

# Public Law News

*A Publication of the Minnesota State Bar Association Public Law Section*

**Volume XIX, Issue 3, Spring 2005**

## Public Law Section

### Executive Council

*Jay Heffern, Co-Chair, 612/673-3272*  
*Dianne Ward, Co-Chair, 651/266-3211*  
*Harriet Sims, Secretary, 651/556-4085*  
*Kim Buechel Mesun, Treasurer, 612/668-0482*  
*James Alexander, 612/664-5619*  
*Diane Alshouse, 651/215-0600*  
*Tom Frost, 612/348-0109*  
*Hon. Tom Kalitowski, 651/297-3530*  
*Mary Miller, 651/284-5306*  
*Hon. Warren Sagstuen, 612/348-8276*  
*Louis Thayer, 651/296-2384*

### Newsletter Committee

*Greg Brooker, Co-Chair, 612/664-5689*  
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*Terry L. Adkins*  
*Tom Frost*  
*Nancy McLean*  
*Hon. Warren Sagstuen*  
*Corrine H. Thomson*  
*Ronald L. Whitehead*  
*Mary Miller*

### Other PLS Committees

*Awards: Diane Alshouse, 651/215-0600;*  
*Louis Thayer, 651/296-2384*  
*Community/Public Service: Nancy McLean, 612/348-6755*  
*Data Practices: Tony Palumbo, 763/323-5550;*  
*Margaret Westin, 612/668-0484*  
*Local Government: Eileen Wells, 507/387-8603*  
*Pro Bono Policy Committee: TBN*

### PLS Coordinators

*Ethics: Hon. Warren Sagstuen, 612/348-8276*  
*CLEs: Mary Miller, 651/284-5306*  
*Membership: James Alexander, 612/664-5619*

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Visit the PLS web site:

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

MSBA



[www.mnbar.org](http://www.mnbar.org)



**Meeting Notice**  
**Public Law Section**  
**Annual Meeting & CLE**

Friday, May 13, 2005  
 8:00 a.m. to 3:30 p.m.  
 Mintahoe Conference Center – Bandana Square  
 1021 East Bandana Boulevard, Suite 230, St. Paul, Minnesota

**Schedule and Presenters:**

- 8:00 to 8:30 a.m.           Registration
- 8:30 to 10:00 a.m.       Data Practices Legislative Update  
 Laurie Beyer-Kropuenske, Director of IPAD, Minnesota Department of Administration  
 Responding to Data Requests  
 Corrine Thomson, Kennedy & Graven
- 10:00 to 10:15 a.m. Break
- 10:15 to 11:45 a.m.      Data Practices Case Law Update  
 Tony Palumbo, Assistant Anoka County Attorney  
 Data Security Issues  
 David Orren, Minnesota Department of Health
- 11:45 to 1:45 p.m.       Annual Meeting, Luncheon & Annual Public Law Awards Presentation
- 1:45 to 2:00 p.m.        Break
- 2:00 to 3:30 p.m.        Working with Interpreters  
 Hon. Luz Maria Frias, Minnesota District Court Magistrate  
 Katrin Johnson, Minnesota Courts Interpreter Coordinator  
 Blong Yang, Attorney

4.5 hours standard CLE credits including 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  
 E-mail: (send credit card #)  
[kbasting@mnbar.org](mailto:kbasting@mnbar.org)

*Friday, May 13, 2005 Public Law Section           RSVP By 5/11/05*

**Method of payment:**  
 Check made payable to "MSBA/Public Law" in the amount of:

- \$50 Public Law Section member\*
- \$60 Non-Section member\*
- \$25 Law Students (all day CLE & Luncheon)\*
- \$20 Annual Meeting & Luncheon Only

\*includes awards luncheon and annual meeting

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](http://www.mnbar.org) | 800-882-6722

# Section Executive Council Elections

*By: Tom Frost, Hennepin County Attorney's Office*

The Executive Council of the Public Law Section is elected at the section's annual meeting. The 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 terms. The Council meets once a month over the noon hour, usually on the third Tuesday of the month.

This year's election will take place at the annual meeting on May 13, 2005. It will be held in conjunction with the section sponsored CLE.

Nominations are solicited for the two co-chairs, secretary, treasurer and council member positions. Officers and council members must be public lawyers and current members of the MSBA Public Law 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% of 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.

If you are interested in serving on the council or in nominating someone else, please contact the Nominating Committee co-chairs: Harriet Sims (<Harriet.Sims@state.mn.us> or 651-556-4085) and Tom Frost (<tom.frost@co.hennepin.mn.us> or 612-348-0109).

Another way to participate in section activities is to serve on a section committee. Current committees are Awards, Community Service, Data Practices, Ethics, Local Government, Membership, and Newsletter. To find out more about committee membership, contact any current Executive Council member.

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## MSBA Public Law Section Public Attorney Awards Ceremony

*By: Louis Thayer, Administrative Hearing Referee, Minnesota Department of Human Services*

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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 at the Mintahoe Banquet Center in St. Paul\*, beginning at 11:45 a.m., Friday, May 13, 2005.

**Mintahoe Conference Center – Bandana Square  
1021 East Bandana Boulevard  
Suite 230, St. Paul, Minnesota**

Please plan on joining us for this ceremony to honor our outstanding colleagues.

The awards and former recipients are:

- 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 an appellate, federal court, state district 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 are:**

- 2004 **The Honorable John R. Tunheim**, Federal District Court of Minnesota
- 2003 **The Honorable Joanne M. Smith**, Judge of the Second Judicial District
- 2002 **The Honorable Renee L. Worke**, Asst. Chief Judge of the Third Judicial District
- 2001 **The Honorable George A. Beck**, Administrative Law Judge
- 2000 **The Honorable J. Earl Cudd**, United States Magistrate Judge
- 1999 **The Honorable Leslie May Metzen**, Chief Judge of the First Judicial District
- 1998 **The Honorable Kenneth F. Fitzpatrick**, Judge of the Second Judicial District
- 1997 **The Honorable George H. Hoey**, Judge of the First Judicial District

**2. Julius E. Gernes Prosecutor Award of Excellence**

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 are:**

- 2004 **Kathryn A. Santelmann**, Assistant Ramsey County Attorney
- 2003 **Larry M. Collins**, Waseca County Attorney
- 2002 **Al Zdrasil**, Assistant Ramsey County Attorney
- 2001 **Alan J. Harris**, Senior Assistant Hennepin County Attorney
- 1999 **James C. Backstrom**, Dakota County Attorney
- 1998 **Dianne A. Ward**, Chief Deputy Hennepin County Attorney
- 1997 **John R. Speakman**, Assistant Anoka County Attorney
- 1996 **Conrad I. Freeberg**, Morrison County Attorney

**3. William E. McGee Public Defender Award of Excellence**

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 are:**

- 2004 **Paul G. Thompson**, Assistant Public Defender, Ninth Judicial District
- 2003 **Richard G. Carlson**, Assistant Public Defender, Fourth Judicial District
- 2002 **Ronald Greenley**, Assistant Public Defender, Tenth Judicial District
- 2001 **Cynthia T. Daly**, Assistant Public Defender, Fourth Judicial District
- 2000 **Larry Hammerling**, Deputy State Public Defender, MN Public Defender's Office
- 1999 **Manley Zimmerman**, Assistant Public Defender, Fourth Judicial District
- 1998 **Harry Newby, Jr.**, Assistant Public Defender, Sixth Judicial District
- 1997 **Candace Rasmussen**, Chief Public Defender, Third Judicial District
- 1996 **Fred Friedman**, Chief Public Defender, Sixth Judicial District

**4. Public Attorney Awards of Excellence**

There are two Public Attorney Awards of Excellence. These awards 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 Law:** This award is given to an attorney practicing civil law in a public law office at the federal state, or local level.

•**Government Agency:** This award is given to an attorney practicing in a variety of public settings including lawyers with such titles as hearing officials, staff attorneys, legal analysts, law clerks, or holding nonlegal government leadership positions such as commissioners, managers and council members.

Persons nominated for the Julius E. Gernes Prosecutor Award of Excellence, the William E. McGee Public Defender Award of Excellence, or the Public Attorney Awards of Excellence must have at least five years of experience as a public sector 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 of their duties.

**Past recipients for Government Agency are:**

- 2004 **Kenneth A. Nickolai**, Chief Administrative Law Judge, Office of Administrative Hearings
- 2003 **Richard A. Wexler**, Assistant Commissioner, Minnesota Department of Health
- 2001 **Thomas W. Anderson**, Metropolitan Airports Commission
- 2000 **Laura D. Kadwell**, Director, Child Support Enforcement Division, Minnesota Department of Human Services
- 1999 **Ann Russell**, Assistant Hennepin County Attorney, Hennepin County Medical Center
- 1998 **Michael B. Johnson**, State Court Administrator's Office
- 1997 **Julie M. Brunner**, St. Louis County Administrator

**Past recipients for Public Law Office are:**

- 2004 **Toni Beitz**, Senior Hennepin County Attorney
- 2003 **Mark J. Ponsolle**, Director, Office of the Ramsey County Attorney
- 2002 **David R. Ornstein**, Bloomington City Attorney
- 2001 **Robert A. Stanich**, Assistant Attorney General
- 2000 **John L. Kirwin**, Assistant Attorney General  
**Desyl Peterson**, Minnetonka City Attorney
- 1999 **William P. Donohue**, University of Minnesota
- 1998 **Alan C. Williams**, Assistant Attorney General
- 1997 **Richard S. Slowes**, Assistant Solicitor General
- 1996 **Beverly Jones Heydinger**, Deputy Attorney General

**5. Douglas K. Amdahl Public Attorney Career Achievement Award**

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 are:**

- 2004 **Carl Conney**, Assistant Minnesota Attorney General  
**Wayne G. Johnson**, City Attorney to Beaver Bay and Silver Bay

- Eldon G. Kaul**, Assistant Minnesota Attorney General
- Clayton LeFevre**, In Memoriam, City Attorney to Lauderdale, Richfield and Robbinsdale
- 2003 **William E. Falvey**, Retired Chief Public Defender, Second Judicial District  
**William E. McGee**, In Memoriam, Chief Public Defender, Fourth Judicial District  
**John D. Tierney**, Retired Principal Attorney, Hennepin County Attorney's Office
- 2002 **The Honorable Gary L. Crippen**, Retired Judge of the MN Court of Appeals  
**LeRoy Jackson**, Retired Senior Attorney, Hennepin County Attorney's Office  
**The Honorable Kenneth J. Maas**, Retired Judge of the Tenth Judicial District
- 2001 **The Honorable Douglas K. Amdahl**, Retired Chief Justice of the MN Supreme Court
- 2000 **The Honorable Doris Ohlsen Huspeni**, Retired Judge of the MN Court of Appeals  
**Phillip B. Byrne**, Retiring Deputy City Attorney, St. Paul City Attorney's Office
- 1999 **The Honorable A.M. "Sandy" Keith**, Former Chief Justice of the MN Supreme Court
- 1998 **The Honorable Esther M. Tomljanovich**, Former Justice of the MN Supreme Court  
**James N. Bradford**, Former Assistant Attorney General  
**Floyd B. Olson**, Bloomington City Attorney, Deputy Minneapolis City Attorney
- 1997 **The Honorable Rosalie E. Wahl**, Justice of the MN Supreme Court  
**Stanley G. Peskar**, General Counsel, League of Minnesota Cities  
**William R. Kennedy**, Hennepin County Chief Public Defender  
**Julius E. Gernes**, Winona County Attorney
- 1996 **Earle T. Anderson, Jr.**, Maple Grove City Attorney  
**Robert R. W. Johnson**, Anoka County Attorney  
**The Honorable Jon L. Lunde**, Administrative Law Judge, Office of Administrative Hearings  
**Lloyd J. Moosbrugger**, Assistant Attorney General

*\*From either downtown, take interstate 94 to the Lexington Parkway exit. Go north on Lexington about 2 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.*

# Booker and its Aftermath

By: Jim Lackner, Senior Litigation Counsel, U.S. Attorney's Office

After the Supreme Court's decision in *Blakely v. Washington*, 124 S.Ct. 2531 (2004), the validity and proper application of the Federal Sentencing Guidelines became unsettled, creating chaos in the federal criminal justice system. *Blakely* involved the State of Washington's determinate sentencing scheme. Under that scheme, a sentencing judge was required to increase a "standard" sentence whenever that judge found additional facts relevant to the sentencing scheme. *Blakely* held that it was a violation of the defendant's Sixth Amendment right to a jury whenever a judge is required by a sentencing scheme to impose a sentence that is not based solely on facts reflected either in a jury verdict or admitted by the defendant.

*Blakely* specifically left open the question whether the Federal Sentencing Guidelines, which mandated that a judge increase or decrease sentences based upon the judge's findings of facts under a preponderance of evidence standard, also violated the Sixth Amendment right to jury.

*U.S. v. Booker*, 125 S.Ct. 738 (2005) settled that question, in a two-part decision. *Booker* involved two consolidated cases. One, *U.S. v. Booker*, from the Seventh Circuit, raised the issue whether *Blakely* applied to the Federal Sentencing Guidelines. The second case, *U.S. v. Fanfan*, concerned the issue as to how to apply *Blakely* to the Federal Sentencing Guidelines, if in fact the Court held that *Blakely* applied. Justice Stevens wrote the opinion for the 5-4 majority on the first issue. The Court held that the same Sixth Amendment analysis in *Blakely* applied to the Federal Sentencing Guidelines due to the mandatory nature of the sentencing scheme on judicial sentencing decision making. Specifically, the Court noted, "if the Guidelines as currently written could be read as merely advisory provisions that recommended, rather than required, the selection of particular sentences in response to differing sets of facts, then we would not implicate the Sixth Amendment". 125 S.Ct. at 743.

The second part of the opinion, which concerned the remedial issue, was written by Justice Breyer. In a different 5-4 majority, the Court found that one of the provisions in the Federal Sentencing Guidelines enabling legislation, 18 U.S.C. § 3553(b) which made the Guidelines mandatory, was incompatible with the Court's constitutional analysis.

By excising two provisions from the Guidelines legislation, 18 U.S.C. § 3553(b)(1) and 3742(e) (the second section related to the standard of review of appeals of certain Guidelines sentences) the Court noted it was making the Guidelines "effectively advisory" and thus removing the Sixth Amendment infirmities.

What does this mean for sentencing under the new advisory Guidelines? Although the dust is still settling, federal sentencing should not look radically different than before *Booker*. The Court was careful to note that a sentencing court must consider the applicable Guideline range, but that in deciding on the appropriate sentence a court may also consider the other statutory concerns set forth in § 3553(a). Section 3553(a) sets out a number of different factors, including the need for the sentence to adequately deter criminal conduct and to protect the public from further crimes of the defendant, among other things.

The circuit courts of appeals are just now beginning to grapple with the issue of how to review the reasonableness of federal sentences - the new standard of review under *Booker*. The Eighth Circuit in *U.S. v. Haack*, 2005 WL 840124 (8th Cir. April 13, 2005) set forth a procedure for the district courts to follow in reaching a "reasonable" sentence. That procedure includes several "essential aspects" including that the sentencing judge must: (1) consider the Guidelines and therefore determine the applicable Guideline range; (2) consider all the other factors listed in Section 3553(a); (3) decide whether to impose a sentence within the applicable Guideline range or apply a Guideline permitted departure or (4) impose a non-Guidelines sentence. As part of this procedure, the Eighth Circuit noted, a judge may find all facts appropriate for determining the sentence. Because the Sentencing Guidelines are now advisory, a sentencing judge can sentence based upon judicial fact finding by a preponderance of evidence. The *Blakely* issues related to judicial fact finding do not apply to an advisory guideline scheme.

Many issues arise from the Court's holding in *Booker*. For example, which pre-*Booker* cases on appeal should now be remanded for resentencing? What is the standard of review to make this determination? Is *Booker* applicable on collateral review? While much is still uncertain, the constitutional issue after *Booker* has been reformulated.

Because the Supreme Court made the Sentencing Guidelines advisory in *Booker*, the issue for review of a pre-*Booker* sentence on direct appeal is not whether a sentencing judge made factual findings under a preponderance of the evidence standard, but rather whether that judge erred by treating the Sentencing Guidelines as mandatory rather than advisory. *U.S. v. Mooney*, 2005 WL 696909 (8th Cir. March 28, 2005).

Whether there was error requiring a remand for resentencing will be determined by a reviewing court in part based upon the judge's comments at sentencing which might indicate a desire to sentence outside the Guideline range, and whether the judge sentenced the defendant to the lowest possible point within the applicable Guideline range. It will also depend on whether the issue is reviewed under plain error or harmless error.

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## Habitat For Humanity

*By: Nancy McLean, Hennepin County Attorney's Office*

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The Public Law Section will be working with Habitat for Humanity on April 22nd. During the last several years, the public lawyers, families and friends have worked on more than 25 Habitat projects. It's been a wonderful opportunity to contribute to the community while learning new skills.

If you'd like more information or want to volunteer, contact Nancy McLean at <[Nancy.McLean@co.hennepin.mn.us](mailto:Nancy.McLean@co.hennepin.mn.us)>.

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## *Loaves and Fishes April 6, 2005*



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## Adopt a Family

*By: Nancy McLean, Hennepin County Attorney's Office*

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The Public Law Section sponsored 14 families through Sponsor a Family, Cornerstone, and the Minneapolis Public Schools. We provided holiday gifts for children and adults as well as Rainbow/Cub gift certificates. For the last several years, we have worked with Sponsor a Family (Lutheran Social Services and Catholic Charities joint holiday project) and Cornerstone (an agency serving victims of domestic violence). This year we also worked with young parents at the Broadway School in Minneapolis. As in past years, help came in many forms. People made generous financial contributions, bought and wrapped gifts for an individual or an entire family, and many teens and young adults helped with wrapping and delivery. Thanks to all who contributed to this very successful project.

# Thank You's

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January 2005

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 2004 Sponsor A Family program. Through your generosity and those of other sponsors, 2300 families, including over 10,000 people, received needed gifts and a holiday meal. Because of your personal expression of caring, they experienced joy and hope during the holiday season.

The families expressed their thanks in many ways and in various languages. Most simply said "thank you" and shared their blessings. If provided, your family's thank-you card is enclosed. The following excerpts reflect the many stories of the families you helped:

- "Thank you for your kindness to me and my daughter. I lost my mom this past April, and I lost my job this spring. I'm starting to get things right. It's been a tough year. God bless you for your help."
- "Thank you so much for all your help this year. We are a family that wasn't born here, but we still thank you for your kindness. Even in this selfish world today, we appreciate families like yours who are willing to give and share their own with families like ours."
- "We just want to say thank you so much from the bottom of our hearts! I just had a baby and have been without pay for two months. We really appreciate it!"
- "Thank you so much for your help this Holiday Season. My husband is a cancer patient and myself...I have heart problems. You shall be remembered in our prayers. Love at this holiday time."
- "I want to thank you for blessing us. The look that my children had on their faces, made me think of you and your affection of love, with your giving. If I had a thousand tongues I couldn't thank you enough! God bless you!"

Many times the families state that they hope to be able to help others some day. Yes, our world is filled with crises, public and private. It is also filled by people like you and these families, who know the blessings of both giving and receiving. We hope you will continue sharing in these blessings throughout the year and in our next holiday gift program. On behalf of all these families, thank you!

Sincerely,

Fr. Larry J. Snyder  
Executive Director  
Catholic Charities

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

*Dear Sponsor,*

*Thank you so much for everything that you are giving my family this holiday. God bless you for taking the time to bring a little happiness to all my children.*

*Happy Holidays!*

*Thank you.*

*Rufina*

*Dear Sponsor,*

*"Thank you for the gifts for the family.*

*Happy Holidays!*

*Christina*

**Loaves & Fishes  
Volunteer Appreciation**

April is volunteer appreciation month and we wanted to take this opportunity to thank you for your faithful service. Last year Loaves & Fishes served over 320,000 meals. This was made possible by hundreds of volunteer teams like yours. On behalf of the Loaves and Fishes guests, staff and board, we wish to express our most sincere thanks and gratitude for all your hard work and dedication.

Mary Jo Bellinger, Volunteer Coordinator  
Dean Weigel, Executive Director

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***Loaves and Fishes April 6, 2005***



# MSBA Convention

By: Pat Everheart, Minnesota State Bar Association

The Minnesota State Bar Association is calling this year's annual get-together "Unconventional Wisdom" because it's not the convention members are used to. The event-being held at Madden's resort in Brainerd June 15 through 17-features a new format made up of tracks designed for the way members practice law and where they are in their careers.

The five tracks at this year's convention are: small-firm (for solos and small-firm practitioners), associate (for those early in their careers and the people who supervise them), second-half of career (for those in mid to late career), section/committee (for those interested in taking substantive law courses in various specialty areas) and, of course, golf (sorry, no continuing legal education credits for golf). The full schedule is available by following the links from [www.mnbar.org](http://www.mnbar.org) or directly at [www2.mnbar.org/convention](http://www2.mnbar.org/convention).

Minneapolis attorney Aaron F. Biber, chair of the convention committee, said this is the first time in more

than a decade that the convention has been held at a resort. "Frankly, the purpose is to emphasize having some fun," said Biber. He also noted that the setting is family-friendly, with childcare available. Planners hope that factor will help to attract younger lawyers.

The convention's schedule has also been revamped to allow lawyers to have more fun and to build professional contacts in a relaxed setting. Madden's reputation as the state's top public golf course plays right into that.

**Register by May 15 to save up to \$50!**

You can register online at [www2.mnbar.org/convention](http://www2.mnbar.org/convention). Contact Janny Grice, <[jgrice@mnbar.org](mailto:jgrice@mnbar.org)>, 612-278-6343 or 800-882-6722 ext. 343 for details.

## MSBA General Assembly Meeting: Friday, April 15, 2005 Highlights of the Meeting

By: Marcy Harris, Community Action for Suburban Hennepin County and  
Dick Ericson, Minnesota State Bar Association

**Award Presentations:** the following awards were presented:

**Graven Award:** Dick Beens presented the award to Ann Huntrods of Briggs and Morgan.

**Becker Award:** in recognition of access to justice, awarded to Camille Hurtado and Doug Clark. Volunteer Law Student Award given to Ahmed Telub and Morgan Volent.

**Outstanding Service Award:** awarded to Bob McLeod for contributions to [practicelaw.com](http://practicelaw.com).

### President's Report

President Stowman, as one of his initiatives this year, was to work on grassroots lobbying by constituents (bar members). Some of the issues this past year have included sales tax on legal services, funding for court system, legal

aid, public defenders. Stowman has also been meeting with legislators to build relationship between them and the Bar, and has also testified regarding bills.

Stowman has written letters to the editor, especially regarding attacks on the judiciary, including criticisms of judges in the Terri Shiavo case. He posted free living will forms on our website.

When testifying at the Legislature, a bill passed a House committee (not floor) that would limit fees when statutorily awarded as part of the judgment. He opposed that because it would make it hard to get an attorney. Additionally, he opposed legislation that, if the defendant offered settlement, attorney wouldn't be able to continue collecting fees.

### Assembly Committee Reports

**Elections/Appointments:** presented by Judge Stafsholt. The Committee drafted guidelines for elections and appointments; Stafsholt moved adoption; carried. Several recommendations for nominations were put forward, including electing Harriet Sims of the Public Law Section (representing Hennepin County) to the Client Security Board. All recommendations for nominations passed.

**General Policy:** presented by Brian Melendez. One action item, to consider a policy providing that judges may become president of the Bar Association. Issue first arose in 2002 because a judge received informal advisory letter from Judicial Conduct Board, which suggested that it may be inappropriate for judge to hold office. In last month, this became an issue again, as a judge is interested in serving as an officer. Goes to heart of whether we're trade association, or integral part of justice system of state, include both bench and bar in leadership. Motion to accept policy; vote carried.

**Governance Committee:** Dan O'Connell presented. Probate and Health law amendments were reviewed. Three proposed bylaw amendments approved by Governance Committee and Council; will be presented at convention. Interpretation of bylaws issues: the Assembly has authority to interpret transition issues during this first year of new governing structure. New Assembly and Council members will start terms July 1, 2005. With respect to interpretations, question on terms of former Board of Governors; recommend that terms of those who had served on Board will not be restricted by term limits under new structure. Also, current Assembly members will not have their terms

counted against same six-year limit. And two-year limit for at-large members of Council: service on either former Executive Committee or current Council will not count against. Members of Assembly elected to Council will have their terms begin July 1, 2005 – recommends that the current Assembly elect those members, drawn from current Assembly. Finally, alternate members do not have absolute right to vote. They recommend that both alternates and voting members be eligible to serve next fiscal year. Moved and seconded. Main motion carried.

**Legislative Committee:** Sue Holden presented. No action items. No recommendations. They do meet weekly in conjunction with the lobbyist and staff.

### Action Calendar

Proposed FY 2005-06 budget. Motion to approve budget carried. MCLE Fund budget presented and approved as well.

### New Business

Aaron Biber, Convention Committee chair, presented highlights of this year's convention which will be held June 15-17 at Maddens. Tracks: Associate, Section, Second-Half Career, Small Firm, Golf. Encourages attendance, families. Good educational line-ups, great socializing opportunity, different setting.

### Presentation

Trudy Halla presented the "After the JD" program, which detailed a national study of legal careers by tracking the lives of more than 5,000 lawyers during their first ten years after law school.

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## Eyes On The Courts

*By: Greg Brooker, Assistant U.S. Attorney*

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### FEDERAL AND STATE COURT ROUND UP

Federal and state courts in Minnesota have issued several cases of importance to public lawyers. What follows are summaries of cases decided in February, March, and April 2005:



#### *Child Protection Negligence:*

**Radke v. County of Freeborn, No. A03-797 (Minn. Sup. Ct., April 21, 2005).**

On April 21, 2001, nineteen-month-old Makaio Radke was beaten to death by Paul Gutierrez, a friend of Makaio's mother. At the time of his death, Makaio's parents were separated. Upon learning that Gutierrez had moved in

with his estranged wife, Makaio's father, Matthew Radke, had become concerned for the welfare of his son. On January 20, 2001, Matthew Radke called the Albert Lea Police Department to file a complaint. On February 28, 2001, he brought Makaio to the Albert Lea Medical Center, where a doctor found lesions behind Makaio's ears and bruises on his cheeks. The doctor reported the suspected child abuse and neglect to the Freeborn County Human Services Department. In response, a Freeborn County child protection worker visited the home of Makaio's mother on March 2, 2001. The mother claimed Makaio fell, and the child protection worker took no protective action on behalf of Makaio.

Nineteen days later, on March 21, 2001, Matthew Radke brought Makaio to the Albert Lea Police Department when he discovered bruising on Makaio's testicles. Makaio was transported to the Albert Lea Medical Center that day, where the doctor also noted abrasions on Makaio's head, a bruise on his jaw and his back, and wounds on his thigh and foot, which resembled burns. The police reported the suspected abuse to the county the following day, as did the doctor. Five days later, in response to these reports, the county child protection worker visited Makaio at his mother's home. Makaio's mother told the worker that the mark on Makaio's foot was caused by hand-foot-mouth disease. The county worker apparently accepted his explanation despite the fact that the doctor diagnosed Makaio's injuries as resembling a burn. Although the county worker observed Mr. Gutierrez present in the home she did not question him about Makaio. The worker conducted no further investigation and did not take any protective action.

On April 10, 2001, the county worker wrote a letter to Matthew Radke stating that Freeborn County had determined no abuse had occurred and that child protection services were not necessary for Makaio. The following day, Matthew Radke contacted the Albert Lea Police Department to report continuing abuse, and two days later, Makaio's guardian ad litem also contacted the police after she observed bruising on Makaio's face. Seven days went by before a Freeborn County caseworker took any steps to investigate. The day prior to Makaio's death, a child protection worker visited Makaio's home. The county caseworker observed a small bruise on Makaio's left temple, a similar bruise on his rib cage, a third bruise on his backbone just above his diaper, and a healing injury to his foot. The worker noted that Makaio was lethargic and had a runny nose. The county worker left the house after thirty minutes without taking any precautionary measures. The next day, Makaio was severely beaten by Gutierrez, who later was convicted on first-degree murder by criminal sexual conduct and by child abuse.

Makaio's father sued Freeborn County and the county child protection workers for wrongful death. The Freeborn County District Court dismissed the case, and the Minnesota Court of Appeals affirmed, noting that the county and county workers owed no duty to Makaio. The appellate court relied on *Hoppe v. Kandiyohi County*, 543 N.W.2d 653 (Minn. 1996), where the court held that no cause of action existed under the Vulnerable Adult Reporting Act for negligent investigation. The Minnesota Supreme Court granted further review.

The state supreme court reversed, holding that a cause of action exists for wrongful death on the alleged negligence of the county and county workers in the investigation of

child abuse and neglect reports as required by the Child Abuse Reporting Act, Minn. Stat. Sec. 626.556. Although the Supreme Court noted that the Vulnerable Adult Report Act, the statute at issue in *Hoppe*, was similar to the Child Abuse Reporting Act, it distinguished *Hoppe* on several grounds and then overruled it.

After overruling *Hoppe*, the Supreme Court applied the four factors in *Cracraft v. City of St. Louis Park*, 279 N.W.2d 801 (Minn. 1979). The court first held that the child abuse reporting statute requires that the local welfare agency immediately investigate – the performance of mandatory acts. In addition, the court held that, in this case, the county workers had actual knowledge of the dangerous condition, having received numerous reports of suspected abuse of Makaio. The other two factors of *Cracraft* were not determinative, but the court found that the statutory mandate was overwhelmingly dominant. Therefore, the court held, Freeborn County and its employees owed a special duty to Makaio once they received reports identifying him as a suspected victim of abuse. The case was remanded for trial.

***Minnesota's Participation-in-Government Statute***  
***Marchant Investment v. St. Anthony West Neighborhood Organization*, No. A04-900 (Minn. Ct. App., April 5, 2005).**

Minnesota's participation-in-government statute, Minn. Stat. Sec. 554.01-05 (2004), provides immunity from claims materially relating to an act that involves "public participation," which includes speech or lawful conduct aimed at procuring favorable government action. Marchant Investment, a real-estate developer, proposed a development project in Northeast Minneapolis. A neighborhood group opposed the project and wrote a letter to the city planning department stating that the group "met countless times" with the developer, who "refused to listen to our concerns." Marchant sued the neighborhood group, alleging defamation, tortious interference with a prospective business advantage, civil conspiracy, and civil aiding and abetting. The neighborhood group moved under Rule 12 for a judgment on the pleadings on all claims, citing the participation-in-government statute. The district court granted the group's motion, and Marchant appealed.

The Minnesota Court of Appeals affirmed. The appellate court first noted that the artificial distinction between "fact" and "opinion" is no longer significant in Minnesota defamation law. Rather, courts review a statement's "broad context," including "the general tenor of the entire work" and the "specific context and content of the statements including the use of figurative or hyperbolic language and the reasonable expectations of the audience." Applying this standard, the appellate court held that "in

this type of public debate, an audience expects opposing sides to use persuasive force to convince others to adopt their position and it is less likely to perceive statements as objective assertions of truth.” In addition, the court held that the participation-in-government statute explicitly requires the nonmoving developer in this case to disprove the immunity by clearly and convincingly establishing an underlying tort. The developer failed to establish any tort in this case and therefore the district court properly dismissed the developer’s action and awarded attorney fees to the neighborhood group, the appellate court held.

#### *Administrative Search Warrants*

**Yanke v. City of Delano, No. 03-6180 (JNE/JGL) (D. Minn., March 31, 2005).**

The City of Delano passed an ordinance requiring persons discharging into the city’s sanitary sewer system to obtain an inspection of their discharge system. In lieu of having a city inspector inspect the property, an owner could furnish a certificate from a licensed plumber. Owners not adhering to these ordinance requirements were assessed a monthly surcharge of \$100 to their sewer bill. Yanke refused to allow a city inspector to inspect his property and refused to hire a private plumber to certify compliance with the ordinance. The city thus began assessing him the monthly surcharge. Yanke refused to pay the assessment, and the city threatened to shut off utility services unless the bill was paid.

Yanke sued the city, alleging that the ordinance violated the Fourth and Fourteenth Amendments of the U.S. Constitution and several articles of the Minnesota Constitution. Yanke argued that the city inspectors could not enter his home or business without consent from him or an administrative search warrant. Yanke also contended that the private plumbers under the ordinance were not truly private actors but were acting as agents of the government. He asserted that he had a constitutional right to insist upon an administrative search warrant before the private plumbers could enter his property.

The U.S. District Court granted summary judgment to the city. The Court noted that under Eighth Circuit precedent, the private plumbers do not become government actors simply because the city knows of and acquiesces in the plumbers’ searches and because the plumbers are motivated in part to assist the government. The court found no federal constitutional violation because under the city’s ordinance, the property owner initiates the relationship with the private plumbers, determines who conducts the inspections, and decides when they are conducted. The court declined to reach the state constitutional questions.

#### *Police Investigations*

**Scheeler v. City of St. Cloud, No. 04-2800 (8<sup>th</sup> Cir. March 31, 2005).**

On March 24, 1997, nineteen-year old Craig Scheeler died of a gunshot wound to the head. At the time of the shooting, two other individuals were with Scheeler in his home. St. Cloud police officers arrived on the scene and began their investigation following medical emergency treatment to Scheeler. The police officers recovered the gun and fingerprinted it, collected live ammunition rounds, took a blood sample from the floor, and took photographs of the area. They also interviewed the two individuals who were with Scheeler at the time of the shooting. Based on the investigation, the medical examiner’s office and the city police concluded that the shooting was accidental. The parents of Scheeler disputed these findings, maintaining that, based on their own investigation and analysis of the scene, their son was the victim of a gang homicide. After the parents objected to the initial investigatory findings, the police retained a forensics expert, contacted the FBI, and involved the Benton County Attorney’s Office. None of these additional inquiries resulted in a different determination from the one initially made by the police.

In 2000, the parents of Scheeler brought a wrongful death action in state court alleging that the two individuals at the home at the time of the shooting killed their son. After a trial, the jury returned a verdict in favor of the defendants, finding that Scheeler placed his handgun to his head and pulled the trigger during a game of Russian roulette. The Scheelers appealed, and the Minnesota Court of Appeals affirmed.

Following the wrongful death case, in 2003, the Scheelers commenced a civil-rights action against the city and others, alleging that defendants denied them meaningful access to the courts by failing to properly investigate their son’s death. They argued that the “faulty police investigation” interfered with their constitutionally protected right to bring a wrongful death action in Minnesota court against the individuals who killed their son. The U.S. District Court granted summary judgment to the defendants, holding that the parents, as a matter of law, could not show that the city police failed to perform any aspect of the investigation based on deliberate indifference. The court also found that many of the defendants were immune under the doctrine of qualified immunity. The Scheelers appealed to the Eighth Circuit.

The Eighth Circuit Court of Appeals affirmed. The appellate court first noted that the constitutional basis for the right to access to court is “unsettled,” but that a plaintiff “must show that the defendants acted with some intentional

motivation to restrict their access to the courts.” “In other words,” the Eighth Circuit noted, “the Scheelers must show that the defendants displayed a deliberate indifference to their right to access the courts through their investigation of [their son’s] death.” This they were not able to do, and as a result the district court properly granted summary judgment to the city.

#### ***Defamation***

**Lewis v. St. Cloud State University, No. A04-1308 (Minn. Ct. App., March 22, 2005).**

The issue on appeal in this case was one of first impression in Minnesota: Whether a state university and its governing authority can be liable as publishers of allegedly defamatory material contained in a student-run newspaper.

Lewis is a faculty member of St. Cloud State who filed an age-discrimination charge against the university for demoting him from his position as dean of the college of social studies. Shortly after the demotion, the student-run newspaper published an article about Lewis, which alleged was defamatory. Lewis sued for defamation, but the district court ruled that no discovery was warranted and dismissed the case, finding that the university had a policy that prohibited it from exercising any editorial control over the newspaper. Lewis appealed.

The Minnesota Court of Appeals affirmed, noting that the basis for holding a publisher of a newspaper vicariously liable for defamation is the relationship of principal and agent. Unlike a private publisher, the university had no control over the content of the newspaper or the ability to discharge newspaper employees. “Holding that respondents are not liable for defamation as publishers of the student-run newspaper in this case is an accommodation between appellant’s claim for compensation for harm and the First Amendment and policy restrictions placed on respondents,” the court held.

#### ***Police High-Speed Chases:***

**Terrell v. Larson, No. 03-1293 (8<sup>th</sup> Cir., February 4, 2005)(en banc).**

While two Anoka County sheriff deputies were on duty, working and eating dinner at a substation, a call came over dispatch at approximately 10:00 p.m. that a twenty-three year old female locked herself in a bathroom and was threatening harm to her three-year-old child. The deputies responded that they would provide back up to a patrol car that was on its way to the scene. One minute later and before the deputies left the substation, dispatch called back and cancelled the back up request as another patrol car was on its way. The deputies replied that they would

still provide back up, and they left the substation and entered a police truck. En route to the scene of the call, the deputies approached the intersection of Highway 65 and Crosstown Boulevard driving at a very high speed. Yellow flashing lights warned that the stoplight ahead was about to turn red. The deputies slowed to about 40 miles per hour, but then sped up when they saw no cars in the intersection. The traffic light turned red and the patrol truck, which had its lights and sirens engaged, broad sided Talena Terrell’s car, killing Terrell instantly. At the time of impact, the patrol truck was going between 60-64 miles per hour.

Terrell’s estate sued the officers, alleging that the deputies’ decision to respond to the call was “conscience-shocking and reckless” as to Terrell’s constitutional rights. They also later questioned whether the response of the deputies was truly an emergency, given that other patrol officers were already responding to the call. Evidence suggested that the chase violated department policy and state law.

The U.S. District Court denied summary judgment to the deputies based on qualified immunity, and a three-judge panel of the Eighth Circuit affirmed, holding that the high-speed case law from the U.S. Supreme Court and the Eighth Circuit is limited to “high speed police pursuits aimed at apprehending a suspected offender.” Because the deputies were not pursuing a suspected offender at the time of the crash, qualified immunity did not apply. The Eighth Circuit en banc, with three judges dissenting, vacated the panel’s decision and found qualified immunity for both deputies.

The en banc court noted that, under *County of Sacramento v. Lewis*, 523 U.S. 833, 836 (1998), officers involved in a chase aimed at apprehending a suspected offender must have the intent to harm the plaintiff in order for the qualified immunity doctrine not to apply. In *Helseth v. Burch*, 258 F.3d 867, 871 (8<sup>th</sup> Cir. 2001)(en banc), the Eighth Circuit held that this intent-to-harm standard applies even if the chase conditions arguably afford the pursuing officers time to deliberate. The issue presented in this case was whether this case law should be extended to an officer’s decision to engage in high-speed driving in response to emergencies other than apprehending a fleeing suspect. The en banc court held that it does and noted that any other result would deter police officers from deciding to respond to emergency calls, thereby increasing the risk of harm to citizens caught up in these crises.

The dissenting judges stated: “A police officer may now kill innocent bystanders through criminally reckless driving that blatantly violates state law, police department regulations, accepted professional standards of police conduct, and the community’s traditional ideas of fair play

and decency so long as the officer subjectively, though unreasonably, believed an emergency existed. The majority's holding extends Lewis's high-speed pursuit rule from its intended purpose of protecting officers forced to make split-second decisions in the field to a per se rule that now shields officers even after they have had an actual opportunity to deliberate at the police station."

***Statute of Repose:***

**Olmanson v. LeSeur County, No. A03-629 (Minn. Supreme Court, March 31, 2005).**

David Olmanson was injured when the snowmobile he was operating went off the edge of a golf cart culvert under a county road. The culvert was designed and constructed in 1989 by a private golf course operator with the approval of the county. Olmanson brought an action against the county and golf course operator alleging a failure to inspect and maintain the culvert. The county and golf course operator moved for summary judgment, arguing that the 10-year statute of repose barred the action. The district court granted summary judgment on this issue, but the Minnesota Court of Appeals reversed, holding that under the statute of repose the duty to warn is inherent in a landowner's duty both to maintain and inspect. The Minnesota Supreme Court granted further review.

The state supreme court affirmed. It first noted that the alleged injury here arose from the county and golf course operator's negligence in inspecting the culvert and their resulting failure to notice that it was dangerous. The court held that an exception to the 10-year repose statute allows for claims regarding the "maintenance, operation or inspection." The court stated: "The landlord's duty of reasonable care is modified according to the expected use of the land, and the entrant also has a duty of reasonable care, which varies according to the circumstances under which he enters the land. However, the landlord's duty of reasonable care includes an ongoing duty to inspect and maintain property to ensure entrants on the landlord's land are not exposed to unreasonable risk of harm." The case was remanded for trial.

***Automatic Approval Statute:***

**Allen v. City of Mendota Heights, No. A04-1278 (Minn. Ct. App., March 29, 2005).**

A Minnesota statute requires local governments to take action on certain applications within 60 days of the date of filing or the application is automatically approved. On November 5, 2002, a developer filed an application for preliminary plat and other approvals from the City of Mendota Heights. On December 2, 2002, local citizens petitioned the Environmental Quality Board for an

environmental assessment worksheet ("EAW") on the proposed project, and seven days later, on December 9, the city was designated the responsible government unit for the EAW petition. On December 18, the city wrote the developer, indicating that the 60-day approval statute was tolled by the citizen petition and that the statute would not begin to run until after the city council decided that no EAW was required or until after the entire environmental review process was complete. During the environmental review process, the developer sued the city for a writ of mandamus compelling the city to show cause why the developer's application should not be approved. The district court granted the city's motion for a judgment on the pleadings, and the developer appealed.

The appellate issue presented, one of first impression, was whether a citizens' petition for environmental review under the Minnesota Environmental Policy Act ("MEPA") tolls the running of the 60-day period for city action. The court held that the 60-day statute provides that the sixty days will be tolled if another state statute requires a process to occur before the local government can act on the application. Because MEPA mandates a certain environmental review process prior to any local action, the Minnesota Court of Appeals held that the sixty-day requirement is tolled until the environmental process is complete.



# USDC Rule Changes

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The U.S. District Court of the District of Minnesota has posted at its website the following notice: “The U.S. District Court approved several proposed amendments to the Court’s Local Rules. They are being posted for public comment before formal adoption. See the link for detailed information.”

The link summarizes the proposals as follows:

“The U.S. District Court for the District of Minnesota has approved several proposed amendments to the Court’s Local Rules of practice. The rule changes, which will affect Local Rules (“LR”) 7.1, 72.1 and 72.2, were recommended by the Court’s Federal Practice Committee, chaired by Minneapolis Attorney Jeff Keyes of the Briggs and Morgan law firm. Briefly summarized, these proposed amendments will provide as follows: (1) Proposed Amendments to LR 7.1(c) and (e) The proposed amendments to LR 7.1(c) and (e) pertain to the permissible length of a memorandum filed in connection with a motion. The proposed amendments will impose a maximum word limit on such memoranda, in place of the current maximum page limit. Generally speaking, no party may file a memorandum that exceeds 12,000 words, and a “reply memorandum” may not exceed the unused portion of the 12,000-word limit on the party’s initial memorandum. All memoranda must be (i) typewritten in at least a size 13 font, (ii) double spaced, (except for headings, footnotes and quotations), and (iii) submitted on 8½” by 11” paper with at least 1” margins on all four sides. In addition, every memorandum must be accompanied by a certificate signed by the filer, which verifies that the memorandum complies with the word-count limits and other stylistic requirements of the Local Rules.

(2) Proposed Amendments to LR 72.1 and 72.2 The proposed amendments to LR 72.1 and 72.2 pertain to the duties and authority of Magistrate Judges, and the procedures by which their rulings may be reviewed. The revised LR 72.1, (“Magistrate Judge Duties”), will more accurately describe the work performed by the Magistrate Judges in this District. The revised LR 72.2, (“Review of Magistrate Judge Rulings”), updates the procedures to be followed when a party seeks review of a Magistrate Judge’s ruling on (i) “non-dispositive matters,” (ii) “dispositive matters,” and (iii) cases that are fully adjudicated by a Magistrate Judge upon the consent of the parties.

The full text of the proposed amendments can be obtained by accessing the District Court’s website at [www.mnd.uscourts.gov](http://www.mnd.uscourts.gov), by visiting or calling the Office of the Clerk of Court in St. Paul, Minneapolis, Duluth or Fergus Falls. As required by federal statute, the proposed amendments will be posted by the Court for public review and comment through February 18, 2005. Comments should be provided in writing to the Clerk of Court at the address above, or by e-mail to [MnFedRules@mnd.uscourts.gov](mailto:MnFedRules@mnd.uscourts.gov). The rules will be adopted by the full Court following consideration of any comments or suggestions received by the Clerk of Court during the public notice period.”

The full text of the proposed amendments can be obtained at [http://www.mnd.uscourts.gov/Press\\_Releases/proposed\\_rules\\_for\\_commentill.pdf](http://www.mnd.uscourts.gov/Press_Releases/proposed_rules_for_commentill.pdf).

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## *Loaves and Fishes April 6, 2005*



# Upcoming CLE Seminars

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

<b>Date</b>	<b>Seminar</b>	<b>Time</b>	<b>Place</b>	<b>Sponsor/Contact</b>
5/13/05	Data Practices – Update. Working With Interpreters	8:30 a.m. to 11:45 a.m. 2:00 p.m. to 3:30 p.m.	PLS Annual Conference Mintahoe Conference Center, Bandana Square	Public Law Section Margaret Westin (612) 668-0484 Dianne Ward (651) 266-3211
5/17/05	Recording Documents in Ramsey County	Noon to 1:30 p.m.	First National Bank Bldg., Suite E-1400 St. Paul	Ramsey County Bar Association/ Alexandra Hennekens (651) 222-0846
5/18/05	Monthly Luncheon – Judge Joan Erickson	Noon to 1:15 p.m.	Walker Room Palomino Club Minneapolis	Federal Bar Association/ Laura Mitchell (612) 492-7185
5/26/05	Minnesota Tax Update and Development	Noon to 1:30 p.m.	To be announced	Ramsey County Bar Association/ Alexandra Hennekens (651) 222-0846
5/26/05	Community Prosecuting – Civil Nuisance Laws	Noon to 1:00 p.m.	Ramsey County Courthouse, Room 40	Second Judicial District Administrator <cleprogram@courts.state.mn.us>
6/10/05	Natural Resources and Environmental Law – Current Issues	8:30 a.m. to 4:30 p.m.	O'Shaughnessy Educational Center U of St. Thomas	Attorney General's Office/ Marty Casserly (651) 297-5919
6/14/05	Annual Federal Practice Seminar	8:30 a.m. to 4:30 p.m.	Hyatt Hotel Minneapolis	Kristine Boylan (612) 332-5300
6/16/05	Data Practices	1:30 p.m. to 3:00 p.m.	MSBA Convention Maddens	Public Law Section Margaret Westin (612) 668-0484
6/22/05	Working With Interpreters	tba	League of MN Cities Update	PLS and League of MN Cities, Eileen Wells/ (507) 387-8603
9/7/05	Update on Minnesota Rule Writing	9:00 a.m. to Noon	MN Department of Health, Snelling & Energy Park Dr.	Inter-Agency Rules Task Force Paula Bastian (651) 284-0634
9/29/05	Sentencing Circles	Noon to 1:00 p.m.	Ramsey County Courthouse, Room 40	Second Judicial District Administrator <cleprogram@courts.state.mn.us>
<i>To include a notice of an upcoming CLE in the next issue, contact Mary Miller 651/284-5306</i>				

# News From the Bench

By: Kim Buechel Mesun, Office of District General Counsel

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Governor Pawlenty appointed **Renee L. Worke** to the Minnesota Court of Appeals. She will fill the vacancy created by the retirement of the Honorable James C. Harten, whose retirement was effective on March 31, 2005. This position is for a judge from the First Congressional District. Worke is the chief judge of the Third Judicial District. She has been a Third Judicial District trial court judge chambered in Waseca County since 1996 and has been chief judge of the district since 2002 and was assistant chief judge from 2001 through 2002. Prior to her appointment to the bench in 1996, Worke was an attorney with the Owatonna law firm of Rietz, Rietz, Rietz and Worke from 1984 to 1996. Worke also served as a part-time contract Third Judicial District public defender from 1984 to 1996 and a part-time contract Administrative Law Judge in the child support division from 1994 to 1996. She was a Third Judicial District law clerk for the Honorable Urban J. Steimann in Faribault from 1983 to 1984. Worke earned her *juris doctorate* degree from William Mitchell College of Law in St. Paul in 1983 and her bachelor of science degree *magna cum laude* from Minnesota State University, Mankato, in 1980. Worke was recently re-elected to a second full term as chief judge of the Third Judicial District and serves as vice chair of the state Conference of Chief Judges. She is also a member of the Supreme Court's Transformation Workgroup, lead judge for the Children's Justice Initiative and served as a member of the Supreme Court-appointed Legislative Redistricting Panel. In 2002, Worke received the Minnesota State Bar Association Public Law Section's Rosalie E. Wahl Judicial Award of Excellence. She is also a coach and team manager of Odyssey of the Mind and Destination Imagination, and is active in the Rotary Club of Waseca, the Boy Scouts, and the University of Minnesota Extension Steering Committee. Worke, 46, lives in Owatonna with her husband and their two sons.

**Barbara R. Hanson** was appointed to the Seventh Judicial District trial court bench in Otter Tail County. Hanson will fill the vacancy created by the resignation of the Honorable Kathleen A. Weir on January 4, 2005. The Supreme Court certified the chambers of this judgeship for the city of Fergus Falls in Otter Tail County. Hanson is an assistant Otter Tail County attorney, a position she has held since 1984. Hanson earned her *juris doctorate* degree with distinction from the University of North Dakota in Grand Forks in 1984, her bachelor of science degree *cum laude* from Bemidji State University in 1977, and her associate of arts degree from Fergus Falls Community College in 1975.

Hanson is a member of the Otter Tail County Juvenile Advisory Council, the Fergus Falls High School Choral and Band Boosters, the Lake Region Halfway House Board of Directors, and is active in her church. She has also trained child protection social workers and law enforcement officers on a variety of legal topics and served on the Process Parenting Advisory Council and the CARE (Children are the Responsibility of Everyone) Council. Hanson, 49, lives in Fergus Falls with her husband and their two children.

**Shari R. Schluchter** was appointed to the Ninth Judicial District trial court bench in Beltrami County. Schluchter will fill the vacancy created by the retirement of the Honorable Richard C. Taylor, whose retirement was effective on December 31, 2004. The Supreme Court transferred the chambers of this judgeship from Polk County to Beltrami County. Schluchter has been the chief assistant Beltrami County attorney since 1990 and was an assistant Beltrami County attorney from 1985 to 1990. She was also an attorney with the Bemidji law firm of Faver, Schluchter and Tingelstad from 1992 to 1995 and an attorney with the Bemidji law firm of Keyes and Faver from 1985 to 1992. Schluchter earned her *juris doctorate* degree (1985) and her bachelor of science degree *cum laude* (1982) from the University of North Dakota. Schluchter is the treasurer of the Beltrami County Bar Association, a member of the Beltrami County Child Protection Team, the Children's Justice Initiative Team, the Kinship North Advisory Board, and the Bemidji Area Super Swimmers Board. She has also been the Secretary of the First Lutheran Church Council, and has served on the Beltrami County Truancy Committee and the Independent School District 31 Attendance Policy Committee. Schluchter, 44, lives in Bemidji with her husband and their daughters.

# Public Attorneys on the Move

By: Kim Buechel Mesun, Office of District General Counsel

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Governor Pawlenty appointed Donald Schoenrock and Jenel Wavra and reappointed Gail Chang Bohr, William Collins, Jr., Richard Smith, and Amanda Voight to the Juvenile Justice Advisory Committee (JJAC). All six are appointed to four-year terms that expire on January 5, 2009.

**Gail Chang Bohr**, of St. Paul, is the executive director of Children's Law Center of Minnesota, which provides representation for children in juvenile court through its approximately 170 volunteer lawyers. She also serves on the Children's Justice Initiative Committees of both Hennepin and Ramsey Counties. Bohr, who was first appointed to the JJAC last year to fill an unscheduled vacancy, represents private, non-profit organizations as well as persons knowledgeable about learning disabilities, emotional difficulties, child abuse and neglect and youth violence.

**William Collins, Jr.**, of St. Paul, is the executive director of the YWCA of St. Paul. He is also a member of the Ramsey County Workforce Investment Board, Inc. Youth Council, the Board of Directors of the Blue Cross Blue Shield of Minnesota Foundation, the Minnesota Twins Community Fund, and served on the 2004 St. Paul Police Chief Selection Committee. Collins, who has been a member of the JJAC since 2001 and is currently co-vice-chair, represents private, non-profit organizations.

**Donald Schoenrock**, of Alexandria, is completing his undergraduate work at Minnesota State University, St. Cloud, and anticipates receiving his bachelor of arts degree in criminal justice in May 2005. His senior thesis is on juvenile work camps. Schoenrock replaces Amanda Voight as a youth member.

**Richard Smith**, of Plymouth, is a Fourth Judicial District Guardian Ad Litem in Hennepin County and an Indian Child Welfare Act Specialist. He was also a youth intervention supervisor for seven years with the Ginew/Golden Eagles Minneapolis American Indian Center. Smith, who has been a member of the JJAC since 2001, represents public agencies concerned with delinquency prevention or treatment.

**Amanda Voight**, of Edina, is a family therapist with Meridian Behavioral Health Network in Minnetonka. She is a doctoral candidate in family psychology and has a master's degree in counseling and psychological services.

Voight was first appointed to the JJAC in 1996 as a youth member, and is now appointed to replace Judith Kahn as a representative of youth workers involved with alternative programs.

**Jenel Wavra**, of Moorhead, is an assistant Clay County attorney and handles all juvenile delinquency cases for the Clay County attorney's office. Wavra replaces Megan Hunt Schlueter on the JJAC as a representative of juvenile justice agencies.

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

## Minneapolis City Attorney's Office

**Charles J. Brown** has joined the staff of the Minneapolis City Attorney's Office as an Assistant City Attorney. He is a 1996 graduate of the Tulane Law School and clerked for the Louisiana Third Circuit Court of Appeals. Before coming to Minneapolis he practiced with the Murray law firm in New Orleans.

*If you have an announcement you would like included in the Public Attorney on the Move section you can email it to Kim Mesun at [kim.mesun@mpls.k12.mn.us](mailto:kim.mesun@mpls.k12.mn.us) or mail it to her at 807 NE Broadway, #220B, Minneapolis, MN 55413.*

# Public Law Section and Minnesota Defense Lawyers Sponsor Continuing Legal Education Seminar on Administrative Hearings

*By: Louis Thayer, Administrative Hearing Referee, Minnesota Department of Human Services*

On April 13, 2005, the Public Law Section and the Minnesota Defense Lawyers Association, sponsored a 90-minute seminar on the administrative hearing processes of several government agencies. The event was attended by about thirty attorneys and law students at St. Thomas University Law School. The



event qualified for 1.5 continuing legal education credits. The presenters were (left to right): Referee Catherine Moore from the Dept. of Human Services and formerly an Unemployment Insurance Judge; Referee Louis Thayer from the Dept. of Human Services; Judge Beverly Jones Heydinger from the Office of Administrative Hearings; and Judge Marilyn Kunz from the federal Social Security Administration. Each of the presenters gave overviews of their respective administrative review authority and tips for attorneys who may appear in those forums. One of the highlights of the event was a top eleven tips that attorneys should adhere to in appearances before in administrative hearings.

## TIPS TO PREPARE FOR AN ADMINISTRATIVE PROCEEDING

1. Check the statutes and rules, including the rules for service. Understand the scope of the ALJ's jurisdiction.
2. Promptly notify the ALJ that you intend to appear.
3. Ask for limited discovery OR request the exchange of exhibits and a witness list prior to the hearing.
4. Ask the judge if a pre-hearing or post-hearing memoranda is expected.
5. If you need a continuance or an extension, check with the opposing party first. Don't wait until the last minute.

6. If you anticipate that you will have several witnesses, ask the ALJ to schedule a prehearing telephone conference to agree upon a schedule.

7. Be sure you understand the hearing process, the burden of proof, the evidentiary

standard, and how the exhibits should be marked.

8. Be on time. Complete settlement discussions before the hearing is scheduled to begin.
9. Plan to make a brief opening statement to demonstrate that you understand the law and what you must prove. Competence can be demonstrated in a minute or two. Likewise, prepare a brief closing statement.
10. Prepare your witnesses for hearing. Be sure that they are familiar with the exhibits, that they understand the foundation for them, and their relevance. Explain to them what to do when an opposing attorney objects to the question or answer.
11. Be sure that you have enough copies of the exhibits: one for each party (including your client, if that person will want to follow along), one for the ALJ, and one for the witness. And be sure that you still have one for yourself. Have a system for keeping your exhibits organized during the hearing.

In addition, the presenters suggested that people who may be appearing in an administrative hearing should be sure to check the various agencies' websites for more information.

# 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](http://www.ipad.state.mn.us/opinions/index.html)>.*

No. of Opinion	Date of Opinion	Gov't Entity Involved	Topic	Opinion Requestor
04-078	12/15/04	Minnesota Racing Commission	Test, score sheet and results.	X/Nickitas
05-001	1/7/05	Rock County	Public data access procedures compliance.	LaFond, City of LaVerne
05-002	1/7/05	Rock County Auditor-Treasurer	Public data access procedures compliance.	LaFond, City of LaVerne
05-003	1/7/05	Rock County Sheriff's Department	Public data access procedures compliance.	LaFond, City of LaVerne
05-004	1/7/05	ISD 700	Employee personnel file data on job performance.	X
05-005	1/26/05	Department of Health	MDH water testing program.	Maybay, K.S.T.P.
05-006	1/27/05	ISD 624	Data in invoices relating to extended day care, that involves a former spouse.	ISD 624/Kepple
05-007	1/27/05	City of Lonsdale	Placement of street lighting and utilities in his neighborhood.	Anderson
05-008	1/28/05	ISD 15	Data that documents who was appointed responsible authority.	Gardner
05-009	2/09/05	City of St. Mary's Point	City Attorney memo concerning election ineligible candidates.	Feehan
05-010	3/7/05	City of Greenwood	Appointment of responsible authority by ordinance? Construction of a fence.	Musgerd
05-011	3/14/05	Resource Training and Solutions (a Minnesota service cooperative)	Financial documents pertaining to the health insurance pool and its annual audit.	Leyk
05-012	3/21/05	Faribault County	Document containing data about employee (employee response to reprimand).	X

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