

Public Law News

A Publication of the Minnesota State Bar Association Public Law Section

Volume XVIII, Issue 3, Spring 2008

Public Law Section

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Visit the PLS web site: <http://www2.mnbar.org/sections/public-law/index.htm>



www.mnbar.org

Friday, May 16, 2008

Public Law Section Annual Meeting & CLE Program

The First Amendment and National Security: A Case Study Involving the Republican National Convention

Against the backdrop of the Republican National Convention, federal, state and local government officials will be faced with the challenging task of weighing first amendment rights of free speech and assembly and ensuring public safety. This program will focus on finding a practical, workable balance to those potentially competing interests.

The first part of the presentation will examine the 1st Amendment and protest. Then our experienced panel members will open the conversation with insights from their diverse perspectives reflecting their experiences with City and U.S. Attorney's Offices, FBI, St. Paul Police Department, and the U.S. Secret Service. This CLE will be invaluable to any public sector attorney interested in this challenging topic.

Following the CLE presentation will be the annual meeting and awards ceremony.

When:

Friday, May 16, 2008

8:30 am- Registration

9:00 am - CLE Program

11:45 am - Luncheon, Awards and Annual Meeting

Where:

Midland Hills Country Club

2001 Fulham Street

Saint Paul, Minnesota

[Click here for directions](#)

Presenters:

John Kelly,

Saint Paul Assistant City Attorney

Kyle Loven,

FBI Chief Division Counsel

Greg Brooker,

Assistant United States Attorney

Matthew Bostrom,

Saint Paul Assistant Chief of Police

John Koleno,

United States Secret Service

Cost:

\$40 Public Law Section members

\$50 Non-Public Law Section members

\$20 Law Students

\$25 Annual Meeting and Luncheon ONLY



Please [click here](#) to register or visit the MSBA website at www.mnbar.org.

12th Annual MSBA Public Law Section Public Attorney Awards

Come on May 16 to the Public Law Section Annual Meeting and Awards Luncheon to see the following people receive awards honoring them for their service to the public.

Rosalie E. Wahl Judicial Award of Excellence:

2008 **Chief Justice Russell A. Anderson**, Minnesota Supreme Court

This award is named for former Minnesota Supreme Court Justice Rosalie E. 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 improving the justice system. The PLS seeks to honor an appellate, federal or state court, or administrative law judge who not only possesses high ideals, personal character and judicial competence, but also has gone beyond the ordinary call of duty, participating in projects focused on improving the quality of justice or the justice system. Nominated judges must have been on the bench for at least five years.

Past recipients of the Rosalie E. Wahl Award are:

- 2007 **The Honorable John P. Smith**, Ninth Judicial District
- 2006 **The Honorable Ann Montgomery**, Federal District Court
- 2005 **The Honorable Allan W. Klein**, Office of Administrative Hearings
- 2004 **The Honorable John R. Tunheim**, Federal District Court
- 2003 **The Honorable Joanne M. Smith**, Second Judicial District
- 2002 **The Honorable Renee L. Worke**, Third Judicial District
- 2001 **The Honorable George A. Beck**, Administrative Law Judge
- 2000 **The Honorable J. Earl Cudd**, Federal Magistrate Judge
- 1999 **The Honorable Leslie May Metzen**, First Judicial District
- 1998 **The Honorable Kenneth F. Fitzpatrick**, Second Judicial District
- 1997 **The Honorable George H. Hoey**, First Judicial District

Julius E. Gernes Prosecutor Award of Excellence:

2008 **Jeffrey Edblad**, Isanti County Attorney

This award is intended to recognize the work and dedication of an outstanding prosecutor working at the federal, state, or local level. The award is named in memory of the late Julius E. Gernes, former Winona County Attorney and chief prosecutor who was well known and highly regarded by county attorneys throughout Minnesota and whose professional achievements as a public attorney encompass the attributes of this award.

Past recipients of the Julius E. Gernes Award are:

- 2007 **Susan E. Gaertner**, Ramsey County Attorney's Office

- 2006 **Cary W. Schmies**, Duluth City Attorney's Office
- 2005 **Steve Redding**, Hennepin County Attorney's Office
- 2004 **Kathryn A. Santelmann**, Ramsey County Attorney's Office
- 2003 **Larry M. Collins**, Waseca County Attorney's Office
- 2002 **Al Zdrazil**, Ramsey County Attorney's Office
- 2001 **Alan J. Harris**, Hennepin County Attorney's Office
- 1999 **James C. Backstrom**, Dakota County Attorney's Office
- 1998 **Dianne A. Ward**, Hennepin County Attorney's Office
- 1997 **John R. Speakman**, Anoka County Attorney's Office
- 1996 **Conrad I. Freeberg**, Morrison County Attorney's Office

William E. McGee Public Defender Award of Excellence:

- 2008 **F. Richard Gallo**, State Public Defender's Office

This award is intended to recognize the work and dedication of an outstanding public defender working at the federal, state, or local level. The award is named in memory of the late William E. McGee to recognize his contributions and commitment to the fair, nondiscriminatory administration of justice and representation of citizens of limited means. The award also recognizes his extraordinary leadership, initiative and innovation in the performance of his duties as the Hennepin County Chief Public Defender.

Past recipients of the William E. McGee Award are:

- 2007 **Noreen C. Phillips**, Second Judicial District
- 2006 **Daniel M. Scott**, Federal Public Defender's Office
- 2005 **Brad Colbert**, State Public Defender's Office & Legal Aid to MN Prisoners Clinic at William Mitchell College of Law
- 2004 **Paul G. Thompson**, Ninth Judicial District
- 2003 **Richard G. Carlson**, Fourth Judicial District
- 2002 **Ronald Greenley**, Tenth Judicial District
- 2001 **Cynthia T. Daly**, Fourth Judicial District
- 2000 **Larry Hammerling**, State Public Defender's Office
- 1999 **Manley Zimmerman**, Fourth Judicial District
- 1998 **Harry Newby, Jr.**, Sixth Judicial District
- 1997 **Candace Rasmussen**, Third Judicial District
- 1996 **Fred Friedman**, Sixth Judicial District

Public Attorney Awards of Excellence:

- 2008 **Jay M. Heffern**, Former Minneapolis City Attorney - Public Law Office Award
- 2008 **Virginia Rae Bly**, MN Department of Human Services - Government Agency Award

These two awards are the primary method of recognizing the work and dedication of outstanding public attorneys. A recipient is selected each year from those attorneys who work

for (1) a public law office, and (2) a government agency.

To receive the Public Attorney Award of Excellence for an attorney in a public law office the attorney must have practiced civil law at the federal, state, or local level for at least five years. The attorney must have engaged in activities that show dedication and commitment to public service and the public practice of law. The attorney may also have distinguished him/herself by making significant contributions that aid in the operation of government or the practice of law and/or by demonstrating extraordinary leadership, initiative, or innovation in the performance of his/her duties.

The Public Attorney Award of Excellence for an attorney working in a government agency is specifically dedicated to those licensed attorneys who work in government agencies in a variety of capacities with such titles as hearing official, general counsel, staff attorney, legal analyst, law clerk, or attorneys who hold non-legal leadership positions in government agencies such as commissioner, superintendent, manager, director, council member, school board member.

Past recipients of the Public Attorney Award of Excellence in a Public Law Office are:

- 2007 **Kenneth E. Raschke, Jr.**, Minnesota Attorney General's Office
- 2006 **Douglas J. Gregor**, Minnesota Attorney General's Office
- 2005 **Joan D. Humes**, United States Attorney's Office
- 2004 **Toni Beitz**, Hennepin County Attorney's Office
- 2003 **Mark Ponsolle**, Ramsey County Attorney's Office
- 2002 **David R. Ornstein**, Bloomington City Attorney's Office
- 2001 **Robert A. Stanich**, Minnesota Attorney General's Office
- 2000 **John L. Kirwin**, Minnesota Attorney General's Office
- 2000 **Desyl Peterson**, Minnetonka City Attorney's Office
- 1999 **William P. Donohue**, University of Minnesota
- 1998 **Alan C. Williams**, Minnesota Attorney General's Office
- 1997 **Richard S. Slowes**, Minnesota Attorney General's Office
- 1996 **Beverly Jones Heydinger**, Minnesota Attorney General's Office

Past recipients of the Public Attorney Award of Excellence in a Government Agency are:

- 2007 **Allen Giles**, Minneapolis School District
- 2006 **Dennis W. Erickson**, MN Department of Human Services
- 2005 **Gail M. Olson**, Minnesota State College and University System
- 2004 **Kenneth A. Nickolai**, Minnesota Office of Administrative Hearings
- 2003 **Richard A. Wexler**, MN Department of Health
- 2001 **Thomas W. Anderson**, Metropolitan Airports Commission
- 2000 **Laura Kadwell**, MN Department of Human Services
- 1999 **Ann Russell**, Hennepin County Medical Center
- 1998 **Michael B. Johnson**, Minnesota Court Administrator's Office
- 1997 **Julie M. Brunner**, St. Louis County Administrator

Douglas K. Amdahl Public Attorney Career Achievement Award:

- 2008 **Lane Ayres**, Hennepin County Attorney's Office
Jeanne Schleh, Ramsey County Attorney's Office
The Hon. Allen Oleisky, Fourth Judicial District

This award is intended to recognize retired or retiring public attorneys who have had distinguished careers as public attorneys, have made many significant contributions to public service and are recognized as models of the dedication and commitment of public attorneys. This award may be given to more than one recipient per year.

Past recipients of the Douglas K. Amdahl Award are:

- 2007 **Karel Lee Moersfelder, Quy T. Dam, Michael R. Dean**
2006 **Alan R. Mitchell, James F. Lammers**
2005 **Philip J. Olfelt**
2004 **Carl Conney, Wayne G. Johnson, Eldon G. Kaul, Clayton LeFevere**
2003 **William E. Falvey, William E. McGee, John D. Tierney**
2002 **The Honorable Gary L. 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**
1998 **The Honorable Esther M. Tomljanovich, James N. Bradford, Floyd B. Olson**
1997 **The Honorable Rosalie E. Wahl, Stanley G. Peskar, William R. Kennedy, Julius E. Gernes**
1996 **Earle T. Anderson, Jr., Robert R. W. Johnson, The Hon. Jon L. Lunde, Lloyd J. Moosbrugger**

Pro Bono Attorney Award of Excellence:

- 2008 **Kathleen Battle Sayles, Southern Minnesota Regional Legal Services**

This award was created in 2006 and is intended to recognize an outstanding public attorney (or public law office) who has engaged in activities that show dedication and commitment to provide volunteer services to underserved communities. With the Pro Bono Attorney Award of Excellence the Public Law Section seeks to honor attorneys who exemplify the principles of professional conduct rule 6.1:

A lawyer should render public interest legal services. A lawyer may discharge this responsibility by providing services at no fee to a person of limited means or to public service or charitable groups or organizations, by service activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to person of limited means.

Additionally, the Minnesota State Bar Association adopted Professional Aspiration Standards which encourage attorneys to provide at least fifty hours of pro bono legal services per year. The American Bar Association has adopted a similar standard.

Past recipients of the Pro Bono Attorney Award are:

- 2007 **Patrick R. Burns**
2006 **Kenneth Kohnstamm**

Public Law Section Executive Council Elections for 2008

Minnesota State Bar Association Public Law Section Bylaws call for the annual election of the Section Executive Council. The Section Executive Council consists of two co-chairs, a secretary, a treasurer, and eight council members. The co-chairs, secretary, and treasurer each serve one-year terms. The council members serve two-year staggered terms. The election will take place at the annual meeting to be held on May 16, 2008 (*see* page 2 for meeting location and details).

The Nominations Co-chairs Judge Tom Kalitowski and Kim Buechel Mesun presented the following report to the Executive Council at the April 8, 2008 Council meeting:

Proposed PLS Executive Council for 2008-09

Co-Chairs (1-year term):

Barry Greller – Assistant Attorney General, Minnesota Attorney General’s Office

Mary Miller – Compensation Attorney Principal, Minnesota Dept. of Labor and Industry

Secretary (1-year term):

Jim Alexander – Assistant U.S. Attorney, U.S. Attorney’s Office

Treasurer (1-year term):

Kim Buechel Mesun – Assistant District General Council, Minneapolis School District

Executive Council (2-year term):

Dana Banwer – Deputy City Attorney, Minneapolis City Attorney’s Office

John Choi – St. Paul City Attorney

Todd Schoffelman – Assistant County Attorney, Sherburne County Attorney’s Office

Inta Sellars – Assistant Chief Human Services Judge, Minnesota Dept. of Human Services

Council Members returning for the second year of their 2-year term:

Diane Alshouse, District Court Judge, Second Judicial District

Greg Brooker, Chief Deputy, Civil Division, U.S. Attorney’s Office

Tom Kalitowski, Judge, Minnesota Court Appeals

Nancy McLean, Assistant County Attorney, Hennepin County Attorney’s Office

Nominations from the floor are also allowed.

“Connecting Youth To Success: Doing Juveniles Justice in Minnesota” June 19, 2008

The Juvenile Justice Coalition of Minnesota is sponsoring an open forum entitled “Connecting Youth to Success: Doing Juveniles Justice in Minnesota”. The forum will be held on Thursday, June 19, 2008 at the Earle Brown Heritage Center in Brooklyn Center.

Come together with leaders from across Minnesota to build your community’s capacity to address common juvenile justice system issues. National and local presenters will share a wealth of practical solutions to address disproportionate minority representation, mental health, family involvement, use of evidence-based practices, after care/reentry, systems coordination, prevention, the role of the courts, shared funding and school partnerships.

Who will benefit in attending...

- Judges
- County Attorneys
- Public Defenders
- Law Enforcement
- Education Administrators
- Corrections Administrators
- State Agency Leadership
- Court Administration Members
- County Administration Members
- Elected Officials
- Community-Based Organization Leadership
- Professional Association Leadership
- Human Services Leadership
- Correctional Residential Facilities Administration
- Higher Education Administration
- Religious Affiliated Organization Leadership

Forum Sponsor

- Juvenile Justice Coalition of Minnesota (JJC)

Forum Co-Sponsors

- Hennepin County Attorney’s Office
- Hennepin County Public Defender’s Office
- Minnesota Department of Corrections
- Minnesota Department of Education
- Minnesota Department of Human Services
- Minnesota Department of Public Safety, Office of Justice Programs
- NAMI - Minnesota
- The McKnight Foundation
- The Minneapolis Foundation
- Wilder Research

Forum Partners

- Juvenile Detention Alternative Initiative (JDAI)
- Juvenile Justice Advisory Committee (JJAC)
- Minnesota Community Corrections Association (MCCA)
- Minnesota Corrections Association Juvenile Justice Committee
- Minnesota Judicial Branch
- **Minnesota State Bar Association Public Law Section**

Forum Steering Committee Members

- Jeri Boisvert, MN Department of Public Safety, Office of Justice Programs, Co-chair
- Lenny Castro, Hennepin County Public Defender, Co-chair
- Sue Abderholden, NAMI Minnesota
- Judge Tanya Bransford, Fourth Judicial District
- Chris Bray, MN Department of Corrections
- Pat Dale, The Storefront Group
- Chris Ganzlin, McKnight Foundation
- Richard Gardell, Juvenile Justice Advisory Committee
- Cheryl Holm-Hanson, Wilder Research
- Tricia Hummel, MN Department of Public Safety, Office of Justice Programs
- Karen Kampa Jaszewski, Minnesota Judicial Branch, Court Services Division
- Judith Kahn, Mpls. Youth Coordinating Board
- Cheryl Kreager, Juvenile Justice Coalition of Minnesota
- Curt Peterson, Juvenile Justice Coalition of Minnesota
- Lt. Bryan Schafer, Mpls. Police Department
- Carol Thomas, MN Department of Education
- Bill Wyss, MN Department of Human Services, Children’s Mental Health

Forum Agenda

7:30 – 8:30 am *Registration*

8:30 – 8:45 am *Welcome/Introduce Nine Tenets & Connection with 2006 JJC Forum*

8:45 – 10:05 am **Keynote Presentation**
“Juvenile Crime: Where Are We Going?”

Dr. Anthony Schembri, Sir Leon Radzinowicz
 Professor of Criminology, Law & Police Science,
 University of Florida

10:05 – 10:30 am *Overview of Forum Issues & Minnesota Data*

Chris Bray, Minnesota Department of Corrections

10:30 – 10:45 am *Break*

10:45 – 11:45 am *Morning Break-Out Sessions*

1. *Reducing Disproportionate Minority Contact*

Presenter: *James Bell, The W. Haywood Burns Institute, California*

2. *Treating Youth with Mental Health Needs in the Juvenile Justice System*

Presenter: TBA

3. *Families Matter*

Presenter: *Trina Osher, Huff Osher Consulting, Inc., Maryland*

4. *Frameworks for Implementing, Sustaining, and Scaling-up Evidence-Based Programs: Lessons Learned in Washington State*

Presenter: *Elizabeth Drake, Washington State Institute for Public Policy*

5. *Pennsylvania’s Principle of Aftercare: Reform Efforts within a County-Based System*

Presenters: *Autumn Dickman, Pennsylvania Juvenile Law Center; Rick Steele, Pennsylvania Juvenile Court Judges’ Commission and Center for Juvenile Justice Training & Research*

6. *Building a Stronger and Smarter Juvenile Justice System*

Presenter: *Shay Bilchik, Center for Juvenile Justice Reform, Georgetown University’s Public Policy Institute Policy expert.*

7. *Dollars and Sense of Prevention Instead of Prison*
 Presenter: *Trisha Beuhring, Ph.D., Institute on Community Integration, University of Minnesota*

8. *“Foundations for Excellence: An Overview of the Juvenile Delinquency Guidelines”*

Presenter: *Honorable Corey Wahwassuck, Leech Lake Tribal Court*

9. *Schools as Nodes of Justice: Prevention and Capacity Building through Restorative Justice and Responsive Regulation*

Presenter: *Dr. Brenda Morrison, Simon Fraser University, British Columbia, Canada*

12:00 – 1:00 pm **Lunch**

1:00 – 2:00 pm **Afternoon Break-Out Sessions**

1. *JDAI and More: Strategies for Addressing Disproportionate Minority Contact*

Presenters: *James Bell, The W. Haywood Burns Institute; Jim Payne, The Annie E. Casey Foundation; Angelique Kedem, Minnesota Juvenile Detention Alternative (JDAI) Coordinator*

2. *Minnesota Models for Serving Youth with Mental Health Needs in the Juvenile Justice System*

Presenters: *Chris Bray, Minnesota Department of Corrections; Linda Hanson, Mental Health Coordinator, Dakota County Corrections; Ed Frickson, Ramsey County*

3. *Family Voices*

Presenters: *Youth and parents/guardians currently or previously involved with the juvenile justice system.*

4. *Challenges of Implementing Evidence-Based Practices with Youth of Color*

Presenter: *Ken Martinez, Partnership for Children and Families Mental Health American Institutes for Research*

5. *Minnesota’s After-Care System*

Presenters: *Mike Boehm, Family & Children’s Center; Terry Thompson, Bar None Residential Treatment Services; Andrea Hendel, Bar None Residential Treatment Services; TBA*

6. *Integrated Systems in Minnesota*

Presenters: *Susan Mills*, Tri-County Community Corrections; TBA

7. *Successful Minnesota Prevention and Intervention Models*

Presenters: *Jason Carver*, The Link; *James Kambiri*, The Link; TBA

8. *How Other States Fund Juvenile Justice Reforms*

Presenters: *Autumn Dickman*, Pennsylvania Juvenile Law Center; *Elizabeth Drake*, Washington Institute for Public Policy

9. *Minnesota Schools: Keeping Youth Out of the System*

Presenters: Stephanie Autumn, National Center for Mental Health Promotion & Youth Violence Prevention; Mary Leadem Ticiu, Stillwater Area Senior High School; Dave Kisch, School Resource Officer/Oak Park Heights Police Department; Vernon Rowe, Roosevelt High School, Mpls.

2:00 – 2:15 pm Afternoon Break

2:15 – 3:30 pm Small Group Discussions Focused on Forum Issues

Small group discussions on how Minnesota can improve our juvenile justice system, focusing on the identified forum issues. Momentum coming out of the forum will tap into existing efforts or create new statewide initiatives.

Forum Issues:

- Disproportionate Minority Contact
- Mental Health & Juvenile Justice
- Family Involvement
- Use of Evidence-Based Practices
- After Care/Reentry
- Systems Coordination
- Prevention & Intervention
- Role of the Courts
- Role of the Schools

3:45 – 4:15 pm Closing Remarks and Summary of Discussions

Shay Bilchik, Director of the Center for Juvenile Justice Reform at Georgetown University's Public Policy Institute

4:15 – 4:30 pm Forum Wrap Up and Call to Action

Jeri Boisvert, Director, Minnesota Department of Public Safety, Office of Justice Programs; Lenny Castro, Hennepin County Public Defender

REGISTER BY JUNE 13, 2008

Space is limited. Reserve your place at the 2008 "Connecting Youth to Success; Doing Juveniles Justice in Minnesota" today. Registration must be received on-line by June 13th. After that, you must register on-site. On-site registration cannot be guaranteed. Don't delay – register now!

Registration Fee: The \$60 registration fee includes admittance to all key note presentations, break out sessions, electronic copy of forum materials, as well as continental breakfast, lunch and refreshment breaks.

If you are required by your employer to use a purchase order, letter of authorization or state voucher, please indicate this on your electronic registration and bring the copy with you along with payment at the time you register for the forum.

Registration:

The registration form and process is available on-line only through the Juvenile Justice Coalition of Minnesota website at www.jjcmn.com. Registration deadline is Friday, June 13, 2008. Please have photo ID available when picking up your registration packet. Payment may be made through a credit card, purchase order or check per the on-line registration instructions.

Continuing Education:

CLE, POST and CE credits will be available.

Forum Contact Information:

Log on to the JJC website at www.jjcmn.com to access forum brochures and other details. For more information about the forum, please contact Curt Peterson, JJC Director at (612) 998-7466 or curt@orgdev.org.

Conference Location:

Earle Brown Heritage Center
6155 Earle Brown Drive, Brooklyn Center, MN
<http://www.earlebrown.com/>

2008 Laws of Interest to Public Lawyers

by Michele L. Timmons, Revisor of Statutes

The Outdoors and the Arts.

Chapter 151 proposes a Minnesota constitutional amendment which, if adopted in the 2008 elections, would go into effect on July 1, 2009. If adopted, the sales and use tax would be increased by three-eighths of one percent. The revenue derived would be allocated as follows: 33% to the outdoor heritage fund, 33% to the clean water fund, 14.25% to the parks and trails fund, and 19.75% to the arts and cultural heritage fund.

Transportation.

The Minnesota Legislature overrode the Governor's veto and enacted Chapter 152, a \$6.6 billion, 10-year transportation funding bill. The act raises motor fuel taxes for the first time in 20 years by 5 cents per gallon plus an additional surcharge of up to 3 ½ cents calculated to pay the debt service on trunk highway bonds until 2039. The bill also removed the Ventura caps on the vehicle registration tax and allows counties to raise their sales tax by either ¼ cent in the Twin Cities metropolitan area or ½ cent in Greater Minnesota for local transportation purposes.

Tax conformity.

Chapter 154, an omnibus tax bill, contains many provisions that were part of last year's vetoed tax bill, as well as some new provisions. The following provisions may be of most interest to public lawyers. Beginning in 2009, article 1 changes the local government aid distribution formula for cities to make it more consistent from year to year.

Under article 2, cities are authorized to create airport authorities with other units of government. Taxing districts in greater Minnesota counties can do joint advertising and hold joint truth in taxation hearings.

Article 4 updates Minnesota's income and franchise tax laws to changes in the Internal Revenue Code. However, Minnesota did not conform to all changes, such as deductions for 2007 higher education expenses or 2007 teacher classroom expenses.

Article 8 contains changes to mineral taxes and provides for additional distributions to certain school districts and for other purposes. Certain materials become subject to the aggregate production tax.

Article 9 contains miscellaneous changes to tax increment financing laws and increases border city allocations.

Article 10 authorizes certain political subdivisions and public entities to establish trusts to pay post-employment health benefits. Debt limits for cities, towns, and counties are increased. It contains many other changes regarding public finance.

Article 13 makes several changes relating to the board of assessors and to the licensing and education of assessors. Sections 35 and 36 of that article have certain conflict of interest prohibitions for members of local and county boards of appeal and equalization.

Article 15 changes state debt collection procedures under Minnesota Statutes, chapter 16D, including requiring that debts be submitted electronically.

Article 16 changes provisions relating to administrative rulemaking local impact notes. It also changes revenue recapture provisions, including authorizing participation in the program by cities for additional purposes.

Age for Blood Donation. Chapter 157 lowers the age for blood donors from 17 to 16, but 16-year olds must obtain written permission from their parent or guardian. This change is effective July 1, 2008.

County Historical Society funding. Chapter 158 removes the exception of cities of the first class from Minn. Stat. 138.053, effectively permitting first class cities to appropriate up to 0.02418 percent of taxable market value annually for county historical society purposes.

Special laws for Yellow Medicine and Nicollet counties. Chapter 160 permits Nicollet County to appoint the auditor-treasurer, and Chapter 161 permits Yellow Medicine County to appoint the county recorder and the auditor-treasurer. Each law becomes effective following local approval.

Special law for Bloomington School District. Chapter 163 provides for redistricting of School District No. 271 into four single-member districts, with three additional members to be elected at large. This law is effective after local approval, but must be submitted as a ballot question in the 2010 election if local approval does not occur by July 1, 2010. *Note – This measure though passed by the Legislature, was subsequently vetoed by Governor Pawlenty.*

The major bills remaining for the balance of the session include a bill to deal with the state's \$935 million projected deficit, bonding for capital investment projects, and the finalization of legislation to provide compensation for victims of the 35W bridge collapse.

Public Law Section Public Service Projects

Public Law Section Tries Something New with Habitat of Humanity

A Habitat for Humanity "Brush with Kindness" event is scheduled for Thursday, **May 22**. Public Law Section volunteers will work from 9:00 a.m. to 4:00 p.m. at a metro area location. Brush with Kindness is a new Habitat program designed to help the disabled, elderly, and those needing help with home repairs like painting and minor home maintenance. Please let Nancy McLean know if you would like to volunteer on May 22. You can contact her at: nancy.mclean@co.hennepin.mn.us

Public Law Section Continues to Serve up Tater Tot Hot Dish at Loaves & Fishes

On February 6 and April 2, Public Law Section volunteers and their friends cooked up another tater tot hot dish dinner for the 300+ diners at the Loaves & Fishes program at Holy Rosary church in south Minneapolis. We are always looking for

more volunteers to help out. The Public Law Section buys the food and does the cooking and set up and another volunteer group of University of Wisconsin – Madison alumni comes in to serve and clean up. The time commitment is from 2:45-5:00. The next day we are cooking is **June 4**. Come and show off your culinary talents! Contact Nancy.McLean@co.hennepin.mn.us if you are interested.

Public Law Section Infant/Child Clothing & Diaper Drive at MSBA Convention in Duluth

The Public Law Section is sponsoring an Infant/Child Clothing & Diaper Drive at the MSBA Convention in Duluth **June 15-17**. Please bring your new and slightly used infant and children's clothing (birth through age 4) and new disposable diapers (all sizes) and donate them at the convention. There will be bins to collect donations at the registration desk. The clothing will be donated to the Duluth Public Schools Teen Parent Program and the Bethany Crisis Shelter. If you are not going to the Convention but would still like to donate, please contact Nancy McLean at nancy.mclean@co.hennepin.mn.us.

Public Law Section Pro Bono Task Force

The Public Law Section Pro Bono Task Force will partner with the Volunteer Lawyers Network (VLN) to provide a clinic at Holy Rosary Church (site of the PLS bimonthly Loaves & Fishes volunteer project) the first Wednesday of the odd numbered months (July, September, November, January, March, May). We plan to start these clinics on Wednesday, **July 2**, 2008. Public law volunteers will staff the clinic, meeting with clients from approximately 5:30 p.m.- 6:00 p.m. during the evening meal time. Clients will be asked to sign up the week before to make an appointment to meet with a lawyer, but there may also be "walk-ins" that will be seen as well. Attorneys will provide either advice only or brief service to the clients. Any cases requiring ongoing representation will be referred back to VLN (or the Public Law volunteer may choose to keep the case). If you are interested in participating, please contact Nancy McLean at Nancy.McLean@co.hennepin.mn.us. VLN will provide training and malpractice insurance.

Public Law Section Sponsors Dream Team for LRAP Race for Justice



*Joel Fisher, James Alexander & Mary Miller
Not Pictured: Greg Brooker and Louis Thayer*

Once again, the Public Law Section was proud to sponsor a team of runners for the “Race for Justice” held April 13, 2008 at Nicollet Island. Proceeds generated from the race benefit law graduates through the Loan Repayment Assistance Program (LRAP) of Minnesota. By subsidizing education debts for dedicated, low-paid public interest attorneys, LRAP helps meet the legal needs of low-income Minnesotans across the state. The connection between the Public Law Section and LRAP is a natural one. LRAP encourages new attorneys to enter into and retain positions serving the legal needs of low-income and other disadvantaged individuals by providing them with student loan repayment assistance. Although modest, these grants are essential to the attorneys receiving them. This is the same population that we encourage section members to serve through our pro bono policy.

The Public Law Section pledged \$500 and encouraged section members to make individual contributions for the PLS “Dream Team.” The team was made up of Mary Miller (our team captain from the Department of Labor and Industry), Jim Alexander and Greg Brooker (our “ringers” both at the U.S. Attorney’s Office), Louis Thayer (“with a bum knee” at the Department of Human Services) and Joel Fisher (the captain’s spouse who gets persuaded to participate by the captain).

PLS donates \$300.00 to the Minnesota Justice Foundation

April 1, 2008

Louis Thayer
Assistant Chief Human Services Judge
Minnesota Department of Human Services
Appeals Division
PO Box 64941
St. Paul, MN 55164

Dear Mr. Thayer:

Please extend our thanks to all the members of the Public Law Section of the MSBA for the generous contribution of \$300 to be used for our 2008 Summer Clerkship Program.

Every summer since 1983, MJF has sponsored summer clerkships, which are open to students enrolled at all four Minnesota law schools. Law students work full-time during the summer at legal aid offices and public interest organizations across the State. MJF clerks provide their placement agencies with intensive help with casework, research, legal writing, client intake, interviewing, and even courtroom representation. Since the program began, 497 summer clerks have provided 200,000 hours of work benefiting 23,000 low-income and disadvantaged clients.

Placement agencies range from government entities to legal aid offices and nonprofits such as the Minnesota Coalition for Battered Women, the Immigrant Law Center, the Nature Conservancy, the Second Judicial District Public Defender, and the Minnesota Department of Human Rights. We also work with several agencies in outstate Minnesota, including Anishinabe Legal Services, Legal Aid Service of Northeast Minnesota, and Regional Native Public Defense Corporation. Organizations like these are often struggling with limited resources, making it difficult for them to provide necessary assistance to the client populations they serve.

Agencies select their own law clerks by screening

resumes and cover letters, conducting on-campus interviews, and reviewing writing samples.

Summer Law Clerks work at the direction and under the supervision of the agencies' own lawyers, thereby gaining valuable practical experience. Each law clerk works a minimum of 400 hours during the summer and receives a subsistence stipend.

The popularity and value of this program is reflected by the fact that we receive twice as many requests for summer clerks as we can support and ten times as many applications as there are clerkships available.

Thank you very much for your leadership in making affordable legal services available to thousands of low-income and disadvantaged Minnesotans.

Sincerely,
Janine Laird
Executive Director

**PLS supports Hamline University
School of Law, Hamline Journal
of Public Law & Policy
Spring 2008 Symposium**

April 16, 2008

Mr. Louis Thayer
Co-Chair of the Public Law Section
Minnesota State Bar Association (MSBA)

Dear Mr. Thayer and Members of the Public Law
Section Committee:

On behalf of the *Hamline Journal of Public Law
and Policy*, I would like to express our sincere

appreciation for the Public Law Section's support of our annual Spring Symposium. This year's symposium, entitled "*The 60th Anniversary of the Universal Declaration of Human Rights, A Reality Check*", gathered scholars, lawyers and government officials from all over the world to Hamline to discuss the goals of the Declaration. We received great feedback from the symposium speakers and participants on the overall event.

Additionally, we have received praise from participating universities in the United Kingdom and Australia, as well as a request from the Joint Committee on Foreign Affairs, Defense and Trade of the Australian Government for a sizable subscription to the *Journal*. This international exposure has been a fantastic opportunity for the *Journal*, and your sponsorship led the success of this event.

On behalf of the Board of Editors of the *Hamline Journal of Public Law & Policy*, we would like to extend our sincerest appreciation. The 2008 Spring Symposium issue will be published this fall by the incoming Board of Editors. Please keep your eyes out for it! You can check our website at <http://law.hamline.edu/journal-law-and-public-policy/2008-spring-symposium.html> soon for details on the release of the fall issue and highlights of the symposium. We hope that the *Journal* will continue to have a positive relationship with the Public Section and its members of the Minnesota State Bar Association.

Best Regards,

Ann Feaman
Editor-in-Chief
Hamline Journal of Public Law & Policy
Hamline University School of Law
afeaman01@hamline.edu
(651) 523-2371

This Section of the PLS News is added through an agreement between the Public Law Section and the Administrative Law Section.

Punch the Clock: Timing Issues and Substantive Impacts on Administrative Law

by Eric L. Lipman, Administrative Law Judge



Harvey Mackay, Minnesota's envelope magnate and best-selling author of business leadership books, frequently remarked that over the course of thirty years he started every meeting with his sales force in the same way. Mackay explained that, "I take off my watch, hold it up, and state the following: 'We have no real competitors. This is our only competitor.'" Continued Mackay, "since my only real enemy is the clock, I focus everyday on figuring out how to make the most of the time I have...."

In their recently published article *Deadlines in Administrative Law*¹, Professors Jacob E. Gersen (Assistant Professor of Law, University of Chicago Law School), and Anne Joseph O'Connell (Assistant Professor of Law, Boalt Hall, School of Law, University of California, Berkeley) seem to pick up right where Mackay and his sales meeting leave off. Gersen and O'Connell closely and deeply examine the imposition of rulemaking deadlines as a frame for understanding regulatory events that later occur. And, while most of the academic literature has ignored time and timing issues as a significant driver of regulatory results, Gersen and O'Connell make findings that are both statistically significant and potentially very important to practitioners.

Among the duo's findings are:

- (1) Rulemaking deadlines are more likely to be imposed by Congress when the regulatory policy implicates key state, local or federal governmental concerns – namely that Congress uses deadlines "to constrain agency actions that have a broad effect on powerfully situated political interests;"
- (2) There is a general tendency for Congress to impose rulemaking deadlines as to new programs with "new high profile risks for regulation" more than with "older, more familiar risks that may be more serious;"
- (3) Deadlines were more likely to be imposed by Congress during periods of divided government (when the Executive Branch agencies were perceived to be further from "legislative ideal points");
- (4) While deadlines to complete rule making tended to reduce the duration of rulemaking proceedings for the U.S. Department of Health and Human Services by more than 50 percent, for many other agencies, deadlines reduced the average length of regulatory actions only modestly (on average by roughly 100 days);
- (5) Deadlines impose significant constraints on agency resources and create incentives for agencies to seek to avoid notice and comment rulemaking "for deadline driven actions;" and,

¹ Accessible from the Social Science Research Network, here: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1085377

- (6) Avoiding notice and comment rulemaking increases the risk to agencies that a later challenge to the rules in federal court will be sustained.

Perhaps of greatest interest to public lawyers, is this last contention of Gersen and O’Connell – namely that legislatively-imposed deadlines increase the likelihood that a later challenge to promulgated rules will be sustained. For Gersen and O’Connell the argument is two-fold. First, the duo notes that rulemaking deadlines “stand out as one of the few areas where courts will compel agencies to act despite multiple demands on their resources;” a matter that clearly increases the risk to agencies in litigation if a statutory deadline has not been met. Secondly, to the extent that sharp regulatory deadlines press federal agencies to seek to avoid notice and comment rulemaking, under the “good cause” exception to the federal Administrative Procedures Act this likewise increases the risk of a successful court challenge. As the authors note: “In lieu of a bright-line rule on deadlines and good cause, courts typically apply a multifactor analysis in assessing whether an agency can rely on a deadline to forego traditional notice and comment procedures.... [A]gencies must exercise care in skipping notice and comment procedures, but if the ordinary requirements of notice and comment are truly burdensome given time constraints from the statute, the agency’s decision to avoid costly and time-consuming procedures is likely to be upheld.”

While Professors Gersen and O’Connell focused their inquiries on federal rulemaking deadlines, practitioners – both inside and outside of state government – should also be mindful of regulatory deadlines that are closer to home. For example, stakeholders who objected to a proposal regarding behavioral interventions for disabled students, recently challenged a rule proposed by the Minnesota Department of Education as failing to meet an important deadline. The stakeholders asserted that because the legislative authority to amend the rules in question was granted on July 15, 2005, but the Notice of Hearing for the rulemaking was not published until October 15, 2007, more than 18 months later, the Department lost its authority to promulgate any rule. Minn. Stat. § 14.125 requires that an agency “publish a notice of intent to adopt

rules or a notice of hearing within 18 months of the effective date of the law authorizing or requiring rules to be adopted, amended, or repealed.” If the agency does not meet this timeline, “the authority for the rules expires.”

Agreeing with the commentators who objected to the proposed rule, Administrative Law Judge Barbara L. Neilson wrote:

Because section 14.125 applies to laws enacted after January 1, 1996, “authorizing or requiring rules to be adopted, *amended* or repealed,” and the 2005 amendment to section 121A.67 included new language requiring the Department to amend the rules governing the use of aversive and deprivation procedures, the Administrative Law Judge concludes that the requirements of section 14.125 apply to the Department’s attempt to exercise that authority as part of this rulemaking proceeding. The fact that the 2005 amendment also contained detailed directions to the Department regarding the content of the rule amendments to be made provides further support for the view that the Legislature intended the directive to be a new instruction to the Department and not simply a continuation of authority previously granted.

In the Matter of the Proposed Amendment to Rules Governing Special Education, Minnesota Rules Chapter 3525, and the Repeal of Minnesota Rules 3525.2435 and 3525.2710, OAH Docket No. 11-1300-19249-1, slip op. at 8-9 (March 3, 2008) (emphasis in original) (<http://www.oah.state.mn.us/aljBase/130019249.rr.htm>).

So, if you haven’t been thinking about how rulemaking deadlines might impact your clients, agency or practice – it just might be high time.

Eric L. Lipman is an Administrative Law Judge with the Minnesota Office of Administrative Hearings and is a Member of the Administrative Law Section Council.

Mark Your Calendars

Administrative Law Annual Meeting & CLE
Wednesday, June 25, 2008 @ 7:30 am
 University Club Summit Avenue, St. Paul

Eyes on the Courts

The following summaries were submitted by Kim Buechel Mesun, Assistant District General Counsel for the Minneapolis School District.

Strock, et al. v. Independent Sch. Dist. 281, Robbinsdale, Minnesota, et al., No. 06-CV-3314 (JMR/FLN) (Minn. Fed. Dist. Ct. Mar. 21, 2008). School district's Rule 12(b)(6) motion to dismiss was granted by the Minnesota federal district court. Plaintiff student using the vehicles of the Individuals with Disabilities Education Act (IDEA), § 504 of the Rehabilitation Act, Americans with Disabilities Act (ADA), and Minnesota Human Rights Act (MHRA) appealed from an Administrative Law Judge's (ALJ's) conclusions that (1) the school district had not violated state or federal child find laws by not initiating a special education evaluation of the student before April 2006, (2) the student was not eligible for special education because even though he was diagnosed with Attention Deficit Disorder (ADD) he did not require special instruction to initiate and complete tasks, (3) the district's accommodations were sufficient to allow the student to make progress in regular education and to graduate from high school, and (4) the district did not deny the student a free appropriate public education (FAPE).

The federal district court determined that the plaintiff had not made factual allegations which if taken as true were sufficient to "raise a right to relief above the speculative level." (See Court's Order at 14.) The court agreed with the ALJ's conclusions and also found that the student's "alleged unsuccessful transition to college affords him no relief." The student was allowed to enroll at Normandale Community College upon graduation. That fact that he was required to take a certain remedial course (i.e. a course which historically approximately 60% of the student's fellows must also take) "is neither unusual nor evidence of "unsuccessful transition," a term the court stated was "an entirely undefined term." (See Court's Order at 18.)

AP, by his parent and legal guardians Dave and Julia Peterson v. Anoka-Hennepin Independent

School District No. 11, No. 06-CV-2342 (PJS/RLE) Minn. Fed. Dist. Ct. Mar. 17, 2008). School district's summary judgment motion was partially granted. This case involves claims by the parents against a district-operated day care center that provided before and after-school day care and summer day care. The parents of a Kindergarten-aged boy with Type I diabetes wanted the Adventure Plus day care center operated by the Anoka-Hennepin School District to (1) check the boy's blood sugar by operating his blood-glucose meter; (2) operate his insulin pump; and (3) give glucagon injections in the event of a hypoglycemic emergency. They claimed that the district's refusal to do so was a failure to provide reasonable accommodations in violation of § 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA) and discrimination under the Minnesota Human Rights Act (MHRA). The court determined that as to the first two requested accommodations, the record was not sufficiently clear to warrant summary judgment for either the parents or the school district.

As for the third requested accommodation, the glucagon injections, though the court determined that the "reasonableness and burdensomeness of the requested accommodation present questions of fact that cannot be resolved on summary judgment", this was just the first step when a party seeks compensatory damages under § 504 or the ADA. In such cases where a party seeks compensatory damages, that party must establish that when the defendant refused to provide what might appear to be a reasonable accommodation it acted with sufficiently culpable intent in making that decision. In the present case, the court determined it was able to decide as a matter of law that the plaintiff could not make this culpable intent showing and therefore, the court granted the district's motion for summary judgment on the third requested accommodation of glucagon injections in the event of an emergency as to the § 504 and ADA claims. The court goes on to clarify that in § 504 and ADA failure-to-accommodate cases to establish "deliberate indifference" (i.e. culpable intent) a plaintiff must show:

(1) that the plaintiff requested the accommodation; (2) that it was “plainly obvious” that the accommodation was reasonable and necessary; and (3) if the defendant has raised the undue-burden/fundamental-alteration defense, that it was “plainly obvious” when the plaintiff requested the accommodation that granting it would *not* have created an undue burden on the defendant and would *not* have fundamentally altered its program.

See Court’s Order at 33.

Finally, the court found that under the doctrine of vicarious official immunity, the district is “immune from liability under the MHRA for the claims based on refusal to administer glucagon.

If you have any court decisions that you would like to highlight in the Eyes on the Courts section of the PLS News, email a summary of that decision with its complete citation to kim.mesun@mpls.k12.mn.us.

Public Attorneys on the Move

Dianne Ward returned to the Hennepin County Attorney's Office on March 31, 2008. Ward was an Assistant Director for the Human Services Division in the Ramsey County Attorney's Office where she worked for the past eight years. Previously, Dianne served as the Chief Deputy in the Hennepin County Attorney's Office and also as the head of the Juvenile Division. Dianne will take on Lane Ayres' responsibilities and join the Juvenile Prosecution Division.

Bob Rudy, Lane Ayers, and Tom Lavelle have retired from the Hennepin County Attorney's Office after years of public service.

Since January, 2007, the following additional attorneys have joined the Hennepin County Attorney's Office - **Jennifer Beck-Brown, Brad Johnson, Celeste DeMars, Stephanie Morgan, Andrea Martin, Thad Tudor, Dominic Mathews, Daniel Homstad, Tom Fabel, Mark Ireland,**

Michael Burns, Scott Zierden and Rick Sheridan.

Mayor R. T. Rybak has nominated and the Minneapolis City Council has confirmed the appointment of **Susan Segal** as the Minneapolis City Attorney. Segal has a law degree from the University of Michigan Law School and an undergraduate degree from the University of California at Berkeley. Most recently, Segal worked as a Senior Hennepin County Attorney and served as the Deputy County Attorney under former Hennepin County Attorney Amy Klobuchar. Segal has significant employment law experience. She has served as an adjunct professor at both the University of Minnesota Law School and William Mitchell College of Law. In her new position, Segal will lead a staff of over 100 employees, including 60 attorneys.

Margaret Westin has been appointed as General Counsel for the Minneapolis School District replacing Allen Giles who left to be General Counsel at Twin Cities Public Television. Westin received her Bachelor of Arts degree *cum laude* from Macalester College in 1974 and her J.D. from William Mitchell College of Law in 1981. She has been employed with the Minneapolis School District as Associate District General Counsel since May 2000. Prior to that she worked for both the Dakota County and Washington County Attorney's Offices, Gelco Corporation and was a law clerk for Federal Magistrate Earl Cudd.

David Wippman has been selected to be the 10th Dean of the University of Minnesota Law School. He will join the Law School on July 1. Wippman is Vice Provost for International Relations and Professor of Law at Cornell University. He is one of the world's leading scholars in international law and human rights. Wippman is a native of Minnesota and attended high school here. He holds an A.B. *summa cum laude* from Princeton University, has a master's degree from Yale University, and earned his J.D. from Yale Law School where he was Editor in Chief of the Yale Law Journal. He clerked for the Hon. Wilfred Feinberg, Chief Judge of the U.S. Court of Appeals for the Second Circuit. He practiced in Washington D.C. from 1983 until joining Cornell Law Schools' faculty in 1992. Wippman served in the Clinton Administration as a director in the National Security Council's Office of Multilateral and Humanitarian Affairs from 1998-99.

Job Announcement - Office of Sen. Amy Klobuchar
Sen. Amy Klobuchar is currently seeking applicants for the position of BUSINESS & CONSUMER OUTREACH DIRECTOR in her Twin Cities office. Ideal candidates will have a JD or MBA or equivalent experience working on issues related to small businesses, consumer protection, taxes, housing and/or banking and lending. The primary role of an Outreach Director is to serve as a liaison between the Senator and a particular subset of key issue-based constituencies, as well as to build and maintain relationships within those communities. This is a full-time position requiring occasional night and weekend hours, particularly during those times when the Senator is in the state.

The application deadline for this position is FRIDAY, MAY 9th. To apply, please email a cover letter and resume to Jake Spano at Jake_Spano@Klobuchar.senate.gov. For more information, please call (612) 727-5220.

If you have an announcement that you would like to include in Public Attorneys on the Move, email it to kim.mesun@mpls.k12.mn.us.

News from the Bench

Governor Tim Pawlenty has appointed **Eric J. Magnuson** as Chief Justice of the Minnesota Supreme Court. Magnuson will succeed the Honorable Russell A. Anderson, who announced his retirement from the Supreme Court last week. Chief Justice Anderson's retirement is effective on June 1, 2008.

Magnuson, 57, is an attorney and shareholder in the business litigation department at the Briggs and Morgan Law Firm in Minneapolis, a position he has held since 2007. He practices almost exclusively in state and federal appellate courts, and works in consultation with trial attorneys on matters in anticipation of appeal. Previously, he was an attorney and partner with the Rider Bennett law firm in Minneapolis from 1977 to 2007, where he chaired the appellate group practice and was managing partner from 1999 to 2000. He was a law clerk to former Minnesota

Supreme Court Chief Justice Robert Sheran from 1976 to 1977, and a law clerk to former Minnesota Supreme Court Chief Justice Douglas K. Amdahl, who was a Hennepin County district court judge at the time. Magnuson earned his J.D. *cum laude* from William Mitchell College of Law in St. Paul in 1976, and his B.A. in history from the University of Minnesota in 1972.

Magnuson writes and edits several federal and state appellate treatises, and is co-author of the 2007 edition of West Publishing's, "Minnesota Practice: Appellate Rules Annotated", co-editor and chapter author of the fourth edition of the "Eighth Circuit Appellate Practice Manual", and co-editor of Matthew Bender's, "The Art of Advocacy: Appeals." Magnuson is the founding president of the Eighth Circuit Bar Association, a fellow and past president of the American Academy of Appellate Lawyers, and co-reporter to the Minnesota Supreme Court Appellate Rules Committee. He is a member of the American Bar Association, where he co-chaired the Appellate Practice Committee of the Section on Litigation, and the Appellate Advocacy of the Tort Trial and Insurance Practice Section. He is also a member of the Minnesota State Bar Association, where he has chaired the Court Rules and Judicial Administration Committee and the Court of Appeals Task Force. He has also served as chair of the Minnesota Commission on Judicial Selection since 2003.

Magnuson has been recognized by his peers as one of the "Best Lawyers in America," is in the "2007 Annual Guide to Appellate Law in America", and is listed as a "Top 10 Super Lawyer" by Minnesota Law and Politics.

Magnuson resides in Inver Grove Heights with his wife. They have four adult children and one granddaughter.

Chief Administrative Law Judge Raymond R. Krause announced that **Manuel J. Cervantes** has accepted a position as the new Administrative Law Judge with the Minnesota Office of Administrative Hearings. Cervantes, who now serves as an Assistant Attorney General in the Charities Division of the Attorney General's Office, has a wide background in government – having formerly served as the St. Paul City

Attorney, a Second Judicial District Court Referee and as a Judge on the Workers' Compensation Court of Appeals. A graduate of Macalester College, the University of Minnesota Law School and the Hubert H. Humphrey School of Public Policy, Cervantes began his work with the OAH in April.

Governor Tim Pawlenty appointed **Tamara G. Garcia, Fred Karasov, Anne K. McKeig, and Laurie J. Miller** to four Fourth Judicial District trial court bench vacancies in Hennepin County. Three vacancies occurred with the resignations of the Honorable Heidi S. Schellhas and the Honorable Francis J. Connolly, who were sworn in as Court of Appeals judges on January 1, 2008; and the retirement of the Honorable Harry Seymour Crump. The effective date of Judges Schellhas and Connolly's resignations and Judge Crump's retirement was December 31, 2007. The fourth vacancy occurred with the retirement of the Honorable Allen Oleisky on March 31, 2008.

Tamara Garcia has been a self-employed attorney in private practice since 2000; a judicial hearing examiner with the Shakopee Mdewakanton Sioux Community in Shakopee since 1995; a judicial hearing examiner with AMERIND Risk Management Corporation in Santa Ana Pueblo, New Mexico since 2007; and a director with the State Fund Mutual Insurance Company in Bloomington since 2000. Previously, she was an associate attorney and partner with the Pustorino, Pederson, Tilton and Parrington law firm in Edina from 1989 to 2000, and a staff attorney with the Minnesota Workers' Compensation Court of Appeals in St. Paul from 1987 to 1989. Garcia earned her J.D. from the University of Minnesota Law School in 1986, and her B.A. from the University of Minnesota in 1983.

Garcia is a member of the Minnesota State Bar Association, where she served on the Board of Governors; Hennepin County Bar Association, where she serves on the Workers' Compensation Section and was a founding member of the HCBA Diversity Law Section. She also belongs to the Minnesota Hispanic Bar Association and Minnesota Women Lawyers. She is a member of the Minnesota Gambling Control Board, has been a mentor with the University of Minnesota Law School Mentor

program, volunteers in a reading program for elementary and preschool students, has been a volunteer moot court judge with the National Hispanic Bar Association, volunteers at her children's schools, and is a participant in the Susan G. Komen Race for the Cure.

Garcia, 46, lives in Eden Prairie with her husband.

Fred Karasov was a senior attorney in the violent crimes division of the Hennepin County Attorney's office, and had been an attorney in the Hennepin County Attorney's office since 1983. He is also a military judge with the Minnesota Army National Guard, a position he has held since 2000, and was a staff judge advocate with the National Guard from 1988 to 2000. He served in Kosovo from 2003 to 2004 as a member of the National Guard. Prior to earning his law degree, Karasov was a senior deputy Hennepin County Sheriff from 1978 to 1982. Karasov earned his J.D. *cum laude* from William Mitchell College of Law in 1982, his M.S. from Northeastern University in Boston, Massachusetts in 1978, and his B.A. from the University of Minnesota in 1976.

Karasov is a member of the Minnesota State, and Hennepin County Bar Associations, and the National Guard Officers' Association. He is a member of the Beyond the Yellow Ribbon Task Force, Minnesota Sex Crimes Investigators Advisory Board, and was a member of the Domestic Abuse Fatality Review Committee, and CornerHouse child abuse victims center. He has written a sexual assault prosecution manual and spoke at numerous seminars on the subject. He has been a moot court judge and mock trial coach and judge; has been a soccer, softball and wrestling coach; volunteers with Sharing and Caring Hands, participates annually in Adopt a Family; serves food to nursing home residents at holidays; and participates in the Back-to-School Backpack Challenge, which provides school supplies and clothes for children in need.

Karasov, 54, lives in Minneapolis with his wife. He has a daughter and four stepchildren.

Anne McKeig was an Assistant County Attorney in the Hennepin County Attorney's office in Minneapolis, a position she held since 1992. She

specialized in Federal Indian Child Welfare Act cases in the office. McKeig was also a part-time staff attorney with the American Prosecutors Research Institute, which is part of the National District Attorney's Association, in January 2007. McKeig earned her J.D. from Hamline University School of Law in 1992, and a B.A. from the College of St. Catherine in 1989.

McKeig is a member of the Minnesota American Indian Bar Association, and the Minnesota County Attorneys Association and was a member of Hennepin County Bar Association. She has been a speaker on child protection issues, and a trainer for the Minnesota Department of Human Services on the civil process of juvenile court and child protection matters. She volunteers for the Division of Indian Work, is a mentor for the College of St. Catherine Shadow Program, and a mentor for high school students through Northland High School's Indian Education Program. McKeig also served on the Governor's Task Force on Fetal Alcohol Syndrome, Minnesota Organization on Fetal Alcohol Syndrome, and Fetal Alcohol Coordinating Board.

McKeig, 40, lives in Brooklyn Park with her husband and their five children.

Laurie Miller was an attorney and shareholder in the litigation department of the Fredrikson and Byron law firm in Minneapolis. She had been an attorney with the firm since 1989. Previously, she was an attorney with the Dunlap and Seeger (then known as Dunlap, Keith, Finseth, Berndt and Sandberg) law firm in Rochester from 1986 to 1989, an attorney with the Orrick, Herrington and Sutcliffe law firm in San Francisco, California from 1983 to 1986, and a law clerk to U.S. Court of Appeals Eighth Circuit Judges Myron H. Bright and Richard S. Arnold in St. Louis, Missouri from 1981 to 1983. Miller earned her J.D. from Yale Law School in 1981 where she was a finalist in the Barrister's Union mock trial competition, and her B.A. from Stanford University in 1978.

Miller is a member of the Federal, American, Minnesota State, and Hennepin County Bar Associations, Minnesota Defense Lawyers Association, and Defense Research Institute. She has been a law school mock trial judge, has been a

speaker at a variety of continuing legal education seminars, and has written a number of articles that have appeared in legal and other professional publications. She chairs the Housing Preservation Project Board of Directors, volunteers for Children's Law Center of Minnesota, and Minnesota Advocates for Human Rights.

Miller, 50, lives in Edina with her husband and their three children.

Governor Tim Pawlenty appointed **John H. Guthmann** to a Second Judicial District trial court bench vacancy in Ramsey County. The vacancy occurred with the retirement of the Honorable A. James Dickinson on January 1, 2008.

Guthmann was an attorney and partner with the Arden Hills law firm of Hansen, Dordell, Bradt, Odlaug and Bradt. He was the firm's managing partner from 1999 to 2002, has been a partner since 1990, and was an associate attorney from 1981 through 1989. Guthmann clerked for Minnesota Supreme Court Chief Justice Robert Sheran from 1980 to 1981. Guthmann earned his J.D. from William Mitchell College of Law in 1980, where he was editor-in-chief of the William Mitchell Law Review; and his B.A. from Cornell College in Mount Vernon, Iowa in 1976.

Guthmann is a member and past president of the Ramsey County Bar Association where he also serves on the civil litigation section, a member of the Minnesota State Bar Association, and the Minnesota Defense Lawyers Association. He has been recognized professionally as one of "The Best Lawyers in America" in both the personal injury litigation and workers' compensation categories by Woodward/White, Inc., named a "Super Lawyer" by Minnesota Law & Politics magazine, and listed in "America's Registry of Outstanding Professionals" and "Leading American Attorneys". Guthmann's volunteer activities in the community include serving as a member of the Minnesota Special Education Task Force; Coalition for Children with Disabilities; PACER Center, Inc, where he is a past president and a member of the board of directors; Friends of PACER, Inc., of which he is currently president; First Minnesota Volunteer Infantry, a Civil War reenactment organization; Boy Scouts of America

Northern Star Council, where he is a member of the board of directors and the Troop 90 Eagle Scout advisor; and Rotary Club of St. Paul. He has also served on the Minnesota Statewide Family Network Board of Directors, Minnesota Institute for Talented Youth, Coalition for Education Reform and Accountability, and the Governor's Interagency Coordinating Council on Early Childhood Intervention. He was named to the Mpls.St.Paul Magazine's Volunteer Hall of Fame in 2001.

Guthmann, 53, lives in St. Paul with his wife, Teresa. They have three children.

Governor Tim Pawlenty appointed **Ronald J. Schutz** as Chair of the Commission on Judicial Selection. He also appointed **John J. McDonald** to the Commission.

Ronald Schutz, of Medina, is an attorney, partner, and chair of the Intellectual Property litigation group with the Minneapolis law firm of Robins, Kaplan, Miller and Ciresi. He is also a member of the firm's executive board. Schutz earned his J.D. from the University of Minnesota Law School with honors in 1981, and his B.S. in mechanical engineering *magna cum laude* from Marquette University in Milwaukee, Wisconsin in 1978, where he was the recipient of an Army R.O.T.C. scholarship. He served four years in the U.S. Army Judge Advocate General's Corps. Schutz is a fellow of the American College of Trial Lawyers; chair of the Center of the American Experiment; and is a member of the YMCA of Metropolitan Minneapolis Board of Directors; and the University of Minnesota (U of M) Law Review Alumni Advisory Board. He is also a past president of the U of M Law Alumni Association. Schutz, who has been a member of the commission since 2003, replaces Eric Magnuson as Chair.

John McDonald, of Mendota Heights, is an attorney and partner with the Minneapolis Law firm of Meagher and Geer, where he practices in commercial litigation, employment practices, insurance and professional liability. He also serves on the firm's management committee. He is a member of the American Board of Trial Advocates, International Association of Defense Counsel, Defense Research Institute, and the American and State Bar Associations. McDonald

earned his J.D. from Creighton University School of Law in Omaha, Nebraska in 1981, and his B.A. from the University of St. Thomas in 1977. McDonald replaces Schutz as an at-large member of the commission.

The Commission on Judicial Selection solicits judicial candidates, evaluates applicants and recommends three to five finalists to the governor for district court and Workers' Compensation Court of Appeals vacancies that occur during the term of a judge. The commission consists of 49 members; 27 appointed by the Governor, and 22 by the Supreme Court.

Jeffrey J. Keyes has been appointed to the position of United States Magistrate Judge for the District of Minnesota. Keyes took the oath of office in the U.S. Courthouse in Minneapolis on April 28, 2008. He will temporarily maintain judicial chambers in Minneapolis until the renovation project of the Warren E. Burger Courthouse is complete this fall. He will then maintain chambers in St. Paul. Keyes will fill the position created by the Judicial Conference of the United States Courts. Judge Rosenbaum and his colleagues appointed a nine-member panel of attorneys and business professionals to advise the court on candidates. Keyes was among a group of highly qualified finalists considered by the Merit Selection Panel.

Keyes, 61, is a graduate of the University of Notre Dame and the University of Michigan, where he earned his J.D. He is a member of the Minnesota State Bar Association, American Bar Association, Hennepin County Bar Association, is a Fellow of the American College of Trial Lawyers, and former Chair of the District of Minnesota Federal Practice Committee.

Prior to his appointment as a U.S. Magistrate Judge, Keyes was a shareholder at Briggs and Morgan, P.A. since 1986. Prior to practicing with Briggs and Morgan, Keyes was a partner with Gray Plant Mooty Mooty & Bennett.

United States Magistrate Judges are appointed by the Judges of the U.S. District Court for a term of eight years, and are eligible for reappointment to successive terms.

Minnesota 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 651/296-6733 or 800/657-3721. The full text of the Data Practices Opinions are now available on line at www.ipad.state.mn.us

of Opinion	Date of Opinion	Gov't En- tity Involved	Topic	Opinion Requester
07-026	12/3/07	City of Zimmerman	Memos relating to city employee dismissal requested by the author.	Zimmerman/Mattick
07-027	12/20/07	Todd County	Data documenting the basis for disciplinary action toward employee.	Todd County/Hastings
08-001	3/5/08	Northfield	Tapes of closed meetings on acquisition of properties for municipal store. Conflict between provisions.	Northfield/Swanson

Public Attorneys Cooking Up a Storm

Great Apple Salad

By Eileen Wells, Mankato City Attorney

1 head of lettuce—shredded
 1 package spinach—shredded
 1 cup Swiss cheese—shredded
 4 Granny Smith apples—sliced (cut into lemon juice or Fruit Fresh and toss to keep from turning brown)
 2 cups cashews

Dressing:

1/3 cup vinegar
 3/4 cup oil
 1 1/2 Tablespoon poppy seed
 1 1/2 teaspoon dry mustard
 2 Tablespoon chopped green onion

Combine the ingredients for the dressing in a small bowl and whisk until well blended.

Recipe from Sharon Pinney—2008.

Upcoming CLE Seminars

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

DATE	SEMINAR	TIME	PLACE	SPONSOR AND CONTACT
5/07/08	Journey to Safety (EOB)	Noon to 2:00 pm	Elmer L. Andersen Bldg. 540 Cedar Street., St. Paul	Attorney General's Office Marty Casserly 651/297-5919
5/7/08	Trial Practice; Judge Tunheim	Noon to 1:00 pm	Courtroom 13E, Mpls.	Federal Bar Ass'n. – Art Boylan – 612-335-1957
5/13/08	Cultural Change – 150 years of legal profession & clients	9:30 am to 11:30 am	Crowne Plaza, St. Paul	RCBA, Sharon Elmore 651/222-0846
5/16/08	First Amendment & National Security (PLS Annual Meeting, Awards Luncheon) (see page 2)	8:30 am— (registration) to 11:30 am	Midland Hills Country Club, St. Paul	PLS – MSBA Greg Brooker 612-664-5600 Louis Thayer 651-431-3618
5/21/08	Federal Bar Ass'n. Monthly Luncheon	Noon	Minneapolis Club, 729 2 nd Ave. S.,	Federal Bar Ass'n.—Nilla Christiansen 612-492-7666
5/22/08	Minnesota Tax Update Luncheon	Noon to 1:30 pm	N110 First Nat'l Bank Bldg., St. Paul	RCBA, Sharon Elmore 651/222-0846
6/16/08	MN Data Practices: The Good, The Bad and The IPAD	9:00 am to 10:30 am	MSBA Convention, Duluth	PLS-MSBA Todd Schoffelman 763-241-2565
6/26/08	Annual Federal Practice Seminar (reception following)	8:30 am to 4:30 pm	Renaissance Depot Hotel, Mpls.	Federal Bar Ass'n.—Dan Poretti - 612-492-7666

To include a notice of an upcoming CLE in the next issue, contact Mary Miller (651) 284-5306.

MSBA Public Law Section will be present at the [MSBA Convention...](#)

MN Data Practices: The Good, the Bad, and the IPAD

Monday, June 16, 2008 ; 10:30 am-12:00 pm

Presenters: **Dale Harris and Janilyn Murtha**, St. Louis County Attorney's Office

Do the words “data practices” cause you to break out in hives, sweat profusely and/or experience the sudden onset of narcolepsy? Join us for an exciting guided tour of the Minnesota Government Data Practices Act. Topics will include the different data classifications, how to make or respond to requests, and a review of key statutory provisions, appellate decisions, and Department of Administration advisory opinions. Remember X-files fans, the truth is out there (but it could be protected nonpublic data).

1.5 Standard CLE credits will be applied for



Please join the Minnesota Chapter of the Federal Bar Association and the Minnesota Federal Judiciary for the

*Annual Federal Practice Seminar
and
Mason Memorial Luncheon*

**Thursday, June 26, 2008
The Depot, Minneapolis
(612) 375-1700**

[Click here for the program](#)

- Learn about current issues in federal practice from judges and top litigators
- Interact with the federal bench and practitioners in an informal setting
- Earn 1.5 Elimination of Bias credits (applied for) through an engaging program put on by the Pangea Theater Group
- New location! The Depot Hotel, parking is included in the registration fee
- Cocktail reception to follow the seminar

This year's Mason Memorial Lunch will feature [Minnesota Supreme Court Justice Alan C. Page](#) and the "Passing of the Bow Tie" from outgoing [Chief Judge James M. Rosenbaum](#) to incoming [Chief Judge Michael J. Davis](#)

[Please Click Here to Register](#) or visit www.halleland.com/fbaevent.

Questions? Contact Dan Poretti at (612) 204-4173 or dporetti@halleland.com.

6.0 hours of CLE credits will be applied for, including 1.5 Elimination of Bias credits.