

Public Law News

A Publication of the Minnesota State Bar Association Public Law Section

Volume XIII, Issue 3, Spring 2004

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MSBA

www.mnbar.org



Meeting Notice

**Public Law Section
Annual Meeting & CLE**

Friday, May 21, 2004
8:00 A.M. TO 3:00 P.M

Mintahoe Conference Center – Bandana Square

The schedule and list of speakers are:

- 7:45 to 8:15 a.m. Registration
- 8:15 to 9:45 a.m. *“Highlights of the Proposed Amendments to the Rules of Professional Conduct and other Ethics Issues for Public Lawyers” and “Ethical Considerations for Public Lawyers with Pro Se Litigants”*
Ken Jorgenson, Director, Lawyers Professional Responsibility Board
- 9:45 to 10:00 a.m. Break
- 10:00 to 11:30 a.m. *“Ethical Considerations in Public Sector Law (hypothetical situations created by the ABA’s Government & Public Sector Lawyer Division)”*
Panel of Speakers
- 11:30 to 1:30 p.m. Annual Meeting, Luncheon & Annual Public Law Awards Presentation
- 1:30 to 3:00 p.m. *“Kosovo: What We Can Learn”*
Hon. Marilyn Justman Kaman, Hennepin County
Hon. Edward Wilson, Ramsey County
Hon. Robert Carolan – Dakota County - tentative
Hon. Dan Mabley, Hennepin County
Moderator: **Hon. John Tunheim**, US District Court

3.0 hours Ethics CLE credits and 1.5 hours EOB credits to be applied for.

How To Register:

Mail Check/credit card # to:

MSBA
Attn: Kim Basting
600 Nicollet Mall #380
Minneapolis, MN 55402

Phone: 612-278-6323

Fax: (send credit card #)
612-333-4927

Email: (send credit card #)
kbasting@mnbar.org

Friday, May 21, 2004 Public Law Section RSVP By 5/19/04

Method of payment:

Check made payable to “MSBA/Public Law” in the amount of:

- \$40 Public Law Section member
- \$50 Non-Section member
- \$20 Annual Meeting & Luncheon Only

Visa/MC # _____ Exp Date: _____

Name: _____

Employer: _____

Phone: _____ Email: _____

Please note requests for special accommodations, dietary needs, accessibility requirements, or teleconferencing when registering
Minnesota State Bar Association, City Center, 600 Nicollet Mall, #380, Minneapolis, MN 55402
612-333-1183 | www.mnbar.org | 800-882-6722

Record Payouts For Client Security Board

By: Martin Cole, Assistant Director, Minnesota Client Security Board
First Assistant Director, Office of Lawyers Professional Responsibility

The Minnesota Client Security Board¹ has dealt with wide variety of issues lately. The most significant of the Board's recent actions is the record dollar amount of claims approved against disbarred lawyer Stephen Rondestvedt. In September 2003, Mr. Rondestvedt walked into the lawyer disciplinary agency and revealed that he had misappropriated approximately \$700,000 in client funds and was prepared to surrender his license. He was promptly disbarred by the Minnesota Supreme Court and charged criminally by the United States Attorney. He entered a guilty plea and was awaiting sentencing at the time this article was written.

The Client Security Board staff contacted potential victims shortly after Rondestvedt's misappropriations became known and claims were soon pouring in, seeking reimbursement of the amount that Rondestvedt had taken. Fourteen such claims were approved at the Board's January 2004 meeting, with another seven claims approved at the recent March meeting. One claim was withdrawn after an insurance company renegotiated a workers compensation settlement with the victim. Four more claims against Rondestvedt remain to be resolved. The claims approved in January totaled \$498,166.09. The March claims totaled an additional \$134,167.99, for a total thus far of \$632,334.08. This overwhelmingly has made Rondestvedt the attorney against whom the highest dollar amount of claims has been approved in Board history, even with more claims left to resolve. The second highest total is almost \$100,000 less².

The amount paid out on Rondestvedt's behalf likely also will result in the Board paying out the highest dollar amount for claims in one year in the Board's fifteen-year history. The current record is \$705,524 in 1996.³ Because the payments thus far this year far exceed the Board's projected annual budget for claims, special approval from the Supreme Court was obtained in order to pay Rondestvedt's victims in the current fiscal year, so as not to require them to wait longer.

In addition to its primary function of paying victims of lawyer dishonesty, the Board also approved a resolution

to support a malpractice insurance disclosure rule that is being considered by the Minnesota State Bar Association's Rules of Professional Conduct committee. Essentially, such a rule will create an obligation to provide information concerning whether an attorney maintains malpractice insurance on the annual attorney registration form, which then would be public information available to prospective clients upon request. Government lawyers would be exempt from the requirement.

The ABA Standing Committee on Client Protection has urged adoption of such a rule by the ABA and by the states. Several states, including South Dakota and Michigan and Illinois, either have a rule or are in the process of adopting one. The MSBA Rules of Professional Conduct Committee established a subcommittee to study the issue, and they invited the Client Security Board to become an *ex-officio* member.

Even though paying malpractice claims is outside the scope of the Client Security Board's authority, the Board regularly receives such claims and must deny them. In many instances it is clear that a malpractice victim will have no realistic means of recovery. Thus, the issue is one of client protection in general. Passage of such a disclosure requirement may yet prove premature in Minnesota, but the Board hopes to continue to assist in the push for its adoption.

Finally, in the area of subrogation, a surprising payment was received recently. Many years ago the Board paid one claim against disbarred attorney Richard Batdorf. Although Batdorf misappropriated approximately \$200,000 from an elderly couple, the Board paid \$50,000 to the victims, which was the maximum amount authorized under the Board's rules at the time (it is currently \$150,000 per claim). The Board obtained a judgment against Batdorf in 1993, but had been successful in collecting only a few hundred dollars from Batdorf over the years. Recently the Attorney General, on the Board's behalf, sought to renew the judgment, even though it was perceived as being somewhat futile. In response to being notified, Batdorf unexpectedly offered to pay the Board in full plus interest

(\$71,000)! Needless to say, this was acceptable. Occasionally it pays to be persistent...and patient.

¹ Margaret Westin, a former Public Law Section chair and an attorney for the Minneapolis School District, is the Board's current chair.

² The attorneys on whose behalf the Board has paid the highest amounts are:

1. Stephen J. Rondestvedt \$632,334.08 (21 claims)
2. Dennis J. Morgeson and Bruce C. Wyant (jointly) \$547,922.67 (8 claims)
3. Peter I. Orlins \$419,843.39 (11 claims)
4. Mark A. Sampson \$404,742.04 (20 claims)
5. Steve C. Samborski \$231,829.50 (23 claims)

³ The Client Security Board operates on a fiscal year basis. Thus 1996 refers to the period from July 1, 1995 to June 30, 1996.

Minnesota Legislative Report 2004 - The Collateral Sanctions Project

By: Michele Timmons, Revisor of Statutes

From the newspapers and television, you are undoubtedly aware of the major issues of the 2004 session – bonding for capital projects, fixing a projected \$160,000,000 budget deficit, the death penalty, stiffer penalties for sex offenders, the .08 standard for DWI, and stadium proposals. One proposal you probably never heard of is a proposed Revisor's instruction to gather and publish a list of collateral sanctions arising from criminal convictions.

Robert M.A. Johnson, the Anoka County Attorney, participated in developing American Bar Association Criminal Justice Standards which, in part, suggest that states codify or better organize laws relating to collateral sanctions. Subsequently, Bob organized a task force to study this issue. Task force members included Leonard Castro, the Hon. James Clark, Deb Dailey, Frederick Goetz, Dale Good, Don Gudmanson, Bill Guelker, Bob Johnson, Tom Johnson, Kevin McHenry, the Hon. Leslie Metzen, Kelly Mitchell, Mitch Perlstein, Doug Ruth, the Hon. Sen. Wes Skoglund, and Dan Storkamp. Staff to the task force included Ken Backhus from Senate Counsel, Jeff Diebel from House Research, and Emily Shapiro.

The task force concluded that there were a great many laws codified throughout the Minnesota Statutes imposing various civil sanctions for criminal convictions. Sanctions relating to voting rights and prohibitions on carrying firearms are reasonably well-known. In addition, however, there are many sanctions in the areas of employment and licensing, driving and motor vehicles, public safety, services or benefits eligibility, property rights, civil rights

and remedies, and even recreational activities! Because of the volume of these laws, the task force did not believe it was practical to recodify the entire body of collateral sanctions into one statutory chapter. Rather, the recommendation was to find a way to cross-reference the existing laws and publish the cross-references in the statutes.

House File 2276 and Senate File 2357 would instruct the Revisor of Statutes to create a new chapter in Minnesota Statutes cross-referencing the statutes imposing sanctions, using the new data practices act sections as a model. The Senate bill has cleared a committee and had its second reading. In the House, the bill has not yet had a hearing as of March 16, 2004. It is likely that an amendment will be proposed to permit the Revisor to publish the cross-references in a table format, rather than a codification, which would ease the creation and continued updating of the cross-references.

If the law passes, it is expected that the Revisor's office will publish a list of cross-references, either in statutory or table form, with the 2004 Minnesota Statutes.

Respectfully submitted by Michele L. Timmons, Revisor of Statutes, with thanks to both Bob Johnson and Emily Shapiro for providing information for this article.

Making Pro Bono Work For Minnesota Government Attorneys

By: Aaron Marcus, 3L Student Liaison*

Recently the Minnesota State Bar Association (MSBA) indicated that one of its main goals is to increase volunteerism by Minnesota Attorneys.¹ Ten initiatives were developed to meet the goal of expanding volunteerism by 500 attorneys over the 2003-2004 year. While no report has indicated whether this goal has been achieved, the strategies seem to be missing one essential component - government attorneys.

Following up on its announced goals, the MSBA issued a "call to honor" encouraging attorneys to participate in pro-bono work.² This call explicitly targets private attorneys by stating "billing time is what you do - changing lives is who you are." Like the ten initiatives, the MSBA's policy is well needed and must be supported, however, of the roughly 6000 federal, state, and municipal attorneys working in Minnesota,³ very little has been done to call these dedicated and well qualified lawyers to arms in the battle over access to justice.

While most of these attorneys share a basic commitment to providing services for the public sector in hope of bettering their community, ironically, these attorneys have met with significantly greater challenge in fulfilling the yearly 50 hours of pro-bono services recommended by the Minnesota Rules of Professional Conduct.⁴ In 1994, the MSBA published a model pro bono policy for government attorneys.⁵ In the ten years since its enactment, only a small handful of state and municipal offices have implemented a policy.

The reasons for this may be many, but most likely is the lack of follow-up and assistance by the MSBA, the lack of a single centralized guide to assist public attorneys in locating opportunities that are within their area of practice, and most importantly, the lack of internal structures to oversee and encourage use of a program. Additionally, many government offices face the added hurdle of being reigned in by the public trust. Minnesota's moonlighting provision, section 43A.38, subdivision 4, prohibits public attorneys from using state resources for private interests that are "not in the interest of the state."⁶ Also, many attorneys may not participate because providing public service as a job makes many government attorneys feel that they are already doing their part. Many may also

believe that they lack the competence necessary to engage in what they see as typical pro-bono work or that they lack malpractice insurance and taking cases is too risky.⁷

These problems are not insurmountable, and in fact, many have been resolved through creative pro bono policies. MSBA has done much of the initial work in structuring a model policy. Several agencies, including the Attorney General's Office, The Office of Lawyers Professional Responsibility, and the Department of Human Services have adopted the model with only moderate variations. However, according to several members of those agencies, while the policies have likely increased pro bono volunteerism, the effect has been marginal. Thus, this short piece will outline the basic model policy, highlighting its strengths and weakness, and then suggest several additions that will encourage greater use and provide for a more structured and effective method of implementation.

The basic model

A good government pro bono policy should address seven central issues: the purpose of the policy, definitions (i.e., what is understood as pro bono work), implementation, approval, accepting the case, use of taxpayer resources, and follow up. On both federal and state levels, the purpose has almost exclusively been to help meet the dire need of many who cannot otherwise afford access to legal representation. The language often mirrors or directly quotes either Minnesota's or the ABA's rule 6.1. Additionally, this section often deals with the moonlighting prohibition. The comment provided by the Department of Human Services' policy provides that, although Minnesota statutes prohibit using any office resources for activities not in the interest of the state, the de minimis use of resources for pro bono services "are directly or indirectly in the state's interest."⁸ Pennsylvania has likewise concluded that pro bono work excepts attorneys from the strictest reading of the moonlighting prohibition.

Next, a broad definition of "pro bono" should be included. The definition found in Rule 6.1 may be used verbatim. Some agencies have taken the next step to delineate types of representation (like guardian ad litem or landlord tenant

disputes). This may be beneficial as each agency will have unique reasons why certain services cannot be provided. For instance, the Office of Professional Responsibility's policy does not permit its attorneys to take direct representational tasks due to the potential for conflict or the appearance thereof.

Most policies then set up a system for approval. The approval policy, unfortunately, often combines what should be two separate issues. First, implementation should require the designation of a pro bono coordinator or committee and designate tasks. The MSBA model policy mentions the need for these positions, but does not delineate selection, tasks, or continuing duties. The Minnesota Attorney General's Office and the U.S. Department of Justice are two agencies that have basic implementation policies.⁹ While both policies mention coordinators or committees; selection, meetings, availability, and goals are not presented, thus making actual effectiveness variable and indeterminate.

The approval process, inversely, has taken on a fairly standard form. The coordinator, supervisor, ethics officer, or committee must approve of a specific project prior to the attorney accepting a case, client, or task. Approval is contingent on a conflict of interest check, whether it would interfere with the attorney's duties, cause the appearance of impropriety or conflict, or issues that pit the attorney against the state or municipality. Most states, including Minnesota, do not have statutes that bar the latter factor directly. Despite a lack of expressed prohibition, several state advisory opinions and the ABA advise against representation that opposes the government employer.¹⁰ More precise measures to protect attorneys from conflicts generally fail to appear in Minnesota policies.

Serving a client is also relevant to the approval process and many of the considerations relating to time commitment and the like will factor in there. However, concerns regarding malpractice coverage, training, case administration, and costs must be considered by a volunteering attorney. Most policies do not substantially cover this material or offer methods for resolving any concerns. Traditionally these issues are largely personal to the attorney and do not involve the office or agency except to the extent that office time or resources are needed for the service. Personal responsibility aside, each office enacting a policy may want to strongly consider providing resources for attorneys to more easily remedy these problems. Along the same vein, when accepting a client or representing them in court, the attorney must make clear to all parties involved that she is working in her individual capacity. A good policy surrounding this issue is located in the MSBA model at section IV.¹¹ Some

recommendations will be more completely explained below.

Related to the previous three areas, the inability to use taxpayer funded supplies and resources burdens many otherwise interested attorneys. De minimis exceptions are, however, permissible. Use of email and phone consistent with office policy, a limited amount of supplies, and the adoption of flexible work hours are all mainstays of this portion of a policy. Separating Minnesota from the Federal Government is a ban on Westlaw or Lexis search use. In both cases the agency or office usually is provided the service for a flat rate without regard to hours used or searches performed. The Department of Justice authorizes use "which [does not] result in additional cost to the government." This is one area that may be open for debate in Minnesota. Finally, follow up is not seen in any of Minnesota's policies. It includes recording, reporting, and recognition. This may turn out to be one of the easiest ways to encourage and advance pro bono work in Minnesota.

Recommendations

A strong pro bono policy for government offices is not designed to make service a requirement. Rather, the purpose is to encourage participation and make it easy for attorneys to get involved. Although adopting a policy may be somewhat time consuming, it is likely worth including for agencies that have over 10 attorneys. The long term benefits certainly outweigh such a minimal upfront commitment. First, begin with the MSBA model. Then, including a few of the following recommendations would allow offices to more feasibly manage and encourage pro bono activities.

A. Appoint a Coordinator or Committee

Before any volunteer commitments may be taken, it is essential to have a form of oversight to check for conflicts and ensure the service is in line with the agency's policy. For large and small offices alike, a coordinator can be designated several tasks that are easy to carry out and essential for a well functioning program. First, the coordinator should be required to select and approve several organizations that provide opportunities fitting with the skills and needs of the agency and its attorneys. The United States Department of Justice has a two tiered model where the coordinator will pre-approve organizations. If an attorney wants to volunteer with a pre-approved entity, they do not need to check with the coordinator prior to accepting a task. Only if an attorney desires to take on service with a new entity must they go through the specified approval process.

This method is actually less time consuming than individual task approval as it front loads the work and handles many cases at once. Additionally, the coordinator will be able to keep attorneys informed of specific opportunities that fit with the office policy, the skills of the attorneys in the office, and avoid conflicts of interest. Many of these are already compiled and would require only that the coordinator review the listing and select organizations that meet their specifications.¹² Sending out periodic emails or providing a message center is also an easy task and can be specified in the duties of the coordinator. By initially providing tasks and duties to a coordinator, the overall approval process becomes less cumbersome and time consuming and the coordinator has more flexibility in performing tasks on their own time.

Further, Nancy Wallrich of the MSBA is ready and willing to assist those who take up the minimal responsibilities a coordinator position would entail.¹³ She would assist in helping the coordinator design a program, host educational events, and find programs fitting to the office.

B. *Representational Concerns*

A significant hurdle to government attorney representation is the lack of malpractice insurance. This has largely been dealt with in Minnesota by the Volunteers Lawyer Network that offers malpractice insurance to attorneys performing pro bono work in Hennepin County. A coordinator could easily have this information available and simply pass off the information to attorneys desiring to do work. In Ramsey County, Southern Minnesota Regional Legal Services provides malpractice coverage for many pro bono activities. Often times, individual organizations will provide malpractice coverage for attorneys. These will generally be listed on the organizations notice of opportunities.

C. *Use of Research Tools*

Serious consideration should be given to allowing the use of Westlaw searches where the office pays a flat rate for the service. One concern is that there is no way to limit employee use to only the paid for areas. This is no different than when an employee uses the service during the regular course of business. Especially in government settings where often an attorney is resigned to more research oriented than representational activities, this may be a prime way to assist attorneys in providing much needed services.

D. *Follow Up*

Recording, reporting and recognition are essential

components of a program that have been largely neglected. Each office can create its own practice, but an easy method would be for the coordinator to record the number of hours performed by members of the office through a voluntary reporting at the end of each month, quarter, or year. This information could then be passed on to the MSBA to assist in tracking the success of its outreach.

Further, reporting will allow for recognition. The Public Law Section has been discussing the possibility of awards for either the office with the best service record or individual commitment. We strongly believe that added commitment should always be recognized and will thus encourage more volunteerism on the part of government attorneys.

Conclusion

Implementing an effective policy should not take a considerable amount of time. The MSBA is ready and willing to help and even coordination could be done with minimal time commitment. Many of the organizations seeking volunteers are even willing to bring their services to the agency by holding monthly or quarterly meetings about what volunteer positions they have available. On June 22, 2004, the MSBA will be hosting a CLE on implementing pro bono policies and we strongly encourage you or a representative from your office to attend.¹⁴

The recommendations set out above are only suggestions, but the hope is to encourage government offices to begin thinking about their role in social justice. As public attorneys, we are already serving the public in some fashion, however, the unmet need well surpasses the current commitment. With the 6000 or more of you out there, we can make a difference.

* Aaron Marcus is one of two student liaisons for the Public Law Section. He is a 3L at the University of Minnesota and will be clerking as a staff attorney for the Third Circuit Court of Appeals in Philadelphia.

¹ See MINN. STATE BAR ASS'N, 10 PRO BONO INITIATIVES FOR THE 2003-2004 BAR YEAR, available at <<http://www.projusticemn.org/civillaw/library.cfm?fa=download&resourceID=44653&appView=folder&folderID=0&print>>.

² MINN. STATE BAR ASS'N, THE CRISIS IN ACCESS TO JUSTICE FOR LOW INCOME MINNESOTANS, available at <<http://www.projusticemn.org/#Why>>.

³ See U.S. CENSUS BUREAU, 2000 PUBLIC EMPLOYMENT DATA STATE AND LOCAL GOVERNMENTS MINNESOTA (2000) at <<http://www.census.gov/govs/apes/00stlmin.txt>>.

⁴ MINN. R. PROF. CONDUCT R. 6.1 and comment.

⁵ MINN. STATE BAR ASS'N, MODEL PRO BONO POLICY AND

PROCEDURES FOR GOVERNMENT ATTORNEYS (1994). The model is available at <www.projusticemn.org>. In order to access it, however, a person must first join projusticemn as a member of the civil law section. Registration is free and easy, but it may take a few days for certification to process. Once joined, access the civil law page and click on the library link. The first listed option is "pro bono resources" and it includes "model policies." The model is available here.

⁶ Minn. Stat. § 43A.38, subd. 4 (2004).

⁷ See Cile Pace & Kenneth Hubbard, *CBA Voluntary Pro Bono Public Service by Government Attorneys: Provision of Direct Representation of Indigent Persons*, 29 JUL Colo. Law. 79, 80 (2000).

⁸ Minn. Dep't of Human Services, Policy on Pro Bono Services 1 (2003) (on file with author).

⁹ See U.S. Dep't of Justice, Department of Justice Policy Statement on Pro Bono Legal and Volunteer Services 3

(2000), available at <http://www.dcbar.org/for_lawyers/pro_bono/about_the_program/doj.cfm>.

¹⁰ See AM. BAR. ASS'N, *A DESKBOOK FOR GOVERNMENT AND PUBLIC SECTOR LAWYERS 2-12* (1998) (highlighting Kentucky's and Georgia's advisory opinions).

¹¹ See also *id.* at Appendix A, Minnesota Attorney General Pro Bono Policy.

¹² See MINN. STATE BAR ASS'N, *DIRECTORY OF PRO BONO OPPORTUNITIES FOR LAWYERS* (8th ed) (2004), available at <www.projusticemn.org>.

¹³ She can be contacted at nwallrich@statebar.gen.mn.us, or (612) 278-6313.

¹⁴ Originally, scheduled for March 23, the CLE has been moved. See projusticemn.org for more information.

Notice:

Federal Court Proposes Local Rule Amendments To Allow Electronic Case Filing

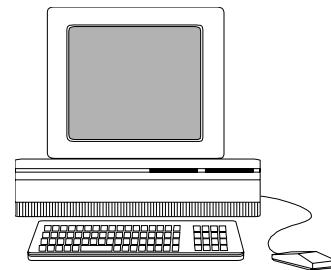
The U.S. District Court for the District of Minnesota sought public comment on proposed amendments to its local rules of practice. The proposed amendments will facilitate the Court's implementation of Electronic Case Filing ("ECF") which will allow attorneys to file documents from their offices by computer. Additional information about ECF will be provided by a set of written standards and procedures entitled "Electronic Case Filing Procedures for the District of Minnesota," which will be promulgated shortly after the proposed amendments to the Local Rules have been approved. The amendments were recommended by the Court's Federal Practice Committee chaired by attorney Jeff Keyes, of Briggs & Morgan in Minneapolis.

Public comments were compiled and will be presented to the Court in April, along with any final proposed modifications. The rules will be adopted by the full Court following consideration of all comments. The new rules effective date will be announced in the near future.

Copies of the proposed amendments, as well as the current local rules are available for reference on the court's web

site at <www.mnd.uscourts.gov>; in the Office of the Clerk in St. Paul, Minneapolis or Duluth; or by contacting Richard D. Sletten, Clerk of Court, at U.S. District Court, 300 South Fourth Street, Suite 202, Minneapolis, MN 55415, Attn: Local Rules Committee.

If you have questions about the amendments, please contact Wendy Osterberg, Chief Deputy at (612) 664-5000.



Public Attorney Awards Ceremony

By: Louis Thayer, Esq., Minnesota Department of Human Services

Each year the Executive Council of the Public Law Section recognizes outstanding achievements of attorneys and judges engaged in public service and in the public practice of law. Through these awards, we celebrate the commitment to public service and the public practice of law. This year the awards committee worked hard to increase the number and diversity of the people nominated. The process was very successful with the highest number of nominations ever from a wide diversity of public law backgrounds. The selection process was very challenging for the executive committee. The committee is in the process of contacting the recipients.

This year the awards ceremony will take place as part of the Public Law Section's Annual Meeting and CLE Program at the Mintahoe Banquet Center in St. Paul beginning at 11:30 a.m., Friday, May 21, 2004. The center is located at the former Bandana Square site at 1021 Bandana Boulevard East, Suite 230, St. Paul, MN. Directions: From either downtown, take interstate 94 to the Lexington Parkway exit. Go north on Lexington about two miles to Energy Park Drive. Turn left (going west) onto Energy Park Drive. Go west on Energy Park Drive for ½ a mile to Bandana Square. The ceremony will be on the second floor of the facility. Please plan on joining us for this event, and particularly for this ceremony to honor our outstanding colleagues.

The awards include:

The Douglas Amdahl Public Attorney Career Achievement Award

This award is named for former Minnesota Supreme Court Justice Douglas K. Amdahl whose 40 plus years as a public attorney with the Hennepin County Attorney's Office and later as Chief Justice of the Minnesota Supreme Court typifies the long dedicated commitment to public service and career achievement expected of recipients of this award. Recipients are retired or retiring public practitioners 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. Chief Justice Amdahl serves as an extraordinary model of public service commitment and career achievement for this award.

The Rosalie E. Wahl Judicial Award of Excellence

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 improving the justice system.

The PLS seeks to honor appellate, federal court, state district court, or administrative law judges in Minnesota who not only have high ideals, personal character and judicial competence, but also have 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.

The Julius E. Gernes Public Attorney Award

This award is intended to recognize the work and dedication of an outstanding public attorney working in the State of Minnesota as a County/City Attorney and/or as a criminal prosecutor 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.

Public Attorney Award of Excellence

The Public Attorney Awards of Excellence are the primary method of recognizing the work and dedication of outstanding Public Attorneys. Awards are given annually with the goal of including award recipients from diverse areas of public practice. Recipients are selected from the following areas: Public Defenders, Public Law Office Counsel in noncriminal law positions, and In-house agency counsel, including lawyers with such titles as staff attorneys, legal analysts, law clerks, or holding nonlegal government leadership positions. Recipients of the Julius E. Gernes Award or Public Attorney Awards of Excellence must have at least 5 years of experience as a public attorney. They must have engaged in activities that show dedication and commitment to public service and the public practice of law. Nominees may also distinguish themselves 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 their duties.

Public Law Section Annual Meeting and Council Elections

By: Tom Frost, Hennepin County Attorney's Office

The Minnesota State Bar Association Public Law Section by-laws call for the annual election of the Section Executive Council. The Council consists of two co-chairs, a secretary, a treasurer and eight council members. The council acts in the intervals between annual meetings of the Section and has full power to act and perform all functions that the Section itself may perform.

The co-chairs, secretary and treasurer each serve one-year terms. The council members serve staggered two-year terms.

The election will take place at the section annual meeting to be held on May 21, 2004. It will be held in conjunction with a section-sponsored CLE and the Section's Annual Awards at Bandana Square in St. Paul.

Nominations are now being solicited for co-chairs, secretary, treasurer and council member positions. Officers and council members must be public lawyers, and current

members of the Section. A public lawyer is defined as an attorney who works for a public agency or provides legal services to a public agency or agencies where the legal services provided amount to at least 50% the attorney's legal practice. Public lawyers may work under the titles of legal assistant, legal analyst, legal advisor, staff attorney, law clerk or similar titles.

Anyone interested in serving on the council or in nominating someone else should contact one of the nominating committee co-chairs, Diane Alshouse (651-215-0600) or Tom Frost (612-348-0109).

Another way of participating in section activities includes serving as a chair or member of a committee. Current committees include Awards, Community and Public Service, Newsletter, Data Practices, Ethics, Membership, and Local Government. To find out more about committee membership, contact any current Executive Council member.

Public Law Section Annual Meeting and CLE

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

A major part of the Public Law Section Annual Gathering at the Mintahoe Conference Center in Bandana Square on May 21, 2004, will be four and a half hours of CLE offerings.

In the morning, at 8:15 a.m. the Council has invited Ken Jorgenson of the Office of Lawyers Professional Responsibility to present on the work of the Task Force proposing changes to the Professional Responsibility Rules. He will address the process, recommendations, current status, and the impact the proposed rules will have on practice and procedure. The hurdles in dealing with pro se litigants will also be a topic.

Another major part of our morning CLE will be the presentation of vignettes of the American Bar Association on ethical topics for public lawyers. These presentations, which discuss in detail some of the delicate situations

that we all encounter, have been made throughout the country and have received "critical" acclaim.

In the afternoon, after the Annual Meeting and luncheon Awards program, several members of the Minnesota bench will present on their experiences in Kosovo, to improve the justice system there. This segment is called, "What We Can Learn," and promises to be a fascinating and instructional event as well. Three credits of Ethics and 1½ credits of Elimination of Bias are being applied for. The seminar will end by 3:00 p.m.

Reservations can be made by contacting Kim Basting at the MSBA at 612-278-6323 or <kbasting@mnbar.org>.

We look forward to seeing you there!

Community Service: A Thank You Note

The Public Law Section donated funds and volunteers in December of 2003 to sponsor 14 families. Following is the letter of appreciation that we received:

January 2004

Dear Friend,

On behalf of Catholic Charities, Lutheran Social Service and our partnering agencies, we would like to express our deepest gratitude for your contributions to the 2003 **Sponsor A Family** program. Through your generosity and those of other sponsors, **2,145** families in the St. Paul and Minneapolis metro area experienced joy and hope during this holiday season.

The families expressed their thanks in many words and in various languages. Here are a few excerpts from their expressions of gratitude:

- **"My family and I wish to thank you very much for your gifts; one of them being hope...I'm trying to rebuild my life, and it isn't easy with a special needs child. Our Christmas would've been bare this year, but for the blessing you have given."**
- **"Thank you for giving us the gifts and the gift certificates. The kids are going to enjoy themselves. The gifts will bring them much happiness and contentment." (translated from Spanish)**
- **"Thank you for thinking of our family. With our new baby on the way, things have been tight financially, and this is such a blessing."**
- **"Thank you for all the help you gave me, and thank you for welcoming me to America."**
- **"We have been struggling this year. Having to sell our home before it was foreclosed. New school for the kids. We have been living on very little. The clothes all fit and the kids look great in them! May God bless you as you have really blessed us."**
- **"We are so grateful for your generosity, and you give us hope that there are people like you in the world."**
- **"Thank you for helping make our holiday happier and brighter...It is our wish that your holidays are as blessed as you've made ours."**

Repeatedly, families asked for God's blessings on you and your families. Truly, we all share in the mutual blessings and joy of giving! We hope you will continue sharing in these blessings throughout the year and join us again in the next holiday gift program.

Sincerely,

Fr. Larry J. Snyder
Executive Director
Catholic Charities

Mark A. Peterson
President/CEO
Lutheran Social Service of MN

MSBA Membership Committee Report

By: Harriet J. Sims, Department of Revenue

The Membership Committee has been busy. The overall goal is to increase bar association membership by at least two per cent. Market share has been declining for several years and we have experienced a net loss in membership, but the Membership Committee has been on the job. The Membership Committee has the following subcommittees: Law Faculty, Judges Recruitment, Junior Recruitment, RCBA Membership Committee Liaison and HCBA Membership Liaison. I am on the Judge Recruitment Subcommittee.

Judge Recruitment Subcommittee

The MSBA Executive committee requested that the Membership Committee focus on recruiting district court judges to become members of the MSBA. There is currently a lack of judicial participation in several districts. The subcommittee's target is approximately 100 district court judges who are not currently members of the MSBA. The subcommittee plans to entice judges to join the MSBA through a targeted direct mail campaign followed by an Executive Committee telephone campaign.

Junior Recruitment Subcommittee

The Junior Recruitment subcommittee implemented a telephone campaign targeted to junior members (between one and five years out of law school) in March. We offered four months of free membership when they join for the following year.

Law Faculty Subcommittee

The Law Faculty Subcommittee is developing a group membership offer to the four law schools and hopes to win Executive Committee approval to implement a pilot project to test the new dues structure during the 2004-05 fiscal year. The current plan is for a group membership billed to the schools for law faculty. Dues would include district and section membership for a flat fee per law professor. At press time all of the details had not yet been worked out. Any plan would be dependent on Hennepin and Ramsey County Bar Association approval as well.

Other Activities

The Membership Committee is also looking into public relations activities in the short term as well as some other long term strategies to boost membership. Liaisons with the Hennepin and Ramsey County Bar Associations have been of value to the Membership Committee.

I am the Public Law Section's representative on the Membership Committee. If you have any ideas for recruitment and retention of members, especially as they relate to public lawyers, or ways that the MSBA can enhance its value to public lawyers, contact me at harriet.sims@state.mn.us or 651/556-4085

CLE Recap

By: Aaron Marcus, 3L Student Liaison

Legal and Political Implications of the United States as the World's Lone Superpower:

Hosted by Law & Inequality Journal at the University of Minnesota Law School
January 23, 2004

For nearly a century, the United States has not been afraid to involve itself in world affairs. But only recently has it decided to control them. This CLE was designed to highlight a trend in U.S. foreign policy that has placed it at the forefront of economic and political dominance, but more importantly, set for itself the role of defining international relations through both laws of peace and war. A capacity crowd filled room 25 at the University of

Minnesota to listen to talks on why preemption and the U.S definition of "enemy combatant" may violate the international laws of war, and how domestic policies such as the USA Patriot Act and the new Office of Citizenship and Immigration Services have impacted the lives of immigrants. Despite the snow, nearly 70 attorneys arrived for CLE credit as well as many students, law professors, and other educators who showed great interest. Six of the participants will be published in the summer issue of Law & Inequality. Thanks to the Public Law Section for its contribution. The day was a remarkable success. For information on ordering a copy of the issue, email <lawineqj@umn.edu>.

Miller, D'Alemberte to Highlight MSBA Convention

Harvard Law School Professor Arthur Miller and former ABA President and Florida State Law School Professor Talbot "Sandy" D'Alemberte will be among the highlights of the 2004 MSBA Convention June 9-11, 2004, in Duluth.

On Friday morning, June 11, Professor Miller will moderate a panel of Minnesota state and federal judges, journalists, public officials and lawyers discussing "High Profile Cases and the Public's Perception of the Legal System." Miller's skill engaging panel members is familiar to many Minnesota lawyers who have enjoyed his thought-provoking performances at previous conventions. The event is sponsored by West.

Professor D'Alemberte has agreed to keynote the Thursday luncheon with remarks tentatively captioned "deTocqueville, Atticus Finch, and Pro Bono." With a career spanning service as a practicing lawyer, a legislator, law school dean, and university president — all in the state of Florida — Professor D'Alemberte is uniquely qualified to address his topic, including comments on Florida's experience with mandatory reporting of lawyers' pro bono service and the significant increase in pro bono service that has resulted.

While the Convention is designed to appeal to all lawyers, new and recently admitted lawyers will find special appeal in the free "New Lawyer Boot Camp" being offered for CLE credit Wednesday afternoon. Running from 2:00 to 5:00 p.m., the interactive "Boot Camp" sessions will range over "How to Start a Successful Firm and Grow a Successful Practice," "Evidence: Getting Yours In — and Keeping Theirs Out," and "Family Law Basics: Answers to Questions Everyone Will Ask You." New lawyers can register for the Convention at a special reduced rate and the "Boot Camp" is included at no charge.

Additional opportunities for CLE during the Convention will range across practice areas and include sessions on such hot topics as "Reinstating the Death Penalty and Addressing Wrongful Convictions," "Mistakes Twin Cities Lawyers Make in Outstate Courts," and "Tribal Courts and the New Full Faith and Credit Rule." The Public Law Section will offer a session on "The International Practice of Public Law." Additional sessions are offered covering military law, animal law, elimination of

bias, balancing law practice and personal life, alternative dispute resolution, real property law, and the impact on Minnesota's criminal justice system of the 1994 *Scales* decision.

Highlights of the Friday General Assembly meeting are expected to include consideration of a proposed alternative governance structure for the MSBA, issues in multijurisdictional practice and conflicts screening, and whether MSBA should take a position — and, if so, what position? — on such hot button issues as the definition of marriage and proposed restoration of the death penalty.

Additional opportunities for networking, recreation, and generally having a good time with fellow lawyers, judges, and their families will fill out this year's Convention on the shores of beautiful Lake Superior. A registration form is printed so act now to reserve your space for "Lighting the Way to the Future."

Reprinted from the April 2004 issue of "Bench & Bar of Minnesota".

Public Law Section CLE

MSBA Public Law Section will sponsor "International Practice of Law"

Thursday, June 10, 2004; 2:00 – 4:30 p.m. Duluth, MN

Join the MSBA Public Law Section for an exciting and informative discussion on the impact that members of Minnesota's bench and bar have had on the international practice of public law. Judge John Tunheim, US District Court, will lead a distinguished panel of judges and lawyers, as they discuss their efforts to learn about and participate in legal systems around the world. The panel will discuss their activities and perceptions of the legal systems of other nations, and they will relate their experiences in participating in rebuilding legal systems,

including drafting and assisting in the interpretation of laws and constitutions. This presentation, sponsored by MSBA's Public Law Section will serve to provide a greater understanding of law and justice on a global scale as well as provide valuable insights into the legal frames of reference of many refugees whom we encounter in this country.

PARTICIPANTS:

Judge John Tunheim, panel leader

Judge Dan Mabley

Judge Edward Wilson

Judge Robert Carolan

Judge Marilyn Justman Kaman

David Schultz

Highlights Of The December 5, 2003 Board Of Governors Meeting

By: Marey Harris

Community Service Award.

Robert Foster received the Mary Alice Gooderl Community Service Award, for his work on behalf of Eastside Neighborhood Services in Northeast Minneapolis. The award includes a \$500 stipend which Mr. Foster designated for Eastside Neighborhood Services.

President's Report

President Jim Baillie updated the Board on a number of items. Some highlights:

- The MSBA is monitoring a First Amendment challenge of the Elimination of Bias CLE requirement.
- Pro Bono is a focus of the Bar this year. Nancy Wallrich is working part-time as pro bono coordinator for MSBA. The LAD Committee has undertaken a variety of initiatives with support of Chief Justice Blatz.
- Rick Hendrickson, the attorney shot at the Hennepin County Government, was recently welcomed back to the practice with a reception at the Government Center.

Legislative Committee

Sue Holden, Chair of the Legislative Committee, presented the recommendations of the Committee, and reviewed the activities of the three subcommittees:

- Grassroots Subcommittee, charged with organizing members of the Board to work in support of MSBA legislative program.
- Funding Subcommittee, seeking additional members regarding fundraising for candidates, relations with LawPAC, and people to host or co-host fundraisers for legislators who have been identified as key to support the MSBA agenda.
- The Priorities Subcommittee, which reviews specific proposals and manages lobbying efforts.

Ms. Holden presented the motion of the Legislative Committee to support proposals from the Business Law Section, Executive Committee, Probate & Trust Law Section and Real Property Law Section, and recognized various representatives to discuss the specifics of their respective proposals. All the proposals were accepted and the motion carried.

A final proposal was forwarded by the Legislative Committee without recommendation. The proposal from the Human Rights Committee opposes any legislation supporting the death penalty. The motion carried.

Rules of Professional Conduct Committee

Ken Kirwin, Chair of the Rules of Professional Conduct Committee, reviewed the current status of the amendments to the Rules adopted at the Convention, and summarized and moved the proposed amendments to Rules 1.6, 1.13, and 7.4. The motion carried.

Recommendation of the Executive Committee regarding a Commission on Sentencing Issues. Mr. Baillie indicated that the Commission would be formed.

Staff recommendation regarding the location of the 2005 convention. Tim Groshens and Kammi Stout of the MSBA staff reviewed the research that had been completed and the reasons behind the recommendation to hold the 2005 Convention in Brainerd. Motion was made to approve the same; the motion carried.

Judicial Elections Committee

Mark Gehan, Chair of the Judicial Elections Committee, reviewed the work of the committee and moved the Committee Report and the Minority Report for approval by the membership. In addition, noting that the Report recommends statutory and regulatory changes, he also moved to refer the Report to the Legislative Committee.

A motion was made and seconded to separate Item C.4. "Candidates in contested judicial races should be at the top of the judicial ballot." The motion carried.

A motion was made and seconded to approve Item C.4.; the motion carried.

A motion was made and seconded to separate Item C.1. "Minn.Stat. 490.121 should be amended to permit judges to serve out their term of office regardless of reaching the current mandatory retirement age of 70." The motion carried. Following discussion, motion was made to defer action on Item C.1. indefinitely. The motion carried.

A motion was made and seconded that consideration of the remainder of the Report and the Minority Report be postponed indefinitely. The motion carried.

Highlights Of The April 16, 2004 Board Of Governors Meeting

By: Marcy Harris

The Board of Governors met at the Minnesota CLE Conference Center at 12:30 p.m. on Friday, April 16, 2004, presided over by President Jim Baillie. Some of the highlights:

David Stowman informed the Board that the brochures for the convention, which will be held in Duluth June 9 – 11, 2004, were available for immediate registration; he also noted that they would be mailed out as well.

Susan Holden presented the recommendations for restructuring LawPAC. Ms. Holden's memo to the Board of Governors is available on the MSBA website. The restructuring involves clarifying and separating out the respective duties of the MSBA and LawPAC. LawPAC's roles will be to promote and raise funds to support MSBA-supported candidates, lawyers and others who have demonstrated an understanding and appreciation of the legal system; the MSBA will retain responsibility for lobbying on issues supported by the MSBA. LawPAC's Constitution has been revised to define the organization's role, purpose and structure. It sets out a 12-person Board

of Trustees and their duties, and a strategy for raising funds for LawPAC work. LawPAC will solicit funds separately from any funds received from the MSBA (the use of which is limited).

Mark Geehan presented recommendations of the Judicial Election Committee. The Board of Governors adopted recommendations put forth regarding judicial free speech and expectations regarding restricting such speech with respect to judges and judicial candidates. The recommendations regarding proposed changes to the Code of Judicial Conduct reflect the recommendations regarding judicial impartiality and independence. The Committee also recommended retaining the plebiscite (it will be conducted electronically in the future).

The Board approved the recommendation of the Membership Committee that would provide discounted membership rates to full-time law school faculty, for those law schools where 100% of the faculty were MSBA members.

The Board approved a recommendation of the Human Rights, Diversity and Family Law Committees, to oppose any effort to amend the Minnesota Constitution to forbid the creation of legally recognized relationships between persons of the same sex.

The Insurance for Members Committee recommended, and the Board approved, an immediate change in the endorsed home and auto insurance carrier from the Chubb to Liberty Mutual.

The Governance Task Force has recommended sweeping changes to the way the MSBA governing bodies are organized. Information is available on the MSBA website. Generally speaking, the Task Force is recommending that the current structure of the General Assembly (up to 15,000 members), House of Delegates (approximately 700 members), Board of Governors (about 80 members) and Executive Committee (8 members) be dissolved, and a new structure adopted that would have a 121-member Assembly (probably closest to the Board of Governors) and a 14-member Council.

The Council would be comprised of four officers, three

members directly elected by the Assembly, four members elected by district bar associations, and one member each representing the New Lawyers Section, MN Women Lawyers and the minority bar associations.

The Assembly would be composed of the 14 members of the Council, 46 members from the District Bar Associations, 28 members from law-related organizations, and 33 members from sections.

Each governing body would have a clear set of responsibilities and expectations, which is not exactly the case currently. The Council would serve as the organization's Executive Committee.

The proposal was introduced to the Board of Governors at this meeting; it will not be voted on until the meetings of the respective bodies in June. If adopted, there will be a one-year transition period to allow people to finish out terms to which they were elected and to set in place the new governing bodies.

There being no further business, the meeting adjourned at 4:00 p.m.

Eyes On The Courts

By: Greg Brooker, Assistant U.S. Attorney

Right to Counsel

State v. Shawntee Marie Tennin

No. A03-1281 (Minn. Sup. Ct., Feb. 12, 2004)



Shawntee Tennin was charged with prostitution. Tennin completed a public defender affidavit indicating that her entire income was \$250 per month in public assistance. Based on the affidavit, the district court determined that Tennin was eligible for a public defender. Under a 2003 state law, Tennin was required to pay a \$50 co-payment for public defender assistance. Tennin ultimately challenged the constitutionality of the mandatory co-payment provision. The district court found the statute unconstitutional and the question was certified to the state supreme court.

The supreme court noted that the legislature made three significant changes to the public defender statute in 2003: (1) the statute created a co-payment obligation upon the appointment of a public defender rather than at disposition of the case; (2) it deleted the express language establishing a judicial waiver of the co-payment; and (3) it increased the amount of the co-payment (\$200 for a felony; \$100 for a gross misdemeanor; and \$50 for a misdemeanor). Because the 2003 statute did not exempt persons who

remain indigent or for whom repayment of the co-payment would work a manifest hardship, the supreme court found it to be in violation of both the U.S. and Minnesota constitutions.

Section 1983; Qualified Immunity

Demetrius Gatlin v. Sergeant Michael Green, et al.

No. 02-3705 (8th Cir., March 16, 2004)

On August 7, 1998, Minneapolis police officers found Juwan Gatlin's body in a Minneapolis alley. He had been shot 15 times with a handgun. A year earlier, Gatlin, who was a known member of a notorious gang, began to cooperate with police, providing them with valuable information that led to several indictments of Gatlin's former gang members. While one of the gang members, Arthur Hurd, was awaiting trial, Hurd attempted to mail a transcript of Gatlin's police statement to his fellow gang members with the note that something should be done about Gatlin's cooperation with the police. Although Hurd's letter was intercepted by the Carver County Sheriff's Department, ultimately the letter was allowed to be sent. Minneapolis and Hennepin County officials thereafter alerted Gatlin to the fact that Hurd's letter had been sent. They financed Gatlin's relocation to Arkansas

to protect him. Law enforcement officials thought Gatlin had relocated to Arkansas, but one month later, Gatlin's body was found. It was widely believed Gatlin was murdered because he provided the police with information about gang activity in Minneapolis.

Gatlin's mother thereafter sued the City of Minneapolis and individual police officers, alleging federal constitutional and civil rights violations as well as state law claims of negligence, breach of contract, and placement in mortal danger leading to death. The U.S. District Court granted the officials' motion for summary judgment on qualified immunity grounds and granted summary judgment in favor of the City on all federal claims. The court declined to exercise supplemental jurisdiction over the state law claims. Plaintiff appealed.

The Eighth Circuit affirmed, holding that government officials performing discretionary functions are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights. The appellate court held that the plaintiff below did not assert a statutory or constitutional right that was violated by government officials. The actions of law enforcement officials were undertaken to minimize the risk of a retaliatory gang hit against Gatlin, the court noted. That Gatlin would ultimately remain in or return to Minneapolis without informing authorities was unknown to police officials. With regard to the claims against the City, the appellate court agreed with the district court that no reasonable jury could decide a lack of training resulted in Gatlin's death.

Unconstitutional Takings

Noland and Nolan v. City of Eagan, et al.

No. A03-616 (Minn. Ct. App., December 30, 2003)

EZ Mini Storage sued the City of Eagan and the Minnesota Department of Transportation (MnDOT) alleging that MnDOT and the City's negligent design and construction of storm sewer systems and their failure to maintain and repair those systems caused flooding to EZ's property. EZ sought a writ of mandamus to compel MnDOT to initiate inverse condemnation proceedings. In the alternative, it filed a complaint alleging tort claims of trespass, nuisance, and negligence. The district court granted MnDOT's motion to dismiss for failure to state a claim. Subsequently, the city and EZ stipulated to dismiss the remaining claims without prejudice, and EZ appealed.

The Minnesota Court of Appeals held that the district court erred in dismissing the inverse condemnation claims on the pleadings. The district court had concluded that the claims of flooding failed to rise to the level of a taking,

but the appellate court concluded that it is possible that EZ could produce some evidence consistent with appellant's theory to grant the relief demanded. The court noted that the complaint alleged numerous incidents of flooding and alleged that the flooding will in the future be frequent, regular, and permanent.

The district court had also dismissed the case on the basis that the mandamus action, one based in equity, could not proceed because EZ had an adequate remedy at law. The appellate court, however, ruled that legal remedies are necessarily inadequate if a taking occurred. The court of appeals also held that EZ could properly pursue mandamus and tort claims simultaneously, noting that principles of judicial efficiency and economy support such alternative claims.

Indian Law

County of Mille Lacs v. Mille Lacs Band of Chippewa Indians, et al.

No. 03-2527 (8th Cir., March 9, 2004)

Mille Lacs County and the First National Bank of Milaca commenced a declaratory judgment action seeking relief regarding the boundary status of the Mille Lacs Indian Reservation. The plaintiffs alleged that the Tribe's assertion of regulatory authority over parts of the reservation's territory has had a negative effect on county affairs and bank security interests. The U.S. District Court ruled that plaintiffs had no standing to question the legal status of the reservation's boundaries. On appeal, the county and bank argued that they have suffered both threatened injury and present harm to their ability to plan and conduct business. They alleged numerous harms including greater regulatory oversight by the federal government, which recognizes the broad reservation boundaries.

The Eighth Circuit affirmed, holding that in order to demonstrate standing, a plaintiff must demonstrate that he or she has suffered an injury in fact, that the injury is fairly traceable to the actions of the defendant, and that the injury will likely be redressed by a favorable decision. The court noted that in declaratory judgment actions, no actual wrong need have been committed or loss have occurred in order to sustain the action, but here the plaintiffs could not establish that they suffered threatened injury caused by the Tribe's alleged ownership of certain parts of the Mille Lacs Indian Reservation.

Land Use Planning

Haverhill Township v. Olmsted County, et al.

No. A03-880 (Minn. Ct. App., February 17, 2004)

Several townships within the boundaries of Olmsted

County had entered into cooperative agreements with the county that permitted the county to enforce county zoning, subdivision, and other official controls within the townships. On or after October 23, 2000, the townships adopted resolutions taking over the enforcement of official controls within the township's boundaries, including areas for which Olmsted County had enacted specific zoning and other controls. In April 2001, the townships filed suit against Olmsted County, alleging that the county persisted in asserting its right to exercise its official controls within the townships. The City of Rochester intervened in the action, asserting counterclaims against the townships. The district court dismissed the townships' complaints and the city's counterclaim. The townships appealed, arguing that a township has the power under state law to pass a resolution to take over planning functions in areas within its corporate limits for which a county has adopted official controls.

The court of appeals affirmed. The appellate court held that when the townships adopted the resolutions, pursuant to Minn. Stat. § 394.32, subd. 3, to take over planning functions with respect to areas within the townships for which the county had adopted official controls, the townships did not acquire the authority of a municipality to enact and enforce planning and zoning regulations. Rather, the townships took over the planning functions, but in performing these functions, they could only exercise the authority that had been granted to townships by the statute. Therefore, the appellate court ruled that the townships' authority to perform the planning functions remained limited by state law to official controls that are consistent with or more restrictive than the official controls adopted by the county.

Education Law

In the Matter of the Expulsion of I.A.L.

No. A03-762 (Minn. Ct. App., February 17, 2004)

I.A.L., a female student at a suburban junior high school, engaged in a fistfight with another female student in the school cafeteria. When a school employee attempted to break up the fight, I.A.L. hit the employee and pulled out hair from the employee's head. The school district suspended I.A.L. for a series of days and moved to expel her for 12 months. An independent hearing officer conducted an expulsion hearing and seven days later the school board adopted the hearing officer's recommendation to expel I.A.L. for a year. I.A.L. appealed the decision to the Minnesota Department of Education, which affirmed the decision of the school board. I.A.L. filed a writ of certiorari to the Minnesota Court of Appeals, arguing that a 29-day delay between the initial suspension and the initiation of expulsion proceedings was unreasonable and a violation of I.A.L.'s procedural due process rights.

The appellate court concluded that the delay in initiating the expulsion proceedings was directly attributable to I.A.L.'s initial decision to settle in lieu of expulsion and her request to confer with an attorney. The court of appeals found no fault in the school district's procedures when the delay between the initial suspension and the initiation of expulsion process was to honor I.A.L.'s request for time to confer with an attorney. Although I.A.L. has a right to an education, which is a protected property interest, the procedures used by the school district were not cause of the delay, and the duration of the delay itself was not unreasonable, the appellate court held.

News From The Bench

Kathryn Davis Messerich has been appointed by Governor Pawlenty to a First Judicial District Court vacancy in the First Judicial District in the city of Hastings in Dakota County. The opening occurred with the retirement of the Honorable Thomas M. Murphy on January 3, 2004. Messerich was an attorney and shareholder with the Minneapolis law firm of Hallelund, Lewis, Nilan, Sipkins and Johnson, a position she held since 2000. She was an associate general counsel for Allina Health System in Minnetonka from 1997 through 1999, an associate attorney and shareholder with the Minneapolis law firm of Bassford, Lockhart, Truesdell and Briggs from 1991 to 1997, and an associate attorney with the Minneapolis law firm of

Lommen, Nelson, Cole and Stageberg from 1987 to 1991. Messerich earned her juris doctorate degree from William Mitchell College of Law in St. Paul in 1987, her master of science degree in maternal-child nursing in 1984 and her bachelor of science degree from Northern Michigan University in Marquette, Michigan, in 1979. Messerich is a member of the Minnesota State Bar Association and Hennepin County Bar Association, chairing its Ethics Committee. She is also a member of Minnesota Women Lawyers, American Health Lawyers Association, Defense Research Institute, and the Minnesota Defense Lawyers Association, serving as its president from 2001 to 2002.

Messerich has done extensive legal teaching and participated in numerous professional presentations on health law. Messerich also serves on boards of directors of the Washburn Child Guidance Center and the Cole Richardson Trust for Pediatric Oncology and has served as attorney coach at Harding High School and a mock trial coach at Henry Sibley High School. Messerich, 46, lives in Mendota Heights with her husband, Jeffrey.

Diane M. Hanson was appointed by Governor Pawlenty to a First Judicial District Court vacancy in the First Judicial District in the city of Shakopee in Scott County. The opening occurred with the retirement of the Honorable Thomas R. Howe on December 2, 2003. Hanson has been an assistant Scott County Attorney in Shakopee since 1996. She was an assistant Morrison County Attorney from 1992 to 1996, a volunteer attorney for the city of St. Paul from 1991 to 1992 and a flight attendant with Northwest Airlines from 1977 to 1992. Hanson earned her juris doctorate degree cum laude from the University of Minnesota Law School in 1991 and her bachelor of arts degree from Kalamazoo College in Kalamazoo, Michigan in 1973. Hanson participates in the University of Minnesota Law School's Judicial Skills Training Program for newly appointed judges, and trains local law enforcement agencies on the investigation of sexual assault and sexual abuse cases. She is a member of the American and State Bar Associations, Minnesota Sex Crimes Investigators Association, Minnesota Association for the Treatment of Sexual Abusers, Scott County Community Notification Team, and she chaired the Scott County Attorney's office Diversity Committee from 1998 to 2002. Hanson, 52, lives in Shakopee.

Governor Pawlenty has selected **Judge Kenneth Nickolai** to serve on the Minnesota Public Utilities Commission (PUC). Nickolai served as head of the Office of Administrative Hearings, where he was appointed in 1997 by Governor Arne Carlson. The PUC is comprised of five

commissioners and regulates three cornerstone service industries in Minnesota's economy: electricity, natural gas, and telephone. It is the Commission's responsibility to ensure that vendors of these services provide safe, adequate, and reliable service at fair, reasonable rates. Nickolai served as deputy commissioner of the Minnesota Department of Human Rights in 1996-97 and as director of policy and legal affairs for the department in 1995-96. He worked as staff attorney for the Minnesota Center for Environmental Advocacy from 1993-95 and provided consultant work for the Governor's Commission on Reform and Efficiency in 1992-93. Nickolai also served as Assistant Regional Counsel to the U.S. Environmental Protection Agency in 1991. Nickolai earned a Master of Public Administration at the Kennedy School of Government, a Juris Doctorate from Duke University School of Law and a Bachelor's Degree from Carthage College.

Raymond Krause has been appointed by Governor Pawlenty to the position of Chief Administrative Law Judge at the Office of Administrative Hearings. The opening occurred as a result of the resignation of Kenneth Nickolai. Krause is the assistant commissioner for tax policy for the Minnesota Department of Revenue, a position he has held since January 2003. He was a judge on the Minnesota Tax Court from 1998 to 2003, the dean and a professor of law at Hamline University School of Law from 1994 to 1998, and senior vice president for government and community affairs with The Pillsbury Company and Grand Metropolitan Inc., from 1984 to 1994. Krause earned his juris doctorate degree from Georgetown University in 1973. Krause, 52, resides in Arden Hills with his wife and their two children. The full-time, paid position is for a six-year term that expires on June 30, 2010.

Public Attorneys On The Move

Kathy Hebert has left the Minnesota Attorney General's Office. She had been with the Attorney General's Office for 20 years working in the Human Services and Transportation Divisions.

Bill Sotkowski has left the Minnesota Attorney General's Office to join the firm of Jacobson Buffalo Schoessler & Magnuson. He had been at the Attorney General's Office for 20 years working in the Natural Resources Division.

Upcoming CLE Seminars

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

Date	Seminar	Time	Place	Sponsor/Contact
4/23/04	Law, Literature and Legal Ethics	8:30 a.m. to 11:45 a.m.	Hennepin County Bar Association, City Center	Hennepin County Bar Association, Marit Brynildson (612) 752-6600
4/23/04	Law, Literature and Elimination of Bias	1:30 p.m. to 4:30 p.m.	Hennepin County Bar Association, City Center	Hennepin County Bar Association, Marit Brynildson (612) 752-6600
4/28/04	Immigration and Employment	8:30 a.m. to 11:45 a.m.	Hennepin County Bar Association, City Center	Hennepin County Bar Association, Marit Brynildson (612) 752-6600
5/5/04	Elimination of Bias	10:00 a.m. to Noon	Radisson City Center	Attorney General's Office/Marty Casserly (651) 297-5919
5/21/04	Ethics Rules, Pro Se Parties and Judicial System In Kosovo	8:15 a.m. to 3:00 p.m.	Mintahoe, 1021 Bandana Blvd. E, St. Paul	Public Law Section MSBA, Margaret Westin, (612) 668-0484
6/10/04	International Practice Of Law	2:00 p.m. to 4:30 p.m.	MSBA Convention, Duluth	Public Law Section MSBA, Marcy Harris (952) 933-9639, ext. 225
6/11/04	Constitutional Law	All day	To be announced	Attorney General's Office/Marty Casserly (651) 297-5919
6/16/04	To be announced	8:00 a.m. to 10:00 a.m.	William Mitchell College of Law	Admin. Law Section, Kirsten Schroeder (651) 582-8607
6/23/04	Annual Rulemaking Seminar	8:30 a.m. to 4:00 p.m.	Dept. of Health Snelling and Energy Park Drive	InterAgency Rules Committee Wendy Willson-Legge (651) 281-9925

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

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
03-048	12/22/03	City of St. Paul	List of people who have worked in certain positions (identifying redacted co-worker).	St. Paul (Flaherty)
03-049	12/31/03	Department of Human Services	The existence and status of complaints or charges against an employee.	Robb
03-050	12/31/03	Department of Military Affairs(MDMA)	Cell phone records of employee.	MDMA (Johnson)
04-001	1/9/04	Minnesota FAIR Plan (for property or liability insurance)	Open meeting law applicability.	FAIR (McKasy)
04-002	1/21/04	City of Duluth	Disciplinary data involving employee X where grievance resulted in reinstatement.	Duluth (Brown)
04-003	1/23/04	School District 272	Access or copies; charge for data; reason for request.	Rodenhiser
04-004	2/3/04	ISD 276	Open meeting law; notice of meeting topic(s).	Slowter
04-005	2/5/04	Department of Transportation	Timeliness of response; all appraisals for property on Highway 63.	<u>Star Tribune</u> (Browning)
04-006	2/27/04	Board of Pharmacy	Number of complaints received and (for recent year) entity that was the subject.	Howe
04-007	2/27/04	ISD 11	Legal bills concerning X's child; "standing" request for data.	X
04-008	2/27/04	Department of Transportation	List of all data requests made by one person and itemized costs of them.	Lietz
04-009	3/2/04	Department of Employment and Economic Development and its contractor Gary Fischler & Associates	Authorization for data release before data existed; Tennessee or informed consent for such.	X

Department Of Administration

Data Practices Opinions Index Continued

No. of Opinion	Date of Opinion	Gov't Entity Involved	Topic	Opinion Requestor
04-010	3/4/04	Department of Employment and Economic Development	Signing authorization forms purportedly not yet completed; release of data to contracting entity.	X
04-011	3/10/04	ISD 2143	Directory information on students and younger children and policy.	Plimpton
04-012	3/10/04	ISD 2168	Directory information on students and younger children and policy.	Plimpton
04-013	3/10/04	ISD 2835	Directory information on students and younger children and policy.	Plimpton

Loaves & Fishes

"Regulars" were on hand for both the February 4 and the April 7 meal preparation and serving at Holy Rosary Church.

For the February event featuring Tator Tot Hot Dish, the chefs included: Nancy McLean, Claudia Zweber, Margaret Olson, Aimee Zweber, Nancy Gove, Tom Kalitowski, Mary Miller, LeAnn Lundberg, Steve Fouts, Patty Moses and Kim Mesun.

April volunteers for Loaves & Fishes included: Tom Frost, Tom Kalitowski, Joan Humes, Greg Brooker, Margaret Olson, Nancy McLean, Aimee Zweber, Dave Honan, Louis Thayer, Nancy Gove, Steve Fouts, Ngozichukwu Akubuike and her daughter Emerald, Mary Miller, John Kirwin, Roylene Champeaux, Tricia Tingle and spouse Steve.



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