

Public Law News

A Publication of the Minnesota State Bar Association Public Law Section

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Visit the PLS web site:

<http://www2.mnbar.org/sections/public-law/index.htm>



www.mnbar.org

CLE Co-sponsored by the Public Law Section and the Minneapolis City Attorney's Office

Selected Public Employment Topics

Tuesday, November 9, 2004
1:00-4:30 p.m.

Course Topics Include:

Labor Relations in the Public Sector – The Management Perspective
The Fair Labor Standards Act – What do the New Regulations Mean for Public Employees
The Family Medical Leave Act
The Minnesota Government Data Practices Act
The Application of *Garrity* & the *Tennessee Warning* to Discipline Proceedings
How to Win Employment Arbitrations
Mixed Motive Discrimination Claims – Where do we Stand?

The CLE will be held at the Hennepin County Medical Center in the Pillsbury Auditorium, 701 Park Avenue, Minneapolis

Parking available in the HCMC parking ramp garage located on 6th Street between Portland Avenue and Park Avenue.

Cost – FREE

However, please contact Pat Detchons at 612/673-2449 to reserve a space for the CLE.

Applied for 3 CLE credits for the seminar.

Wanted: Committee Co-chairs and committee members. If interested in co-chairing a Public Law Section Committee or joining a committee, please contact Dianne Ward at 651/266-3211 or Jay Heffern at 612/673-3272.



Public Law Section 2004 Awards

Opening comments by Jay Heffern at the May 21, 2004 awards presentation ceremony:

Each year, the Public Law Section of the Minnesota State Bar Association recognizes the outstanding achievements of attorneys and judges engaged in public service and in the public practice of law. For me, this annual event is a special time to celebrate. We celebrate today the outstanding careers and accomplishments of nine of our colleagues. In a larger sense, however, we celebrate the many unrecognized public lawyers throughout the state who, day after day, often with little or no thanks:

- work to make our society and our state a better place,
- work to improve our cities and towns; our communities and neighborhoods,
- work to help our families, our friends, our neighbors and the thousands in our state,
- who need legal assistance.

So, the nine recipients of this year's awards represent in many ways the dedication and commitment of those thousands of public lawyers and private practitioners throughout the state who work for and on behalf of the public.

Douglas K. Amdahl Public Attorney Career Achievement Awards (Comments by Jay Heffern)

This year there are four recipients of the Douglas K. Amdahl Public Attorney Career Achievement Award. This award is named for former Minnesota Supreme Court Justice Douglas K. Amdahl whose forty plus years as a public attorney with the Hennepin County Attorney's Office and later, as Chief Justice of the Minnesota Supreme Court, exemplifies the dedicated commitment to public service and career achievement expected of the recipients of this award.

Carl Conney



The first recipient is **Carl Conney**. Carl was an Assistant Minnesota Attorney General for twenty-five years until his retirement in December of 2001. He represented the Minnesota Department of Natural Resources, the Minnesota Department of

Agriculture, the Minnesota Historical Society, the State Fair Board, the Minnesota Department of Revenue, and the Board of Water and Soil Resources. Throughout his career, Carl never put any other interest before that of public service. His only instinct was to do the right thing - both for his client and for the public. Carl is a lawyer who:

- never cut a corner in an effort to get by,
- never avoided putting in the extra time and effort to fully serve his client's and the public's interest, and
- never compromised his advice because of personal comfort or convenience.

His nominator said of Carl:

We as public attorneys have a special duty and obligation to serve not only our agency, but also the public interest. We as public attorneys must be ever vigilant that our acts and words serve the public first. These are the ideals that Carl promoted each and every day of his public service.

Eldon Kaul



The second recipient of the Douglas K. Amdahl Public Attorney Career Achievement Award is **Eldon Kaul**. Eldon joined the Attorney General's Office in 1970 and has been in charge of the AG's Environmental

Protection Division for more than 30 years. Eldon is retiring next month (June 2004). He has served four Attorneys General, Douglas Head, Warren Spannus, Hubert H. Humphrey, III, and Mike Hatch. Eldon has represented the Minnesota Pollution Control Agency, the Environmental Quality Board, the Waste Management Board, the Office of Environmental Assistance, the Water Resources Board, and the Harmful Substances Compensation Board.

Eldon has been involved in most of the environmental cases decided in Minnesota in the last 30 years, but Eldon's involvement in the *Reserve Mining* case and the subsequent administrative proceedings best illustrates Eldon's tenacious commitment to protecting our environment. His work on *Reserve* set the standard of excellence for all environmental lawyers to emulate. Today,

there are many lawyers practicing environmental law, however, Eldon is one of the few in this state who was there at the beginning of the environmental movement and has been there year after year, decade after decade, making sure that our environment is protected. There are few environmental statutes or rules in this state that have not been shaped and molded by Eldon Kaul.

Eldon is not just an outstanding lawyer and public servant. He also is a wonderful developer of young lawyers. Over the years, Eldon has trained and mentored dozens of freshly minted lawyers. I was one of them.

I first met Eldon in 1974 when I was one of his two summer law clerks and I worked for Eldon from 1975 to 1977. Although many years have passed since then, I still remember the encouragement, the patience, and the understanding Eldon devoted to his staff. Over the years, as I have dealt with my own batch of newly minted lawyers, I remind myself of what I learned from Eldon and try my best to practice what Eldon taught me. He was a model boss.

Wayne G. Johnson



Not only are there public servants who have demonstrated the commitment and dedication expected of this award, but there are many private practitioners in the state who are equally committed to serving the public. This

year we recognize two of them.

Wayne G. Johnson, a member of the firm of Johnson and Morris in Silver Bay, Minnesota, has served as City Attorney for Silver Bay for over 46 years and for Beaver Bay, Minnesota for over 50 years. He is the longest presently serving city attorney in the State of Minnesota. As the city attorney for two relatively small cities, Mr. Johnson's responsible not only for all of their civil matters, but also has responsibility for criminal prosecutions within their jurisdictions. He has drafted all of those cities' ordinances. His advice and counsel to these communities over the past five decades has been invaluable.

Like many of this year's recipients, Mr. Johnson's commitment to the public extends far beyond his service as city attorney. Mr. Johnson is nationally known for his leadership in the area of aviation. He was a member of the famous Flying Tigers during World War II and has remained committed to aviation throughout his life. He was named "Mr. Aviation of Minnesota" in 1968 by Governor Harold

Levander and the Minnesota Department of Aeronautics for his promotion and development of the Silver Bay Airport and for his advice and guidance in assisting other area communities in developing their airports. In 1971, he was inducted into the Minnesota Aviation Hall of Fame.

Mr. Johnson's nominator said of him:

Throughout his career, Mr. Johnson has demonstrated extraordinary leadership, initiative, and innovation in the performance of his duties as a public attorney, exemplifying the highest traditions of the legal profession.

Clayton LeFevere (Award accepted by Virginia LeFevere.)



The final recipient of the Douglas K. Amdahl Public Attorney Career Achievement Award is the late Clayton LeFevere. Ask any city attorney who they aspire to be like and the answer

is always the same - Clayton LeFevere. Like Wayne Johnson, Clayton LeFevere served his country in World War II. After the war, Clayton graduated from the University of Minnesota Law School and began private practice.

Clayton LeFevere was a private practitioner who dedicated his career to the representation of public entities and to the service of the public. He served as City Attorney for the Cities of Richfield, Robbinsdale, Burnsville and Lauderdale. He was the President of the Minnesota Association of City and Village Attorneys. When Clayton retired in 1998, the Richfield City Council passed a resolution naming him "City Attorney Emeritus."

Clayton LeFevere was equally committed to making a difference in his community. He served many Minnesota Governors, including being appointed by:

- Governor Elmer L. Anderson as Chair for the Governor's Committee on Metropolitan Affairs,
- Governor Orville Freeman as Chair of the Governor's Committee on Special Legislation,
- Governor Rudy Perpich to the Governor's Council on Economic Development and,
- Governor Harold Levander to the first Metropolitan Council.

Clayton was the Chairman of the Board of Regents of Augsburg College and, as a member of the Association of Governing Boards of Universities and Colleges; he counseled the boards of trustees of 55 colleges and universities around the country.

In 1965 and 1967, Clayton was consultant to the U.S. State Department's Agency of International Development, working in Somalia to set up the legal framework for a public water system.

In nominating Clayton LeFevre, his nominator said of him:

He was the ultimate city attorney with a reputation for a sharp mind, a quick sense of wit, and a solid practical approach to resolving problems. He commanded (and the use of that word is intentional because Clay had a commanding presence) the respect of clients and opponents alike. He epitomized the professionalism that today's lawyers so often mourn.

Clayton's wife, Virginia, and his son, Charlie, who is a lawyer at the Kennedy & Graven law firm, are here today to accept this award.

Public Attorney Award of Excellence – Public Law Office (Comments by Mary Miller)

Toni Beitz



Toni Beitz is a senior attorney in the Civil Division of the Hennepin County Attorney's Office where she represents the Hennepin County Sheriff's Office.

Toni has been a member of the County Attorney's Office for almost thirty years. During that time she was a juvenile prosecutor, handled adult prosecutions, appeals, and what are now known as "CHIPS" cases. As trial attorney in Adult Prosecution, she served as an acting senior attorney supervising and mentoring new prosecutors. Toni served as the head of the Civil Division Litigation Section for ten years starting in 1989.

Many of her civil cases are extremely high profile or sensitive in nature such as wrongful death cases or child protection cases, e.g., *Johnson v. Hennepin County* and *Cooksey v. Hennepin County*, two wrongful death cases against the county. Toni has repeatedly demonstrated

her ability to deal with such cases in a respectful and sensitive manner, due to the human tragedy and loss involved. This involves thorough and demanding preparation of the legal arguments on motions in order to prevail based on them.

Toni has consistently and tirelessly handled an extremely heavy litigation caseload and schedule. She puts in extremely long hours and she is often the first to arrive in the morning or the last to leave in the afternoon. She frequently is in the office on the weekends. The satisfaction of a job well done seems to be all the motivation Toni Beitz requires.

For most of her thirty years, Toni has supervised, and served as a role model and mentor to, attorneys, law clerks, support staff, and peers. Toni is always available and approachable by all staff. Her interest is genuine and her advice sound.

She has the remarkable ability to quickly become proficient in the highly specialized and diverse areas in which she has practiced. Toni has demonstrated an uncanny ability to spot an issue of potential liability and to recognize the potential in litigation for success or disaster. She has settled or litigated accordingly, with generally very positive outcomes for the county.

Toni's calm demeanor and frank approach to staff members, regardless of classification is appreciated by all whom work with her. Toni prepared written training materials aiding new hires in the Juvenile Prosecution Division, which are still in use today. During her current tenure in the Civil Division, she has not hesitated to assist attorneys in both the Adult and Juvenile Prosecution Divisions when cross-jurisdictional issues such as release of court services or child protection data have arisen. Indeed, Toni has personally appeared with legal memorandum in hand, to assist in the argument of such issues on behalf of the State, helping criminal prosecutors who need to research and argue unfamiliar law. In this regard, Toni's unique understanding of the roles of the prosecutor and civil counsel have proven invaluable.

Toni continually demonstrates insight and innovation. Years ago when e-mail was first used, Toni instigated research and policies anticipating the potential for litigation surrounding the discoverability of e-mail.

Toni Beitz is a talented, ethical, and an extraordinarily hard-working attorney who brings respect to the legal profession. Toni's thirty-year dedication to the practice of public law is being recognized by this Public Attorney Award of Excellence.

Public Attorney Award of Excellence – In-house Agency Counsel (Comments by Beverly Heydinger)

Ken Nickolai



Ken Nickolai has had a long, distinguished career as a public lawyer. I will take just two minutes to summarize that career. He received his B.A. from Carthage College in Kenosha, Wisconsin and his J.D. from Duke

University (a classmate of Kenneth Starr – and I am told that Ken Nickolai received a higher grade in constitutional law.) In 1989, Ken got a Masters of Public Administration from the Kennedy School of Government at Harvard University.

Since 1989, Ken has held the following positions:

- Consultant to the Minnesota Department of Administration to Study Discrimination Against Women and Minority Owned Businesses
- Assistant Regional Counsel, Region 1, Environmental Protection Agency
- Consultant to the Governor’s Commission on Reform and Efficiency (CORE)
- Staff Attorney, Minnesota Center for Environmental Advocacy
- Director of Policy and Legal Affairs, and then Deputy Commissioner, Minnesota Department of Human Rights
- Appointed Chief Administrative Law Judge in October, 1997, by Governor Arne Carlson, and served in that position until appointed by Governor Tim Pawlenty to the Public Utilities Commission last September.

Ken has also taught classes, in both law and public policy. He just completed a semester teaching Administrative Law at William Mitchell College of Law. He has also written several articles for publication.

Ken has had many accomplishments in each of his positions. I would like to mention two at the Office of Administrative Hearings (OAH) that I believe are outstanding contributions to the practice of public law.

Ken initiated legislative action to bring the workers’ compensation and administrative law judges at OAH under the Code of Judicial Conduct. This assured a clear, well-established set of ethical principles to guide the office. Ken enlisted the support of the Bar Association, and with its assistance, the legislation was passed. Training and implementation of the Code have raised the professional standing of the OAH, and assured that a strong and enforceable code of conduct is in place.

Ken also instituted a judicial development project that has received national attention. Surveys are sent to litigants and lawyers, asking for their evaluation of a judge’s performance. The surveys are returned to the Management Analysis Division of the Minnesota Department of Administration. The judge receives a summary of the responses, and the Chief receives a summary of all responses. This assures accountability, and provides a basis for developing training and policies that respond to public feedback. In 2001, the Judicial Development Program was named a semifinalist by the Institute for Government Innovation at the Kennedy School of Government. This is a prestigious competition, and the award honors the Judicial Development Program’s innovative approach to judicial accountability.

Now Ken has become a Commissioner of the Public Utilities Commission. I have not checked his rate of approving or disapproving ALJ recommendations, but I have no doubt that he will bring his careful analysis and thoughtful policy approach to the position.

Throughout his career, Ken has unfailingly adhered to high professional standards and ethics. He has great integrity, sound judgment, excellent management skills, and the ability to work on a broad range of issues and with diverse groups of people. His dedication to the improvement of public services in Minnesota has earned him our thanks, and appreciation.



Julius E. Gernes Public Attorney Award (Comments by Tom Frost)

The **Julius E. Gernes Public Attorney Award** recognizes the work and dedication of an outstanding prosecuting attorney. The award is named for the late Julius E. Gernes, the highly regarded Winona County Attorney, whose professional achievements encompass the attributes of this award.

Kathryn Santelmann



This year's recipient is **Kathryn Santelmann**. Kate began her public law career as a judicial law clerk and then served as an Assistant Scott County Attorney. She joined the Ramsey County Attorney's Office in 1992. Since 1995, Kate

has served as Assistant Director of the Prosecution Division and Manager of the Juvenile Prosecution Unit. In this position she supervises nine attorneys. Besides her supervisory duties, she carries a large caseload, writes and argues appeals, and drafts and reviews proposed legislation.

A statewide leader in the juvenile justice arena, Kate serves on the state Supreme Court Juvenile Rules Committee and has co-chaired the Juvenile Law Committee of the County Attorneys Association since 1998.

Kate is recognized as an expert on the state's Extended Juvenile Jurisdiction (EJJ) law and has published two law review articles on EJJ proceedings.

She frequently volunteers to train police, school administrators and probation officers and she has lectured at the National Advocacy Center, a Federal educational facility for prosecutors.

Kate is active at her church, where she coordinates the family shelter volunteer schedule and serves on the Justice and Charity and the Faith Formation commissions.

In the year 2000, William Mitchell College of Law named Kate as one of the Outstanding Women in Law. Her nominator, Ramsey County Attorney Susan Gaertner said of her, "She has distinguished herself as an outstanding public attorney and prosecutor through her dedication, professionalism and extensive efforts to improve the criminal justice system over the past 19 years."

I know Kate to be one of the best lawyers and dedicated public servants in the state, as well as one of the nicest people I know.

William E. McGee Award of Judicial Excellence (Comments by Kim Buechel Mesun)

This award is named for the late William E. McGee former Hennepin County Chief Public Defender and honors public defenders who dedicate their time and talents to protecting the rights of people involved in the legal justice system who cannot afford to hire an attorney. William McGee was one such person and today we honor another.

Paul Thompson



Paul Thompson is an Assistant Public Defender in the Ninth Judicial District in the Bemidji office. Paul has worked as a public defender for over 20 years. As a public defender Paul has the responsibility to:

educate and assist clients, advocate in the courtroom, be a watchdog within the legal system, and represent the public defender system in the community. According to his nominator (his supervisor) Paul excels in all of these responsibilities.

Paul spends countless hours meeting with his clients and their families. He spends many off hours at the office in order to accommodate the schedules of others, including late nights, early mornings and weekends.

Paul's concern for his clients extends beyond their legal issues, and he often advocates for their social and economic rights as well. Whether arguing smaller issues, such as bail, or whether he is making his closing argument in a murder trial, his personal commitment and passion are open for all to observe. He is meticulous about researching the law. His integrity and credibility are well respected by his colleagues, court personnel, and the bench.



As a watchdog within the legal system, Paul is well known around the office for not letting go of an issue once it is known to him. When he discovers an injustice within the legal system, he takes the initiative to bring attention to the issue and to develop a solution.

Paul is kind and hard-working. I attended law school with Paul back in the early 80s and I always remember him as a truly nice person. Not something we can say about all of our law school classmates. He was friendly and helpful to everyone and didn't take himself too seriously. I have not seen Paul since graduation, but it gives me great pleasure to know that he still possesses the same qualities that I so admired in him back in law school.

Paul is a devoted husband and father. He is very active within his church. He is also very active in the local youth hockey organization in which his daughter is a participant. In fact, he organized collaboration between the hockey league and the local juvenile detention center, Northwestern Juvenile Training Center, to clear damaged trees from the land where the new community hockey arena is located.

Paul has been a managing attorney in the Ninth Judicial District since 1995. In this capacity, he is responsible for caseload distribution for two counties. He directly supervises and evaluates five attorneys and five support staff. Paul also handles all client concerns and outside concerns regarding the cases, clients and staff in those two counties. And not only does he provide quality representation, he provides quality leadership as a manager. In fact, he provides both while handling a caseload of more than double the ABA Recommended Caseload Standards. And he does it all without complaint and with humility.



Rosalie E. Wahl Award of Judicial Excellence (Comments by Greg Brooker)

This award is named for former Minnesota Supreme Court Justice Rosalie Wahl whose work as a Justice encompassed the attributes of the award. Justice Wahl is highly regarded, not only for her work as a judge, but also for her dedication to and tireless efforts on projects to

improve the justice system. Today we honor another judge for his similar efforts.

The Honorable John R. Tunheim



It is my pleasure to present the Rosalie E. Wahl Award of Judicial Excellence to U.S. District Court Judge **John R. Tunheim**. Judge Tunheim was born and raised in Newfalden, Minnesota. And to those of you who flunked Minnesota

geography class, that is a farming community in the Red River Valley in northwestern Minnesota.

Judge Tunheim has been a United States District Judge since December 29, 1995. He was nominated by President Clinton on July 10, 1995 and confirmed by the United States Senate on December 22, 1995. Judge Tunheim is one of seven district court judges in the District of Minnesota.

Judge Tunheim has an exceptional record of public service. He served as Minnesota Solicitor General and Manager of the Attorney General's Public Affairs Litigation Division from 1984-1986. He served 9-1/2 years as Chief Deputy Attorney General in the Minnesota Attorney General's Office.

In 1985, he co-chaired the Minnesota State Bar Association/Attorney General Task Force on Legal Advice to Farmers. In 1990, he served as a member of Governor Perpich's Select Committee on the Impact of Drugs on Crime, Education and Social Welfare.

He is a former Chair and member of the Council of the ABA's Government and Public Sector Lawyers Division, a division he helped establish in 1991. He also served as Co-Chair of the Public Law Section of the Minnesota State Bar Association, a section he helped to establish.

From 1993 to 1998, Judge Tunheim served as the Chairman of the U.S. Assassination Records Review Board, an independent federal agency responsible for ensuring and facilitating the review and public disclosure of government records related to the assassination of President John F. Kennedy. The Review Board completed its work on September 30, 1998, presenting its Final Report to the President and establishing a legacy of over 4 million pages of materials concerning the assassination now available to the public at the National Archives in College Park, Maryland.

But it is Judge Tunheim's service in Asia and Europe that I would like to especially highlight today. In June 1990, Judge Tunheim traveled to Russia for the ABA's Central European and Eurasian Law Initiative to teach criminal law and procedure. He returned in January of 2000. In February 2000, he spent three weeks in Kosovo assessing the judiciary and advising the United Nations on needed reforms and development of the rule of law. He returned to Kosovo in June 2000, October 2000 and April 2001. In May and June 2003 he returned again to continue assisting the U.N. in developing the Kosovar judiciary and to supervise elections.

Judge Tunheim recently finished leading a team that has proposed a significant restructuring of the Kosovo judiciary and has recruited American judges to serve as

international judges in Kosovo.

Judge Tunheim has also taught at Justice Department conferences on criminal procedure in Budapest, Hungary in October 2001. He was an international observer at the September 2002 Macedonia elections. In 2002 and 2003, he traveled to what my 13-year old daughter refers to as the "stan" countries. The former Soviet Union provinces that end in stan: one way to learn geography in 7th grade. Kazakhstan in January 2002 and Uzbekistan in May 2003. He is also currently leading a dialogue on human rights in Uzbekistan which began in the fall of 2003.

For these international human rights efforts in particular we honor Judge Tunheim today with the Rosalie E. Wahl Judicial Award of Excellence.

Prior Public Attorney Award Recipients:

Rosalie E. Wahl Judicial Award of Excellence

- 2003 The Honorable Joanne Smith
- 2002 The Honorable Renee L. Worke
- 2001 The Honorable George A. Beck
- 2000 The Honorable J. Earl Cudd
- 1999 The Honorable Leslie May Metzen
- 1998 The Honorable Kenneth F. Fitzpatrick
- 1997 The Honorable George H. Hoey

Douglas K. Amdahl Career Achievement Award

- 2003 William Falvey
John Tierney
William McGee
- 2002 The Honorable Gary Crippen
LeRoy Jackson
The Honorable Kenneth J. Maas
- 2001 The Honorable Douglas K. Amdahl
- 2000 The Honorable Doris Ohlsen Huspeni
Phillip B. Byrne
- 1999 The Honorable A.M. "Sandy" Keith
The Honorable Esther M. Tomljanovich
James N. Bradford
- 1998 Floyd B. Olson
- 1997 The Honorable Rosalie E. Wahl
Stanley G. Peskar
William Kennedy
Julius E. Gernes
- 1996 Earle T. Anderson, Jr.
Robert R.W. Johnson
The Honorable Jon L. Lunde
Lloyd Moosbrugger

Julius E. Gernes Public Attorney Award of Excellence (County Attorney and/or prosecutor)

- 2003 Larry Collins

- 2002 Al Zdrzil
- 2001 Alan J. Harris
- 1999 James c. Backstrom
- 1998 Dianne A. Ward
- 1997 John R. Speakman
- 1996 Conrad I. Freeberg

William E. McGee Public Attorney Award of Excellence

- 2003 Richard Carlson
- 2002 Ronald Greenley
- 2001 Cynthia T. Daly
- 2000 Larry Hammerling
- 1999 Manley Zimmerman
- 1998 Harry Newby, Jr.
- 1997 Candance Rasmussen
- 1996 Fred Friedman

Public Attorney Award of Excellence: In-House Agency Counsel

- 2003 Richard Wexler
- 2001 Thomas W. Anderson
- 2000 Laura D. Kadwell
- 1999 Ann Russell
- 1998 Michael B. Johnson
- 1997 Julie M. Brunner

Public Attorney Award of Excellence: Public Law Office

- 2003 Mark Ponsolle
- 2002 David R. Ornstein
- 2001 Robert A. Stanich
- 2000 John L. Kirwin
- 2000 Desyl L. Peterson
- 1999 William P. Donahue
- 1998 Alan C. Williams
- 1997 Richard S. Slows
- 1996 Beverly Jones Heydinger

Public Law Section Annual Meeting - May 21, 2004

The annual meeting of the Public Law Section was held on May 21, 2004 in conjunction with a full day of CLEs and the Public Attorney Awards presentations. In the morning there was a three-credit Ethics CLE with updates on the Ethical Rules by Ken Jorgenson and Ethics hypotheticals presented by panels of actor wanna-bes. It resulted in a lively discussion of the various ethical rules.

In the afternoon there was a two-credit Elimination of Bias CLE with presentations by the newly returned judges from Kosovo sharing their experiences and comparing the emerging Kosovo judicial systems with the American system.

At the annual meeting the following people were elected to the Public Law Section Executive Council:

Co-chairs-

Dianne Ward, Ramsey County Attorney's Office
Jay Heffern, Minneapolis City Attorney

Secretary-

Harriet Sims, Minnesota Department of Revenue

Treasurer-

Kim Buechel Mesun, Minneapolis Public Schools



The Hon. Edward Wilson

Council Members-

Jim Alexander, U.S. Attorney's Office
Marcy Harris, Community Action for Suburban Hennepin
Mary Miller, Minnesota Department of Labor & Industry
Louis Thayer, Minnesota Department of Human Services

They will join returning council members Diane Alshouse, Ramsey County Public Defender's Office, Tom Frost, Hennepin County Attorney's Office, Judge Tom Kalitowski, Minnesota Court of Appeals, and Judge Warren Sagstuen, Fourth Judicial District who are serving the second year of their two-year terms.



*The Hon.
Daniel Mabley*



The Hon. John Tunheim and panel



*The Hon.
Robert Carolan*



*The Hon. Marilyn
Justman Kaman*

PLS Offers a Glimpse of International Practice of Law at the MSBA Convention

The MSBA Public Law Section was honored to present an insightful and interesting program at the MSBA Convention in June, "The International Practice of Public Law." The presentation was given by members of the



bench and bar who had participated in various ways, toward the rebuilding of a legal and judicial system in Kosovo.

The panel, led by Judge John Tunheim, US District Court, Minnesota, included: Judge Daniel Mabley, 4th Judicial District; Judge Edward Wilson, 2nd Judicial District; Judge Marilyn Justman Kaman, 4th Judicial District, Judge Robert Carolan, 1st Judicial District; and David Schultz, attorney with Hallelund Lewis Nilan Sipkins & Johnson.



David Schultz

The presenters offered various insights on rebuilding a legal system amidst literal and figurative devastation of a country, its institutions, and values. Judge Tunheim presented slides from his visit, showing some of the people he encountered, housing and the conditions of the building where legal and judicial business was conducted. Judge Wilson offered a thoughtful presentation on reintroducing the concept of the rule of law. Judge Kaman discussed the impact of tribal law that



Judge Edward Wilson

still figured into the people's view of laws and the legal system. Judge Mabley outlined the differences between common and civil law systems (Kosovo operating under the latter) and gave us a

virtual tour through a trial. Judge Carolan shared his perceptions of the operation of the judiciary and legal system, and his involvement in legal proceedings. Mr. Schultz had the opportunity to revise (some) and develop (more) judicial procedural instruction books.



Judge Dan Mabley

All of the presenters offered their insights of the people, the country and the impact of the loss of virtually all civil



Judge Robert Carolan

and private institutions. They discussed the impact working outside their "normal" jobs had and will continue to have particularly as it relates to working with those from countries and legal systems outside the United States.

The PLS thanks all of the participants of this program for sharing their experiences and insights into the work they performed, and we should all take pride in having these members of the bench and bar represent Minnesota and the US legal system so exceptionally.



Judge Justman Kaman displays a United Nations flag with patches of each of the peace-keeping countries in the Kosovo area.

Minnesota Association of City Attorneys 2004 Legislative Update

By: Eileen Wells, Mankato City Attorney

The Minnesota Association of City Attorneys met in St. Cloud on June 11, 2004 for the 2004 Legislative Update. The focus was on actions taken in the civil, criminal and judicial areas that impact the daily practice of City Attorneys. Association President Al Hoefstedt, Coon Rapids City Attorney, moderated the seminar.

Laura Offerdahl, Ann Higgins and Craig Johnson from the Intergovernmental Relations staff at the League of Minnesota Cities (LMC) told the story of the 2004 Legislative Session, one that will be remembered more for what was not done than for what the Legislature actually accomplished. They also discussed legislation that had been proposed, but not passed, highlighting issues that they expect to be raised in future sessions.

Christopher Cain, Assistant Mankato City Attorney presented statutory changes, rule changes and case law update relating to criminal prosecutions. Most significant is the lowering of the legal limit for alcohol concentration

from .10 to .08. The effective date of this legislation is August 1, 2005.

Susan Naughton, LMC Staff Attorney, provided an update of recent judicial decisions of interest to the city legal community. The courts have made decisions interpreting the "60 day rule", right-of-way management, governmental immunities, the open meeting law and data practices.

Following presentations by Bryan Brown, Duluth City Attorney on religious symbols and activities and Gerald Hendrickson, Deputy St. Paul City Attorney, on employees' political rights, the group engaged in a lively discussion of First Amendment Rights.

The 2005 Minnesota Association of City Attorneys Educational Conference and Annual Meeting is scheduled for February 4 and 5, 2005. Contact President Al Hoefstedt at (763) 767-6495 for more information.

Minnesota State Bar Association General Assembly Meeting June 11, 2004 - Duluth, Minnesota

By Marcy Harris, Public Lawyer Representative

President James Baillie welcomed all delegates attending the session and the 2004 MSBA Convention. He started by requesting all delegates to remember colleagues who had passed away, and asked for a moment of silence for the recently deceased President Ronald Reagan.

The State of Judiciary reports were delivered by the following Justice and Judges:

- Minnesota Supreme Court: Justice Russell Anderson reported that the prior year had seen significant budget cuts coupled with rising costs in the face of rising caseloads. He also identified positive developments: a children's justice initiative was being implemented in all counties, and the court system continued to implement technological innovations.

- Minnesota Court of Appeals: Chief Judge Edward Toussaint noted that rising caseloads had made it increasingly difficult to issue decisions promptly although he also noted that the Court was determined to maintain quality.

- Minnesota District Courts: Judge Dennis Murphy noted that the state court system was undergoing a change in its funding structure, with two districts now receiving all of their funding directly from the state. Judge Murphy noted that judicial vacancies have hurt some districts more than others, and thanked the MSBA for its efforts to secure adequate funding for the courts.

- **Federal Courts:** Chief Judge James Rosenbaum praised the federal court system for continuing to function well during a year that saw reduced budgets and high-profile discussions of federal sentencing guidelines. He reported on a new system for electronic filings, enhancements to the St. Paul federal courthouse, and planned new courtrooms elsewhere in the state.

President Baillie presented this year’s President’s Award to Dorsey & Whitney attorney Bricker Lavik in recognition of his long-time commitment to the legal needs of the disadvantaged.

Report and Recommendations of the Association Governance Task Force

- The Report and Recommendations of the Association Governance Task Force were presented by Phyllis Karasov, Co-chair of the Association Governance Task Force. The Task Force had met with MSBA members and section representatives to review the governing structure of the Association. After conducting this review, the Task Force recommended the elimination of the Executive Committee, Board of Governors, House of Delegates, and General Assembly, replacing these groups with two new governing bodies — the Council and the Assembly
- Ms. Karasov stated the Board of Governors had approved the proposed new Articles of Incorporation (with an amendment), Restated Bylaws (with an amendment to add a new seat to the Council reserved for a representative from the minority bars), and recommended that the General Assembly approve the is amended version of the Restated Bylaws.
- Ms. Karasov moved that the General Assembly approve the Articles of Incorporation and Restated Bylaws as amended by the Board of Governors. The motion carried.

(for a full review of the report and recommendations, go to the MSBA website)

Pro Bono Presentation: President Baillie reviewed goals regarding pro bono service during the 2003-04 bar year, including involving 500 new attorneys in pro bono activities, and providing assistance in 1,000 new cases. President Baillie reported that these and other goals had been met or exceeded.

Action on the Recommendation of the Human Rights Committee, Diversity Committee, and Family Law Section

relating to a constitutional amendment defining marriage.

President Baillie recognized Caroline Palmer, Chair of the Human Rights Committee, and Diversity Committee member Phil Duran. President Baillie noted that because this recommendation came to the General Assembly from the Board of Governors and from individual committees, it did not require a motion or second. He opened the floor for speakers. Following discussion, the following motion was ultimately carried:

“Resolved: that the Minnesota State Bar Association opposes an amendment to the Minnesota Constitution to forbid the creation of legally-recognized relationships between persons of the same sex.”

Passing of the Gavel

President Jim Baillie recognized incoming 2004-05 President David Stowman of Detroit Lakes.



Eyes On The Courts

By: Greg Brooker, Assistant United States Attorney

What follows is a summary of federal and state court opinions issued in the last few months that may be of interest to lawyers practicing public law in Minnesota.



Police Liability:

Madison v. City of Minneapolis
U.S. District Court
Civ. No. 02-4257
July 15, 2004

Andre Madison sued the City of Minneapolis and several law enforcement officials alleging that the defendants violated his rights under state and federal law by shooting him while attempting to execute a “no-knock” warrant and, after he was wounded, by kicking him while using a racial epithet. Defendants moved for summary judgment. The U.S. District Court granted in part and denied in part the motion.

The Court held that the rule barring a plaintiff from bringing a civil action for damages that necessarily challenges the validity of the plaintiff’s previous conviction and confinement was not applicable. The Court noted that plaintiff’s Section 1983 claims do not necessarily call into question his conviction for obstruction of legal process. The Court also held that because plaintiff’s Section 1983 claims regarding use of excessive force are not identical to the criminal charges of which he was convicted in state court, plaintiff’s claims are not barred by collateral estoppel. This was the case because the reasonableness of the officers’ actions was not litigated or decided during plaintiff’s criminal trial.

The Court granted summary judgment in favor of the officers on the claim that the officers violated plaintiff’s Fourth Amendment rights by shooting him. The Court held that, because the officers reasonably concluded that they were faced with the threat of death or serious harm and because the officers’ responsive use of deadly force was justified, there was not a violation of the Fourth Amendment as a matter of law.

Plaintiff alleged that after he had been shot by the police, at least one officer yelled at him to “get out of here before we start shooting again” and as he crawled out of the bathroom into the dining area, an officer yelled “Die, nigger, die” and “Die motherfucker, die nigger.” After the shooting

had occurred, plaintiff was found bleeding in the dining room with a shotgun near his body. According to plaintiff’s allegations, thereafter an unidentified officer kicked him extremely hard in his side. With regard to these allegations, the Court denied summary judgment to defendants, concluding that, if proven, such conduct was objectively unreasonable and would present a Fourth Amendment violation, given the fact that plaintiff presented no further threat to the officers. For similar reasons, the Court denied summary judgment with regard to the assault and battery counts, noting that plaintiff’s allegations of mistreatment after he was injured and incapacitated overcame an official immunity defense.

Land Use Planning:

Save Latern Bay v. Cass County
Minnesota Court of Appeals
No. A04-165
July 17, 2004

Citizens owning property on or near Woman Lake in Cass County formed a group called “Save Latern Bay” to oppose the development of several near-by lake shore lots owned by the Thousand Acres Development Corporation. The citizen group argued the development proposal would bring increased activity to a sensitive habitat and that the number of lots was too great. Thousand Acres filed a preliminary plat for its development. At the time the plat was filed, the Cass County Board was considering adopting amendments to the ordinance that would have altered Thousand Acres’ plat by reducing the number of residential lots that could be developed. County zoning officials indicated to Thousand Acres that its preliminary plat would fall under the existing ordinance. Prior to plat being considered by the County Planning Commission, the County Board repealed the ordinance and enacted the new ordinance. When the Planning Commission thereafter met to consider the plat filed by Thousand Acres, the Commission members stated that they would review the plat under the standards of the repealed ordinance. The Commission approved the preliminary plat at one meeting and thereafter approved the final plat.

Fourteen days following approval of the final plat, Save Latern Bay appealed the Planning Commission’s decision in Cass County District Court pursuant to a provision in the county ordinance that allows a person to appeal to

district court “questions of law and fact” “within fifteen (15) calendar days from the date of the meeting at which the decision was rendered.”

The Cass County District Court held that the appeal was untimely because the district court characterized Save Latern Bay’s action as an appeal of the preliminary plat approval rather than an appeal from the final-plat approval. The Minnesota Court of Appeals reversed, holding that under the ordinance, persons having an interest affected by the county planning commission’s decision can appeal either the preliminary or the final plat decision. The Court noted that even though preliminary plat approvals may have “superior” importance, final-plat approvals are not stripped of all meaning, noting that final-plat approvals are still subject to review for mistake or abuse of discretion. However, the appellate court noted that because Save Latern Bay did not appeal the preliminary plat decision, the group cannot raise several issues regarding the lakeshore lot size. “At some point following the grant of preliminary-plat approval – Cass County has chosen an interval of fifteen days - a developer must be allowed to safely proceed with infrastructural improvements necessary to secure final-plat approval,” the appellate court noted.

The Minnesota Court of Appeals also reversed the district court’s holding that the developer had acquired a vested right in the preliminary plat and that the county was equitably estopped from revoking the final-plat approval. The appellate court noted that the developer failed to demonstrate expenditures that are unique to the proposed project and would not be otherwise useable, a necessary element in establishing injury or detriment under equitable estoppel law.

The case was thus remanded for further consideration of Save Latern Bay’s appeal of the final-plat decision.

Municipal Tort Liability:

Engleson v. City of Little Falls, et al.
Eighth Circuit Court of Appeals
No. 03-1061
March 29, 2004

Phyllis Engleson, a resident of North Dakota, tripped and fell on a traffic cone at the Little Falls Area Arts and Craft Fair. She commenced a diversity action against the City of Little Falls and others alleging that the defendants had negligently placed the cones. The Fair attracts over 100,000 visitors and has over 1,000 vendors. To accommodate the crowds, the City converted the parallel parking areas along the curb on either side of each public street into pedestrian walkways, which were set off from the vehicles by cones

placed at intervals on the solid-white fog lines ten feet from the curbs. Ms. Engleson tripped on one of the cones while walking with a friend along one of the fog lines. The cones were 28 inches tall and on any given block of the street there were six or seven cones. The City set up the cones following a pre-fair meeting of the police chief, street supervisor, and manager of city services.

The District Court granted summary judgment to the City, holding that, under Minnesota law, the City had no duty to warn fair goers of the presence of safety markers and that the City enjoyed discretionary immunity.

The Eighth Circuit affirmed on the duty question and did not reach the immunity issue. The appellate court noted that under Minnesota law, which follows the Restatement (Second) of Torts, a condition is not obviously dangerous unless both the condition and the risk are apparent to and would be recognized by a reasonable person in the position of the visitor, exercising ordinary perception and judgment. Here, the cones were visible to a reasonable person and the placement of the cones did not make them so much less obvious that the City had a duty to warn. Moreover, the federal appellate court noted, “an invitee is under a duty to exercise reasonable care for his or her own safety and to observe that which is obvious to the ordinarily prudent person.”

Public Employment Law:

Rabe v. City of Bemidji
No. 02-1698
U.S. District Court
March 17, 2004

The former fire chief for the City of Bemidji commenced suit alleging the City violated the Age Discrimination in Employment Act (“ADEA”) when it eliminated his position and reassigned the duties to a new position filled by a younger firefighter. The plaintiff also alleged that the City retaliated against him when the City Manager withdrew an offer to continue paying plaintiff’s health insurance premiums. The offer was withdrawn when the plaintiff refused to sign a notice of intent to terminate agreement with the City.

The City moved for summary judgment. The U.S. District Court stated that in reduction-in-force cases, there are four elements of a prima facie ADEA case: the plaintiff must establish that (1) he or she is a member of a protected class; (2) he or she is qualified for the position; (3) he or she was discharged; and (4) there is some additional evidence that age was a factor in the termination. Under this test, the court noted, a plaintiff may present circumstantial evidence such as statements and practices

that suggest a preference for younger employees. In its summary judgment motion, the City argued that there was no evidence that age was a factor in his termination.

The District Court refused to grant summary judgment on the ADEA allegation. The Court held that plaintiff presented enough evidence that age discrimination played a role in the City's decision. The Court noted that plaintiff offered sufficient evidence that the new fire captain position was identical in every essential detail to the eliminated position of fire chief.

The Court also refused to grant summary judgment on the retaliation claim, which alleged that the fire chief engaged in statutorily protected activity by making his complaint of age discrimination to the City Manager and that the City's reaction – stripping him of the \$405 per month health insurance benefit – amounted to illegal retaliation. The City argued that plaintiff was not entitled to the health insurance benefit because he was not retiring and that the City's offer of health insurance was contingent on plaintiff's acceptance of the terms of the termination notice. The Court held that when the City rescinded its offer to pay for continued health care benefits, such action could be considered "adverse employment action," which was causally related to plaintiff's protected activity of stating that he opposed his termination.

Open Meeting Law:

The Free Press v. County of Blue Earth
No. A03-1152
Minnesota Court of Appeals
April 13, 2004

In April 2002, the Blue Earth County Board met to discuss, among other things, an EEOC charge filed by one of the county employees. The county board chair read a statement explaining that the county board would be closing its meeting "for discussion permitted by the attorney-client privilege." The board minutes state that the meeting was closed "under the attorney-client privilege to discuss pending litigation." The local newspaper, The Free Press, ultimately sued the county for open meeting law violations, contending that the county failed to identify the parties involved in the pending litigation. The newspaper sought declaratory and injunctive relief.

The Blue Earth County District Court ultimately granted summary judgment to the Free Press on its claim that the county's failure to describe the subject to be discussed at the closed meeting violated the open meeting law. The court also issued an injunction enjoining the county from closing any future meeting under the open meeting law

"absent a statement made publicly and on the record which shall indicate the specific grounds permitting the closing of the meeting and which shall contain a description of the subject that will be discussed."

The Minnesota Court of Appeals affirmed the summary judgment holding regarding the open meeting violation but remanded the case for further modification of the injunction. The appellate court noted that the open meeting law requires the government to state the specific grounds permitting the meeting to be closed and describe the subject to be discussed. The court of appeals held that the county's grounds of "attorney-client privilege" did not suffice as the "subject to be discussed" required to close a meeting under the open meeting law. The court also held that "pending litigation" only *identifies* the subject to be discussed – it does not *describe* the subject to be discussed. Because there was not a particularized statement describing the subject to be discussed, the appeals court upheld the summary judgment order against the county.

With regard to the district court's injunction, the court of appeals held that the injunction lacked sufficient specificity to identify the conduct that is to be restrained. It remanded the issue to the district court for more precise direction to inform the county what specific information is required to satisfy the requirement that it describe the "subject to be discussed" under the statute.

Property Law:

Minnesota Department of Natural Resources v. Hess, et al.
No. C4-02-2049
Minnesota Supreme Court
July 29, 2004

In this case concerning the Paul Bunyan State Trail, the Minnesota Supreme Court interpreted a deed from 1898, which conveyed a strip of land from Thomas and Harriet Walker to the Brainerd and Northern Minnesota Railway Company. In 1985, the railway line was discontinued, and in 1991, the DNR purchased the railway corridor from Baxter to Bemidji for \$1.5 million for use as a state trail. The defendants, who owned adjoining parcels to the trail, began in October 1998 to blockade the trail where it crossed their respective properties. The blockade caused the trail to be disjointed and caused public users to travel onto private property to get back onto the trail. In 2002, the Sandbergs began to build a driveway on the property adjoining the trail, even though it was not necessary for the Sandbergs to use the trail to access their property.

In February 2002, the DNR commenced a quiet-title action,

seeking a declaration that the DNR owns the parts of the trail being blockaded by the defendants. The Hubbard County District Court issued a temporary injunction prohibiting the Sandbergs from driving or digging in the trail right-of-way and thereafter both parties moved for summary judgment. In October 2002, the district court granted summary judgment in favor of the DNR, ruling that the DNR owns the property in question. The Minnesota Court of Appeals reversed, holding that the 1898 deed created only an easement and when the railroad ceased railway operations the easement was abandoned.

The Minnesota Supreme Court reversed the court of appeals. Justice Paul Anderson, writing for the Court, stated that prior case law regarding railroad right-of-way was of limited value and was decided prior to the Marketable Title Act, which was enacted to prevent restrictions on property uses that have not been reasserted as a matter of record within 40 years. The language of the granting clause in the deed, the Court noted, establishes that the grantors conveyed a fee simple determinable to the railroad company and not an easement. The Court went on to conclude that the DNR now properly owns the property in fee simple absolute because of the Marketable Title Act.

Chief Justice Blatz dissented, concluding that the language of the deed suggests a conclusion that the interest conveyed by the grantors was an easement that was, in turn, abandoned by the railroad. The railway company therefore had nothing to convey to the state in 1991.

Official Immunity:

Bailey v. City of St. Paul
No. A03-1277
Minnesota Court of Appeals
May 3, 2004

When 73-year-old Virginia Bailey collapsed while shoveling snow, the St. Paul Fire Department ambulance crew responded within minutes. The ambulance crew noticed that Bailey was not breathing properly so they intubated her but on their first attempt they inadvertently placed the tube in Bailey's esophagus rather than in her trachea. On their second attempt, they determined that she was properly intubated and they departed for the hospital. En route Bailey's condition worsened. When she arrived at the hospital, emergency room staff tried to resuscitate her, but she was pronounced dead. The results of the autopsy suggested that Bailey had been intubated in her esophagus rather than in her trachea, causing air to accumulate in her stomach, which contributed to her death.

Bailey's family sued the City alleging that the ambulance

crew was negligent. The City moved for summary judgment, arguing that the crew was engaged in discretionary conduct protected by official immunity. The family argued that official immunity should not apply to the negligent administration of medical care. The family also contended that the conduct at issue was ministerial in any case, because the City had a protocol describing when and how an ambulance crew should intubate a patient. The Ramsey County District Court denied the City's motion for summary judgment, and the City appealed.

The Minnesota Court of Appeals reversed and held that official immunity applied. The appellate court noted that the Minnesota Supreme Court in *Tervilliger v. Hennepin County*, 561 N.W.2d 909 (Minn. 1997) held that official immunity did not protect employees of a county medical facility from liability for a decision not to hospitalize a mental-health patient who later committed suicide; however, the court of appeals held that in this case, *Tervilliger* did not apply. Unlike physicians in a hospital setting, the court noted, an ambulance crew does not have time to base their treatment decisions on a patient's medical history or on consultations with the patient. The appellate court noted that an ambulance crew is more analogous to a police officer, who must make decisions immediately based on scant information with little time for reflection. Moreover, the appellate court noted that denying official immunity to ambulance crews would raise the fear of potential civil liability in emergency situations that could cause crew members to hesitate in providing treatment, thereby increasing the risk to patients.

Public Service Projects

The Public Law Section volunteers kept up their efforts over the summer working at Loaves and Fishes on June 2 and August 4 and at Habitat for Humanity on June 25. Thank you to all volunteers!

Reminder that the Public Law Section volunteers to work at Loaves & Fishes the first Wednesday every other month. New volunteers are always welcome. The next date is

Wednesday, October 6. We generally volunteer the cooking and set up shift from 2:45-5:00 p.m. Contact Nancy McLean at nancy.mclean@co.hennepin.mn.us if you would like to volunteer.

Habitat for Humanity



Bob Roeglin and son Charlie.



Louis Thayer and Kim Buechel Mesun proud of their work.



Habitat houses framed by PLS volunteers.



Nancy McLean instructing Louis Thayer on the fine art of building corners.

Adopt A Family

Join the PLS in its 5th Annual drive to support needy families during the holiday season. You can: 1) join with friends or co-workers to support a family with gifts and meals or 2) make a financial contribution. For more information contact Nancy McLean <nancy.mclean@co.hennepin.mn.us>

Loaves and Fishes - June and August 2004



The fine art of napkin/utensil rolling.



How many lawyers does it take to make a pb&j sandwich?



Greg cleans up.



A happy volunteer.



Louis instructs his friend on the fine art of making tater tot hot dish.



Pb&j extraordinaire.

News From The Bench

Governor Pawlenty appointed **Shaun R. Floerke** to a Sixth Judicial District trial court bench vacancy in the city of Duluth in St. Louis County. The opening occurred with the retirement of the Honorable Carol M. Person on February 29, 2004.

Floerke is a senior assistant attorney in the civil division of the St. Louis County Attorney's office in Duluth. He has worked in the St. Louis County Attorney's office since 1997. From 1996 to 1997, Floerke was an associate attorney with the law firm of Fryberger, Buchanan, Smith and Frederick in Duluth. He was a lead prosecutor with the

Steele County Attorney's office in Owatonna as well as an attorney and partner in the Owatonna law firm of Ruth, Schreiner, Long and Floerke from 1992 to 1996. Floerke earned his juris doctorate degree *magna cum laude* from the University of Minnesota in 1992 and his bachelor of arts degree with honors and distinction from the University of Wisconsin in Madison in 1988.

Floerke is a member of the Eleventh District Bar Association and the Minnesota State Bar Association, where he serves as a judge with the mock trial program. He is also an active member of the Minnesota County Attorneys Association,

through which he has lectured on ethics and the elimination of bias, conflict of interest, and data management and published *DWI Forfeitures in Minnesota and County Attorney's Statutory Duties*. Floerke is also a youth leader with Duluth Harvester Church and a volunteer with Youth Alive, Inc.

Floerke, 39, resides in Duluth with his wife and five children.

Governor Pawlenty appointed **David L. Knutson** and **Michael J. Mayer** to two vacancies on the First Judicial District trial court bench in the City of Hastings in Dakota County. The first opening occurred with the retirement of the Honorable Duane R. Harves on February 29, 2004. The second vacancy occurred with the retirement of the Honorable Thomas R. Lacy on March 23, 2004.

Knutson is an attorney and shareholder in the law firm of Severson, Sheldon, Dougherty and Molenda in Apple Valley, a position he has held since 2001. He has also been a State Senator since 1993. Knutson started his legal career in 1986 with Knutson and Knutson and has continued to practice in Burnsville with its successor firms until becoming a solo practitioner in 1998. Knutson earned his juris doctorate degree from William Mitchell College of Law in St. Paul in 1986 and his bachelor of arts degree from St. Olaf College in Northfield in 1982.

Knutson's professional memberships include the Dakota County, First District and Minnesota State Bar Associations. He has also served on the Civil Legal Assistance, Juvenile Detention Facilities, Foster Care and Adoption, and Parental Cooperation Task Forces and the Commission on Legal Services, and he is a recipient of the Legal Services Coalition's *Pro Bono Publico Award*. Knutson is a member of the Burnsville, Apple Valley and Northern Dakota County Chambers of Commerce, Burnsville Breakfast Rotary Club, Legal Assistance of Dakota County Board of Directors, Dakota County Technical College Foundation, ServeMinnesota Board of Directors and Prince of Peace Lutheran Church.

Knutson, 44, lives in Burnsville with his wife and two children.

Mayer is a partner with the Eagan law firm of Grannis and Hauge. He has been an attorney with the firm since 1989. He was an associate attorney with the South St. Paul law firm of Grannis, Grannis, Farrell and Knutson from 1986 to 1989 and an associate attorney with the Eagan law firm of Hauge, Eide and Keller from 1985 to 1986. Mayer earned his juris doctorate degree from Hamline University School of Law in St. Paul in 1985 and his bachelor of arts degree with honors from St. Mary's University in Winona in 1981.

Mayer is past president of the Dakota County Bar Association, a member of the Minnesota State Bar Association, Minnesota Trial Lawyers and American Trial Lawyers. He has been a member of the Juvenile Justice Advisory Committee since 1995 and was appointed chair last year by Governor Pawlenty. He is also chair of the Midwest region of the Coalition for Juvenile Justice, a member of Congressman Jim Ramstad's Law Enforcement Advisory Committee, a volunteer attorney with Legal Aid of Dakota County, a member of the Burnsville Police Department Citizen Advisory Board, and a mentor for the First Judicial District Youth in Government Program. Mayer also coaches girls softball, track and basketball through the Eagan Athletic Association.

Mayer, 44, lives in Eagan with his wife and two children.

Governor Pawlenty appointed **Michael R. Savre** to a First Judicial District trial court bench vacancy in the city of Glencoe in McLeod County. The vacancy occurred as a result of the death of the Honorable LeRoy W. Yost on December 31, 2003.

Savre is an attorney and president of the Glencoe law firm of Gavin, Olson, Savre and Winters. He has been an attorney with the firm since 1981. Savre, who is a qualified mediator and arbitrator in civil and family law, has also been the Norwood Young America City Attorney since 1982. Savre earned his juris doctorate degree *cum laude* from the University of Minnesota Law School in 1981 and his bachelor of arts degree *cum laude* from Luther College in Decorah, Iowa, in 1977.

Savre is a member of the Minnesota State Bar, McLeod County Bar, and Eighth District Bar Associations and served on the Eighth District Bar Ethics Committee. He is on the Glencoe Hospital Ethics Committee and Glencoe Country Club Board, where he is currently president. Savre was a member and president of the Christ Lutheran Church Council, was on the Glencoe Early Childhood/Family Education Advisory Committee and was Secretary/Treasurer of the McLeod County Parent's Anonymous Board. He has also been a Glencoe community education boys and girls basketball coach, Glencoe Jaycee's youth football coach, Minnesota State High School League football official, and an Odyssey of the Mind judge.

Savre, 49, lives in Glencoe with his wife and two children.

Governor Pawlenty reappointed Judges **William Pederson**, **David Stofferahn** and **Debra Wilson** to the Workers' Compensation Court of Appeals.

Pederson, of Minneapolis, has been a Workers' Compensation Court of Appeals Judge since 1998.

Previously, he was a co-founder, shareholder and managing partner of the Pustorino, Pederson, Tilton & Parrington law firm in Minneapolis from 1980 to 1998, a litigation associate and partner with the law firm of Marker & Pederson in St. Louis Park from 1979 to 1980 and a staff attorney with David K. Wendel & Associates in Minneapolis from 1977 to 1979. Pederson earned his juris doctorate degree from William Mitchell College of Law in St. Paul in 1975 and his bachelor of arts degree from the College of St. Thomas in St. Paul in 1971. Pederson is reappointed to another six-year term that expires on January 4, 2010.

Stofferahn, of St. Paul, has been a Workers' Compensation Court of Appeals Judge since 2002. Prior to his appointment to the court, he was an attorney with the law firm of Sieben, Grose, Von Holtum & Carey in Minneapolis from 1976 to 2002. Stofferahn earned his juris doctorate degree cum laude in 1976 and his bachelor of arts degree in 1969 from the University of Minnesota. Stofferahn is reappointed to another six-year term that expires on January 5, 2009.

Wilson, of St. Paul, has been a Workers' Compensation Court of Appeals Judge since 1991. She was a compensation judge at the Office of Administrative Hearings from 1986 to 1991 and an attorney and partner with the law firm of Fitch, Johnson, Larson and Walsh in Minneapolis from 1981 to 1986. Prior to earning her law degree, Wilson was a college instructor and high school teacher. Wilson earned her juris doctorate degree from William Mitchell College of Law in St. Paul in 1981, her master of arts degree from the University of Minnesota in 1973 and her bachelor of arts degree from Luther College in Decorah, Iowa in 1971. Wilson is reappointed to another six-year term that expires on January 5, 2009.

The Workers' Compensation Court of Appeals has statewide appellate jurisdiction over all workers' compensation appeals. The court consists of five judges appointed by the Governor who have experience with and knowledge of workers' compensation laws and have been licensed to practice law in Minnesota for at least five years.

Other News

Governor Pawlenty appointed **Gail Chang Bohr**, **Chalip Chacon-Bonilla**, **Brenda Pautsch**, and **Judge Kathryn N. Smith** and reappointed **Sarah Dixon** and **Kari Schuch** to the Juvenile Justice Advisory Committee (JJAC).

Bohr, of St. Paul, is the executive director of Children's Law Center of Minnesota, which provides representation for children in juvenile court through its approximately 150 volunteer lawyers. She also serves on the Children's

Justice Initiative Committees of both Hennepin and Ramsey Counties. Bohr replaces Judge Robert Birnbaum, who resigned, to complete a four-year term that expires on January 3, 2005.

Chacon-Bonilla, of St. Louis Park, is a 16-year-old student at St. Louis Park Senior High School. Chacon-Bonilla replaces Peter Aurich as a youth member for a four-year term that expires on January 7, 2008.

Dixon, of Faribault, is the director of the Minnesota Promise Fellows SERVE Minnesota program, and serves on the Minnesota Alliance with Youth statewide coordinating team. Dixon, who has been a member of JJAC since 2002 and is currently vice-chair of the committee, is reappointed to a four-year term that expires on January 7, 2008.

Pautsch, of Gaylord, is a juvenile probation agent supervisor with the Blue Earth County Community Corrections and was previously a juvenile probation agent in Sibley County. She is also a member of the Gaylord City Council. Pautsch replaces Paul Kiltinen, who resigned, to complete a four-year term that expires on January 2, 2006.

Schuch, of Bloomington, is a career and labor market information specialist with the Department of Employment and Economic Development and an evaluation consultant with The Improve Group in Minneapolis. Schuch, who has served one four-year term on JJAC, is reappointed as a youth member to another term that expires on January 7, 2008.

Smith, of Willmar, is a district court judge in the Eighth Judicial District in Kandiyohi County and chairs the Minnesota Supreme Court's Juvenile Delinquency Rules Committee. Smith replaces Jaime Reyes for a four-year term that expires on January, 7, 2008.

The Juvenile Justice Advisory Committee awards grants and carries out the state plan of the federal Juvenile Justice and Delinquency Prevention Act. The committee consists of 18 members appointed by the Governor.

Department Of Administration

Data Practices Opinions Index

By: Mary Miller, Compensation Attorney Principal, Minnesota Department of Labor and Industry

Copies of these opinions can be requested by calling the Department of Administration at (612) 296-6733 or (800) 657-3721. The full text of the Data Practices Opinions are now available online at <www.ipad.state.mn.us/opinions/index.html>.

No. of Opinion	Date of Opinion	Gov't Entity Involved	Topic	Opinion Requestor
04-014	3/11/04	ISD #821	Court complaint against a district administrator; redaction.	ISD 821/Rupp & Quiring
04-015	3/17/04	ISD #97	Complaint letter regarding a district employee	ISD 97/Knutson
04-016	3/23/04	North Mankato	List of books taken out by child; parent access.	North Mankato Kennedy
04-017	3/26/04	Thief River Falls	Amount paid toward employee's health insurance benefit.	Thief River Falls/Torkelson
04-018	3/31/04	ISD #832	Personal notes used to prepare school board minutes.	ISD 832/Kepple
04-019	3/31/04	Middle-Snake-Tarmac Rivers Watershed District	Denial of copies to client due to unpaid copies bill of attorney.	Stengrim
04-020	3/31/04	Department of Public Safety	Notice of use of social security number for commercial drivers license.	X
04-021	4/2/04	Department of Human Services	Information about withholding information on X's child from X. Minn. Rules 1205.0500, subp. 3.	X
04-022	4/2/04	ISD #272	Data Practices policies on student records; timeliness of response; appointment of responsible authority.	Rodenhiser
04-023	4/9/04	Department of Corrections	Civil commitment review and end-of-confinement review concerning a sexual offender. Minn. Stat. § 244.052. Request for meeting data including public employees involved in risk-level determinations.	Star Tribune/Borger
04-024	4/14/04	ISD #77	Publication of photos of X's child identified as "special education" student; provision of data practices policy on line.	X
04-025	4/15/04	Excelsior	Spreadsheet of revenues received from parking violations.	Excelsior, Staunton
04-026	4/27/04	Dakota County	Request for a "negotiated check."	X
04-027	4/28/04	Minneapolis	Voluminous request for public information on all police officers.	Gross and Cohen

Department Of Administration

Data Practices Opinions Index Continued

No. of Opinion	Date of Opinion	Gov't Entity Involved	Topic	Opinion Requestor
04-028	5/5/04	Minneapolis	Police report concerning an apprehension and death.	Gross and Cohen
04-029	5/17/04	ISD #1	Request not clearly received by government.	X
04-030	5/17/04	Eagan	Cellular phone records of ic. mayor/employee; personal use of government-owned equipment.	Salberg
04-031	5/18/04	Ramsey County Sheriff's Office	Public response or incident data. Minn. Stat. § 13.82, subd. 6.	<u>Shoreview Press/Anfinson</u>
04-032	6/1/04	ISD #700	1993 employee time sheets.	Youngren
04-033	6/1/04	Minneapolis	February 6 police report on occurrence; request that witness not be identified.	Gross and Cohen
04-034	6/2/04	LeSueur County Attorney's Office	Information/pictures obtained in visit to Quiram farm.	Quiram
04-035	6/2/04	City of Prior Lake	Data on actions taken to resolve zoning ordinance complaints.	The Meyers
04-036	6/3/04	LeSueur County Attorney's Office	Incident reports and logs for two person, correspondence with IPAD.	Quiram
04-037	6/3/04	City of Winsted	Federal DOT drug test data; preemption; post-discharge hearing disclosure to decision maker; related printed material.	Winsted/Dohm
04-038	6/4/05	Transportation	Charge for searching for and retrieving data for which copies were not requested.	<u>Star Tribune, Browning</u>
04-039	6/22/04	City of Orr	Data relating to the termination of an employee; obligation to make and preserve a record of actions.	Timberjay, Helmberger
04-040	6/28/04	Stearns County Recorder	Costs of searching, retrieving and copying data; overhead costs.	<u>St. Cloud Times, Aeikens</u>
04-041	6/28/04	Stearns County Auditor-Treasurer	Costs of searching, retrieving and copying data; overhead costs.	<u>St. Cloud Times, Aeikens</u>
04-042	6/28/04	Benton County Sheriff's Office	Cost of faxing; normal operating expenses.	<u>St. Cloud Times, Scott</u>
04-043	6/28/04	ISD #11	Receipt of requests.	Pachl
04-044	6/29/04	Minneapolis Park and Recreation Board	Timeliness of response.	Brand
04-045	7/1/04	Winona County Attorney's Office	Destruction of prosecution evidence.	X

Upcoming CLE Seminars of Interest to Public Lawyers - September through January

Date	Seminar	Time	Place	Sponsor/Contact
10/13/04	U.S. Supreme Court Decisions Update	10:30 a.m. to Noon	Radisson City Center, Ballroom A	Minn. Atty. Gen. Office/ Marty Casserly (651)297-5919
10/19/04	Help America Vote Act (HAVA): A Federal Response To State Elections	Noon to 1:00 p.m.	State Office Building Room 200	Revisor's Office (651) 296-2868
10/21/04	Defending Domestic Violence Crimes	8:30 to 11:45 a.m.	Hennepin County Bar Association Offices	H.C.B.A./Carol Berg (612) 752-6600
10/22/04	Parliamentary Law in Real Life Meetings	8:30 to 11:45 a.m.	Hennepin County Bar Association Offices	H.C.B.A./Carol Berg (612) 752-6600
10/28/04	LexisNexis Training	Noon to 1:00 p.m.	Ramsey Co. Courthouse, Basement,	Second Jud. Dist. Admin. Office/Nicole Anderson (651) 266-9267
11/9/04	Selected Public Employment Topics	1:00 to 4:30 p.m.	Henn. Co. Medical Ctr., Pillsbury Auditorium	Mpls. City Attys. Office Public Law Section (see p. 1 for more details)
11/10/04	Home Computer Privacy & Cybercrime	10:00 a.m. to Noon	Radisson City Center, Ballroom A	Minn. Atty. Gen. Office/ Marty Casserly (651)297-5919
11/17/04	Working With Refugees and Immigrants	10:00 a.m. to Noon	State Office Building Room 10	Revisor's Office (651) 296-2868
11/18/04	Criminal Law 101	Noon. to 1:00 p.m.	Ramsey Co. Courthouse, Basement Rm. 40	Second Jud. Dist. Admin. Office/Nicole Anderson (651) 266-9267
11/23/04	Minnesota Supreme Court Roundup	Noon to 1:00 p.m.	State Office Building Room 200	Revisor's Office (651) 296-2868
12/8/04	Data Practices Act - Recent Developments	Noon to 1:00 p.m.	Radisson City Center, Ballrm. A	Minn. Atty. Gen. Office/ Marty Casserly (651)297-5919

Date	Seminar	Time	Place	Sponsor/Contact
12/16/04	The Use of State Gen. Obligation Bonds to Fund Projects	Noon to 1:00 p.m.	Ramsey Co. Courthouse, Basement Rm. 40	Second Jud. Dist. Admin. Office/Nicole Anderson (651) 266-9267
1/21/05	Ethics for the Public Lawyer	8:30 to 11:45 a.m. (there will be a cost for this CLE)	Radisson City Center, Ballroom A	Minn. Atty. Gen. Office/ Marty Casserly (651) 297-5919
1/27/05	Extended Jurisdiction Juvenile & Adult Certification	Noon to 1:00 p.m.	Ramsey Co. Courthouse, Basement Rm. 40	Second Jud. Dist. Admin. Office/Nicole Anderson Second Jud. Dist. (651) 266-9267

The Federal Bar Association plans to host monthly luncheons at which a member of the Bench will speak, providing the opportunity for .5 in CLE credits. The luncheons are tentatively scheduled to be held on the third Wednesday of the month roughly at noon. Check the FBA website as www.fedbar.org/minnesota.html for more up-to-date information on these luncheon CLEs and other FBA events.

New lawyers are invited to join an in-chambers lunch with one of the Federal Court Judges. These opportunities will begin again in September and will offer 1 hour of CLE credit. Details can be accessed at www.fedbar.org/minnesota.html. Further inquiries on these FBA opportunities can also be directed to Ms. Rachna Sullivan, Rider Bennet Law Firm at 612-340-7999.

To include notice of an upcoming CLE in the next issue, contact Mary Miller at 651/284-5306 or mary.miller@state.mn.us.

CLE credits update – The Public Law Section sponsored CLEs on May 21, 2004 and June 10, 2004 entitled “The International Practice of Public Law” have each been approved for two Elimination of Bias CLE credits. The May 21, 2004 Ethics CLE has been approved for three Ethics CLE credits.

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