

Public Law News

A Publication of the Minnesota State Bar Association Public Law Section

Volume XVIII, Issue 2, Winter 2009

Mark your Calendars—PLS Annual Meeting, CLE & Awards
Friday, May 15, 2009—Midland Hills Country Club, Roseville

Public Law Section

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Visit the PLS Website:

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

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MSBA



www.mnbar.org

The MSBA Public Law Section is seeking nominations for the

2009 Public Attorney Awards

Nominations are due no later than **March 2, 2009**

You may send them electronically to kbasting@mnbar.org or by mail to the MSBA Offices: 600 Nicollet Mall, #380, Mpls., MN 55402

The Minnesota State Bar Association-Public Law Section (PLS) invites nominations for awards honoring attorneys and judges engaged in public service and in the public practice of law. Through these awards the PLS celebrates our commitment to public service and the public practice of law. These awards are also used to recognize attorneys and judges who have distinguished themselves by their significant and outstanding contributions to public service and the public practice of law. Nominations are **due MARCH 2, 2009**. Please contact either of the co-chairs of the Awards Committee or any executive council member of the PLS for further information about the awards. A nominee does not need to be a member of the Minnesota State Bar Association to be eligible for an award. The awards include:

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.

Julius E. Gernes Prosecutor Award of Excellence

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.

William E. McGee Public Defender Award of Excellence

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

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 sector 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:

-Civil Law: Public Law Office Counsel:

This award is given to attorneys practicing civil law in the State of Minnesota in a public law office at the federal, state or local level.;

-In-house Agency Counsel:

This award is given to public attorneys practicing in the State of Minnesota in a variety of public settings including lawyers with such titles as hearing officials, staff attorneys, legal analysts, law clerks, or holding non-legal government leadership positions such as commissioners, managers and council members.

Persons nominated for the Julius E. Gernes, the William E. McGee, 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 of their duties.

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.

Pro Bono Attorney Award of Excellence

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

Rule 6.1 of the Minnesota Rules of Professional Conduct provides in part that:

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the 50 hours of legal services without fee or expectation of fee

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

In addition, the Minnesota State Bar Association has adopted Professional Aspiration standards which encourage attorneys to provide at least fifty (50) hours of pro bono legal services per year. The American Bar Association has adopted a similar standard.

A nomination should consist of the following:

- 1) Nominee's full name, employer, address and telephone number;**
- 2) Nominator's name, employer, address and telephone number;**
- 3) Attach a short narrative statement (not to exceed two pages) explaining how you know the nominee and describing the nominee's qualifications for the award; and**
- 4) Nominee's resume, if available.**

Nominations must be submitted no **later than March 2, 2009**. Please submit nominations to Kim Basting via email, fax or mail (**email with attachments in MSWord is preferred**):

Kim Basting
MSBA-Public Law Section
600 Nicollet Mall, Suite 380
Minneapolis, MN 55402-1605
Phone: 612-278-6323
Fax: 612-333-4927
Email: kbasting@mnbar.org

Co-Chairs of Awards Committee (for questions)

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St. Paul, MN 55102
Phone: (651) 266-8717
Fax: (651) 298-5619
Email: john.choi@ci.stpaul.mn.us

MSBA 1000 Supporters

A Letter from MSBA President Mike Ford

You all know that effective access to the justice system is a cornerstone of our democracy. And you know that the justice system itself must be adequate to the task. And you know that's not possible without adequate resources.

Minnesota has a well-deserved reputation for the quality of its judicial system. Minnesota courts have been leaders in a variety of areas, including creation of specialty courts, innovative use of technology, and resources for *pro se* litigants. Likewise, Minnesota's access to justice partnership between the courts, the private bar, and legal aid and pro bono programs is among the most highly regarded in the country. And, unlike the ad hoc, patchwork system of private contracts with which many states try to fulfill their constitutional obligation to provide lawyers for indigent criminal defendants, Minnesota boasts a cohesive, statewide system of professional public defenders.

None of these advances has come easily or cheaply, and all are currently threatened by inadequate funding. The court system faces a \$19 million shortfall, which has already resulted in decreased public services. Cuts to the Public Defenders' budget have already resulted in a crisis for parents in neglect and dependency proceedings. And legal aid programs continue to struggle with an increasing poverty population and escalating demands (like the mortgage foreclosure crisis), with funding that remains inadequate to address some 75% of the civil legal needs of poor people.

Add to these challenges the troubled economy, the counter-cyclic need for court, legal aid and public defense services, and the projected state budget deficit of \$1-3 billion for the 2009 fiscal year, and as Chief Justice Magnuson said in his recent State of the Judiciary, the Minnesota justice system is at a tipping point.

The MSBA is committed to working with all three legs of the justice system – the courts, legal aid, and public defenders – to insure that they have the resources necessary to fulfill their constitutional obligations, and to remain national leaders. But the MSBA's support is only as strong as you make it.

The MSBA has created a new professional networking site to keep you informed of the issues facing the courts, legal aid, and the public defenders, aware of developments in the upcoming legislative session, and to alert you when action is needed to support the justice system. Please take a minute of your time to visit www.1000supporters.org and register to be part of the network of MSBA members committed to preserving the quality of our justice system.

Your involvement is critical. Please join you colleagues in helping to maintain a justice system that Minnesotans can continue to be proud of.



Minnesota Court of Appeals Celebrates Twenty-five Years of Doing Minnesota Justice

By The Honorable Harriet Lansing,
Minnesota Court of Appeals

The Minnesota Court of Appeals celebrated its twenty-fifth anniversary on November 6, 2008. The court, created by a 1982 constitutional amendment, has been nationally recognized for its excellence in case management, commitment to written opinions explaining the reasons for its decisions, providing the opportunity for oral argument in every case, and consistently issuing opinions within ninety days of case submission.

The forces that combined to create the court developed primarily between 1957 and 1982 when filings submitted to the Minnesota Supreme Court increased more than seven-hundred percent—from 213 to 1,682. The rapidly growing backlog created havoc in the performance of all the state's courts and the inevitable conflict between volume and quality became apparent.

To cope with the increased workload, the supreme court attempted a number of initiatives that included increasing the size of the court from seven to nine, hearing arguments in panels, issuing summary affirmances, and relying more heavily on staff. But the court ultimately concluded that these methods were not working and that the quality of Minnesota Courts had been significantly eroded. As a result, the Minnesota Supreme Court, the Minnesota Judicial Council, and the Minnesota Citizens Conference to Improve the Administration of Justice recommended that a constitutional amendment be adopted to create an appeals court.

The Minnesota House Judiciary Committee passed the appeals court bill in February 1982, closely followed by the Senate Judiciary Committee. The amendment was placed on the November 1982 ballot and was supported by seventy-seven percent of general election voters.

In preparation for the events leading up to the

twenty-fifth anniversary celebration, we came across an ad that was used in support of the vote for the 1982 constitutional amendment. The ad appeared in the Minneapolis Tribune in late October of 1982 and it shows the two candidates for governor—Rudy Perpich and Wheelock Whitney—or half of each of them fused together to emphasize that the gubernatorial candidates were united in their support for creating a “state appeals court for Minnesota.”

In the text underneath—about half way down on the right side—it says the unrivaled quality of life in Minnesota should be matched by the quality of our justice system and sums it up by saying, “We need a court system that does Minnesota justice.”

Reading that text caused us to reflect on whether we could say with any degree of confidence—as we approached this quarter-century mark—whether the court of appeals HAS done Minnesota justice.

We identified seven hopes and goals consistently expressed by the people who worked long and hard to create the court a quarter century ago and then looked at what evidence we had to determine how well we had done in these intervening years to meet those aspirational goals. We provide a short summary of that evaluation.

Our first goal was to take off the shoulders of the Supreme Court the crushing pressure of an eruption of appellate cases. Between 1957 and 1982, case filings increased from 213 to 1,682, an alarming increase. The evidence shows that as of November 2, 2008, the Minnesota Court of Appeals has heard and decided about 56,000 cases. Viewed from our perspective, we think that is a significant amount of pressure to take off the Supreme Court.

Second, it was our hope and goal to provide an

opportunity for an oral argument in every appeal where one was requested. It was important to attempt to reinstate this valued tradition that had been sharply constrained in the supreme court in the late seventies and early eighties. And the evidence shows that, except for the narrow and intended exceptions of expedited and pro se cases, we have continued throughout these twenty-five years to provide oral argument to all who request it. This is a rare achievement in appellate courts across this country.

Our third goal was to issue a full written opinion in every case explaining the reasons for our decisions and making those decisions available to the litigants and to the public. Although increasing case loads in the 1990s caused us to briefly rely on more than a minimal number of order opinions, this is no longer the case, and relentlessly, on a weekly basis, we issue enough published and unpublished decisions to quell the appetite of the most voracious legal reader.

Our fourth goal was to resolve cases as quickly as possible by moving them along and getting them scheduled for oral or nonoral hearing as soon after filing as possible to avoid any backlog building up on the front end of the process.

This has been our toughest recent challenge. In 2006 and 2007 due to staff cuts and less than a full complement of judges we began to develop a backlog. But through court-wide initiatives—which included adding judges—we have in the last year eliminated sixty percent of the backlog and anticipate that it will be completely eliminated in the coming year.

Our fifth goal was aimed at the other part of the process—the time between when the case was scheduled for hearing and when it went out the door. This standard, initially daunting, was a mere ninety days. But this goal has fared amazingly well over time and we have had very few deviations—a real tribute to all of the people who work together to get those opinions released.

Our sixth goal was to maintain our central location in St. Paul but to hear cases as a panel

around the state of Minnesota. And we continue to adhere to this commitment—some people say we have even created a trend. Through sleet and snow and with occasional help from interactive video in the dead of winter, we regularly hear cases in Duluth, Moorhead, Rochester, Owatonna, St. Cloud, New Ulm, and other locations.

Seventh, and finally, we had a very optimistic goal that was initially developed by our resolute founder, Supreme Court Chief Justice Doug Amdahl, that at least eighty-five percent maybe even ninety percent of appeals would stop at the court of appeals and not require further review by the supreme court.

And as for that goal, we have veritably knocked it out of the ballpark. Our most recent year of statistics, 2007, shows that ninety-seven percent of the appeals—yes that is ninety-seven percent—have received their final decision in our court and were not taken for further review.

So, what is the bottom line on doing Minnesota justice? We have decided those more than 56,000 cases, provided across-the-board oral arguments, kept those cases moving, made phenomenal progress on our recent backlog, kept those written opinions moving, worked exceedingly well together as a team, traveled around the state to hear arguments, and in our most recent year, we have resolved and reached finality in ninety-seven percent of the cases that have been appealed to the court.

We believe that we can honestly say that we have honored the commitment of those people who created this court and kept faith with the now forty-three people who have served on this court and with the loyal and talented law clerks and judicial assistants and we have earned the right to celebrate twenty-five years of doing Minnesota justice. So we honor the commonality of spirit and the integrity of effort that has made it all possible, and, with high hopes and strong spirits, we launch into the next twenty-five years of doing Minnesota justice.

Judges of the Minnesota Court of Appeals 1983 to present

1. Peter S. Popovich	(C.J. 1983-1987)	23. Paul H. Anderson	(C.J. 1992-1994)
2. Edward J. Parker	(1983-1997)	24. Anne V. Simonett	(C.J. 1994-1995)
3. Daniel F. Foley	(1983-1991)	25. Edward Toussaint, Jr.	(C.J. 1995-
4. D. D. Wozniak	(J. 1983-1987; C.J.1987-1992)	26. Bruce D. Willis	(1995-2008)
5. Susanne C. Sedgwick	(1983-1988)	27. Gordon W. Shumaker	(1998-
6. Harriet Lansing	(1983-	28. G. Barry Anderson	(1998-2004)
7. Doris Ohlsen Huspeni	(1984-1998)	29. Jill Flaskamp Halbrooks	(1998-
8. Thomas G. Forsberg	(1984-1995)	30. Terri Stoneburner	(2000-
9. David R. Leslie	(1984-1987)	31. Sam Hanson	(2000-2002)
10. Roger J. Nierengarten	(1984-1989)	32. David Minge	(2002-
11. R. A. (Jim) Randall	(1984-2008)	33. Natalie Hudson	(2002-
12. Gary L. Crippen	(1984-2002)	34. Wilhelmina Wright	(2002-
13. Fred C. Norton	(1987-1997)	35. Christopher J. Dietzen	(2004-2008)
14. Thomas J. Kalitowski	(1987-	36. Renee L. Worke	(2005-
15. Robert H. Schumacher	(1987-2005)	37. Kevin G. Ross	(2006-
16. Marianne D. Short	(1988-2000)	38. Heidi S. Schellhas	(2008-
17. Sandra S. Gardebring	(1989-1991)	39. Francis J. Connolly	(2008-
18. Roger M. Klaphake	(1989-	40. Matthew E. Johnson	(2008-
19. Jack Davies	(1990-2000)	41. Michelle A. Larkin	(2008-
20. Randolph W. Peterson	(1990-	42. Larry Stauber, Jr.	(2008-
21. Roland C. Amundson	(1991-2002)	43. Louise Dovre Bjorkman	(2008-
22. James C. Harten	(1992-2005)		

Minnesota Court of Appeals 25th Anniversary Celebration



Retired Judges Larry Collins, Steve Muehlberg, and Bruce Willis



Retired MN Court of Appeals Judges Gary Crippen & Jack Davies



Justice G. Barry Anderson & MN Court of Appeals Judge Matt Johnson



MN Court of Appeals Chief Judge Edward Toussaint



David Herr and MN Court of Appeals Judge Jill Flaskamp Halbrooks



Judge Elizabeth Hayden, Retired Judge Charles Flynn, MN Court of Appeals Judge Roger Klaphake and Carol Klaphake



MSBA President Mike Ford & MN Lawyer Barbara Jones



Marianne Short, Al Sedgewick, husband of the Honorable Susanne Sedgewick, and MN Court of Appeals Judge Terri Stoneburner



Justice Christopher Dietzen & Retired Chief Justice Russ Anderson



Terry Votel, Retired Judge Jack Davies and MN Court of Appeals Judge Gordon Shumaker

Thank you to Janet Marshall for the photos.



Inta Sellars

Look Who's New to Your 2008-09 PLS Executive Council

Inta Sellars went to William Mitchell. She is one of the Assistance Chief Human Services Judges with the Appeals Office, Appeals and Regulations Division, at the Minnesota Department of Human Services (DHS). She has been in this management position for almost two years and with the Appeals Office as a Human Services Judge or Appeals Referee since the fall of 1997. Before that Inta worked at the department on a federal grant that has the goal of reducing trauma to child maltreatment victims. Before coming to the department, Inta worked in the child protection field with a guardian ad litem program and as an Assistant County Attorney; her passion has always been in child protection and she hears those types of cases at DHS. Recently, she has been involved with the National Judicial College and recently served as a faculty member for a course for administrative law judges. She has also taught at the University of Minnesota School of Social Work and at William Mitchell. Currently, she is also a part-time fitness instructor at the Midway YMCA.

Inta became involved in the PLS because of her interest in public service and pro bono work. Her colleague, Louis Thayer, encouraged her to be more active and nominated her to the council. Inta states that she hopes she “can bring my experience in planning CLEs to use as a council member, volunteering for public service events and serving the section in whatever way they need me! (Like hosting the least expensive lunch!)”

Welcome aboard Inta!

Inta joins returning council officers and council members:

Barry Greller (Minnesota Attorney General's Office) and

Mary Miller (Minnesota Department of Labor & Industry), Co-chairs

James Alexander (U.S. Attorney's Office), Secretary

Kim Buechel Mesun (Minneapolis School District), Treasurer

Council Members –

Honorable Diane Alshouse (Second Judicial District)

Dana Banwer (Minneapolis City Attorney's Office)

Greg Brooker (U.S. Attorney's Office)

John Choi (St. Paul City Attorney)

Honorable Thomas Kalitowski (Minnesota Court of Appeals)

Nancy McLean (Hennepin County Attorney's Office)

Todd Schoffelman (Sherburne County Attorney's Office)

PLS Nominations Committee seeks those interested in serving on the Executive Council.

The Public Law Section has selected the Honorable Diane Alshouse and Inta Sellars to chair the 2009 Nominating Committee.

If you are interested in serving on the Public Law Section Executive Council, contact Judge Alshouse at diane.alshouse@courts.state.mn.us or Inta Sellars at inta.sellars@state.mn.us.

Council elections will be held at the Public Law Section Annual Meeting on May 15, 2009.

Politicizing the Judiciary: Similar Issues Involve Our Neighbor to the East



**By William
Domina**

Wisconsin State Bar Association Government Lawyers Division --

President's Message: Public Perception of the Judiciary Will Suffer if Judges Become Politically Active

The Government Lawyer's Division (GLD) of the State Bar represents a diverse gaggle of government practitioners that at times appear to have little in common and, at other times, are directly at odds with each other. We are a large division making up more than 25 percent of the State Bar membership.

The challenge from a leadership perspective is to promote ideas and issues that affect all government lawyers in a positive way. Recently, an issue was identified by the GLD's Board that it believes was important to the justice system in which all government lawyers practice.

Siefert v. Alexander, Case No. 08-CV-00126-BBC, currently is pending in the United States District Court for the Eastern District of Wisconsin. The case has been brought by Milwaukee County Circuit Court Judge John Siefert, who is challenging the long-standing Supreme Court rules that regulate the judiciary by prohibiting a judge from being a candidate of any political office, from endorsing a political candidate or platform, and from directly soliciting or accepting campaign contributions. This case, which is part of a national challenge to similar regulations in other states, is based on the premise that such rules violate a judge's individual right to freedom of speech and association. The Wisconsin Department of Justice is defending the long-standing regulations.

Your Board of Directors unanimously voted to support the legitimacy of the Supreme Court rules regulating judges. Your Board which represents a diverse group of government practitioners that is reflective of the entire division, stoutly believes that if judges are to become political partisans that the judicial system and its independence will suffer. Your Board believes that such regulations work to limit judicial campaigns based on extreme, single-issue elections. Although recent elections may lead to another conclusion, your Board believes that these regulations help reduce the polarizing effect of partisan elections.

Additionally, your Board is very concerned about the public's view of the third branch of government if judges are able to adopt political platforms as part of the elective process or endorse other partisan candidates. We believe that the ordinary citizen seeking to have his or her grievance redressed are more likely to view the way they are to be treated in the judicial system as dependant on whether they are of the "correct" political persuasion or to whom they gave political contribution. While good judges can be elected under either system, it is this degradation of perception that your Board finds offensive. The judicial system that is supported by all government practitioners is largely dependent on the faith of the populous that the orders and decrees issued by courts must be followed. Recent history has shown in other parts of the world that the simplicity and strength of this concept can be

undermined and devalued very quickly.

The position of your Board on behalf of the GLD has been provided to the State Bar Board of Governors. In this way, we believe we have promoted an issue that is meaningful to all government lawyers, regardless of practice area.

When the State Bar Board of Governors, took up *Siefert* at its September meeting, it reaffirmed the State Bar's strong support for an independent judiciary and expressed its continuing support for existing regulations as established by the Judicial Commission. While the Board of Governors agreed not to file an amicus brief at this time, it reserved the right to consider filing an amicus if and when the case has been decided on the record by the district court and the case is appealed in the 7th Circuit Court of Appeals. The State Bar will send a letter to the district court informing it of these actions. [For more on this, *see* article below.]

Please feel free to provide any questions or comments on this subject to me or any member of the GLD Board.

(Reprinted with permission from the fall GLD News, a publication of the State Bar of Wisconsin's Government Lawyers Division.)



[Inside the Bar](#)
[October 2008](#)

Board takes action on *Siefert v. Alexander* in appellate court

The Wisconsin Board of Governors took up *Siefert v. Alexander* (Case No. 08-CV-00126-

BBC) at its Sept. 12 - 13 meeting. The board reaffirmed the State Bar's strong support for an independent judiciary and expressed its continuing support for existing regulations as established by the Judicial Commission. While the board agreed not to file an amicus brief at this time, it reserved the right to consider filing an amicus if and when the case has been decided on the record by the district court and the case is appealed in the 7th Circuit Court of Appeals. The State Bar will send a letter to the district court informing it of these actions.

History. In early June, Judge John Siefert, Milwaukee challenged the constitutionality of three provisions of the Wisconsin Code of Judicial Conduct as an infringement on his right to free speech. Specifically, he has expressed his opposition to provisions in the judicial code preventing judges from running for partisan judicial office and prohibiting them from personally raising money, among other issues. Also in June, Attorney General J.B. Van Hollen requested that the State Bar become involved in the issue, and at its June 2008 meeting, the Board of Governors agreed to seek feedback from State Bar committees, divisions, and sections. The case against the Wisconsin Judicial commission is pending in the U.S. District Court, Western District of Wisconsin.

The three rules being challenged by Judge Siefert are:

SCR 60.06(2)(b)(1) – No judge or judicial candidate may be a member of any political party.

SCR 60.06(2)(b)(4) – No judge or judicial candidate may publicly endorse political party candidates or platforms.

SCR 60.06(4) – No judge or judicial candidate may personally solicit or accept campaign contributions, but a candidate may establish a committee to do so and may serve on the committee.

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

**I Noticed, Then Commented –
Thoughts on a New Application for the Notice and Comment Process**
by the Honorable Eric L. Lipman

At the close of last year, I had a something of an old home week. I had the chance to catch up with some professors – Michael Abramowicz and Thomas Colby – who are teaching at my *alma mater*. Abramowicz and Colby are leading lights in the faculty of the George Washington University’s National Law Center and had just posted their latest article to the Social Science Research Network.

In their article, *Notice-and-Comment Judicial Decisionmaking* (a complete copy of which is accessible here: <http://tinyurl.com/5vq517>), Abramowicz and Colby argue that the notice and comment processes of administrative rulemaking might be useful in warding off error by state and federal courts. Noting that judicial opinions often contain errors that have far-ranging and untoward consequences, Abramowicz and Colby contend that if interested persons had an opportunity to preview yet-to-be finalized judicial opinions, commentators could assist the courts in avoiding error. As it is with administrative rulemaking, the professors explain, notice and comment procedures could improve the work product of, and public’s confidence in, our courts.

In keeping with their theme, Professors Abramowicz and Colby also suggested that I submit my reactions to their proposals for “notice and comment” by others. I decided that I would write about the professors’ work, and my own reactions to it, in these pages here. Whether you love or hate their suggestions, Abramowicz and Colby’s article presents ideas that every Public Lawyer should think about closely.

The authors begin their analysis with *Kennedy v. Louisiana*, 128 S. Ct. 2641 (2008) – a high profile case from the last U.S. Supreme Court term. In that case, the Justices considered whether the Eighth Amendment’s Cruel and Unusual Punishments Clause precluded a state from imposing the death penalty for the crime of raping a child. As the authors explain:

The Court based its holding on “evidence of a national consensus” that such a punishment is excessive, and noted that, “[a]s for federal law, Congress in the Federal Death Penalty Act of 1994 expanded the number of federal crimes for which the death penalty is a permissible sentence, including certain nonhomicide offenses; but it did not do the same for child rape or abuse.” A few days after the Court issued its opinion, a blogger pointed out that, contrary to the Court’s implication that there is no provision for the death penalty for child rape in federal law, Congress revised the Uniform Code of Military Justice in 2006 to add child rape to the list of crimes that can trigger the death penalty under military law. That blog post triggered substantial news coverage criticizing the shows that the usefulness of public participation goes well beyond the correction of the occasional objective error.

[We] argue that the case for notice-and-comment judicial decision-making is in most respects at least as strong as the case for notice-and-comment administrative rulemaking. In administrative law, the notice-and-comment process serves several related functions: providing information to decision makers, legitimating the decision-making process, and constraining decision makers by pushing them to confront arguments that point away from their preferred course of action. All of those functions could be served equally as well, if not better, in the judicial context.

Kennedy v. Louisiana – and, for that matter, nearly every other case decided in modern time – also points up the professors’ second critique; that judicial decisions tend to reach beyond the specifics of a particular case so as to describe broader rules of law. As Abramowicz and Colby explain:

[I]n deciding narrow disputes, judges issue opinions that are necessarily broader in scope

than the specific facts of the case. And those opinions have the force of law, controlling the result in future cases, and requiring nonparties to alter their conduct to conform to the judges' pronouncements. In some sense, then, every opinion is an advisory opinion, insofar as it purports to, and functionally does, control other parties and other circumstances not actually before the court.

The authors conclude: "Not only may [important cases] be decided without the input of the broader public that they affect, but [opinions] are also written by judges who will not necessarily be politically representative of that public."

While Professors Abramowicz and Colby put forward a very substantive critique, to my mind, their cures would be far worse than the disease. If aggressive treatments are needed, I know of some better (and milder) therapies for judicial error. A few points deserve emphasis.

First, the case of *Kennedy v. Louisiana*, and Justice Kennedy's sweeping contention that Congress has never provided for the death penalty for the crime of child rape, is a poor founding block for reform. While the Justices may have been red-faced about the misstep, it appears that the source of the mischaracterization was the Court itself. As Justices Clarence Thomas and Samuel Alito remarked later, "[u]ntil the petition for rehearing, none of the briefs or submissions filed by the parties or the *amici* in this case cited or discussed the [Uniform Code of Military Justice] provisions." This should be the primary lesson: Woe to the judge who strays from the underlying record! The most useful thing that we can do now is to include both *Kennedy v. Louisiana*, and the later critiques, in law school casebooks and continuing legal education materials. We should all study (and practice saying in unison) the tenet that departing from the record is ill-advised and potentially hazardous to the esteem of our courts.

Second, while Professors Abramowicz and Colby acknowledge that a process by which some draft opinions are circulated and subject to public comment, would involve additional costs, they propose to underwrite their innovations by boosting the number of nonprecedential opinions. Because nonprecedential opinions are often drafted by staff

attorneys, the authors suggest that increasing the number of these opinions could free up Judges and Law Clerks to sift through public comments in more complicated cases.

The proposal is problematic on a number of fronts. In my view, it significantly underestimates the practical impacts of receiving hundreds, or perhaps thousands, of comments in high-profile cases. If one were to make an analogy between the number of comments reviewed by a federal agency in high-profile rulemakings, and the number of comments that might be submitted to a reviewing court under the professors' hoped-for procedures – say, during a later Administrative Procedure Act challenge to those same rules – the impacts to the court could be very large indeed. Also, it strikes me as ironic, that in order to boost the public's confidence in judicial processes, Professors Abramowicz and Colby urge delegating more opinion writing away from Judges and for fewer of their decisions to be precedential. In terms of invigorating public esteem in our courts, those modifications seem like "robbing Peter to pay Paul."

The proposal also has a "kick the can" problem. If there is a lack of public confidence in the decisions made by our courts now, I am concerned about the results that would follow if Judges received public comments on their drafts but did not later revise their opinions so as to specifically acknowledge, discuss and disclaim comments that were not well taken. Is a notice and comment process that is not genuinely interactive with commentators worthwhile in terms of building public confidence? Similarly, if a Judge did disclaim a line of reasoning that was submitted during the comment phase, does this peroration increase confidence in the final result or merely postpone the day of dissatisfaction for those who do not prevail? Are we simply "kicking the can" down the road?



More importantly, I think that the proposed notice and comment methods send the wrong message to the public – namely, that judicial decision-making is an inductive process that invites, collects and sifts policy preferences from a wide range of stakeholders so as to produce the “best outcome.” While a search for the optimum policy outcome might be appropriate for legislative bodies; and perhaps for agencies that are undertaking rulemaking; this is not what judges do. I doubt that any program for building public confidence in the courts could proceed from such a false start.

As I noted above, however, there are some good alternatives to Professors Abramowicz and Colby’s ideas – renovations that build on the strengths of our courts; are simpler to implement; and which are more likely to reduce the shortcomings about which the professors rightly complain.

My first set of alternatives is cultural. The case of *Kennedy v. Louisiana* could become the new shorthand for the perils of moving outside of the record. Imagine a day when a skeptical judge might say: “Counsel, I don’t want this to be a case like *Kennedy v. Louisiana*,” and the lawyer would instantly understand that she had made a claim that was not firmly grounded in the record. Likewise, I think that we all would be better served if the re-argument of cases were not such a rarity. If additional comment is needed, or would serve a useful purpose, I would prefer returning to the parties and *amici* who filed appearances in the first instance.

A second suggestion is procedural. I would prefer a revision to the Federal Rules of Appellate Procedure that obliged parties to state early in the appeal process the rule of law that they would have the court announce. If it is useful to have appellants “designate the judgment, order, or part thereof being appealed” (*see*, Fed. R. App. P. 3 c) (1)(b)) – surely a statement of the rule to be announced would be as beneficial.

A third suggestion is technological. As Internet-based social networking sites become more popular, we can envision what a service like “Twitter” could mean for sharing information about on-going litigation. Twitter is a free social

networking service that permits users to send short messages to their own web page and to the profile pages of other users who have subscribed to receive such communications. Taking the suggestion that I make immediately above, imagine if the Circuit Courts of Appeal broadcast over the Internet the “Rule to Be Announced” sought by each party to an appeal. Lawyers across the globe could sort and review potential developments in the law from their desktops and potential *amici* could be alerted to important appeals before those proceedings were well underway. (*Cf.* Fed. R. App. P. 29 (e) (an “*amicus curiae* must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed.”))

Some last alternatives are jurisdictional. Congress could move more matters arising under federal law to Article I tribunals. Large chunks of the system that Professors Abramowicz and Colby hope for in their article are alive and well here in Minnesota, under our version of the Administrative Procedures Act. Most of my work, for example, is developing recommended decisions for Commissioners of Departments or independent Boards. These decisions are, in a sense, draft findings and conclusions when I sign them; and as to which the parties have an opportunity to file exceptions with the final decision-maker after a review of my report. (Following a final decision by the agency head, appeals to the appellate courts can follow in the ordinary course.) Congress has substantial powers to select the forum and methods of dispute resolution for claims arising under federal law; and the system that has worked well in Minnesota for more than three decades could be a model to emulate.

Whatever the best methods for eliminating error and boosting confidence in our courts, there is one thing that we all should notice and comment upon: Professors Abramowicz and Colby’s article is an important contribution and is a must read.

Eric L. Lipman is an Administrative Law Judge and the Secretary-Treasurer of the MSBA Section on Administrative Law.

Southern Minnesota Regional Legal Services (SMRLS) 2008 Senior Legal Fair

By Thomas Zera, SMRLS Senior Law Project



On Monday, October 13th, 2008, hundreds of low-income seniors from a variety of racial and ethnic backgrounds, both English and non-English speakers, came out in rainy weather from the five-county area to learn about their legal rights at the 2008 SMRLS Senior Legal Fair. The Senior Legal Fair is a free public event, targeted to low-income seniors held at the Saint Paul RiverCentre in downtown Saint Paul.

The morning started off with a warm welcome by United States District Court Judge Donovan Frank. After Judge Frank's remarks, the seniors were invited to attend community education sessions on debt collection, identify theft, health-care directives, wills, landlord/tenant law, immigration, grandparent rights and foreclosure.

SMRLS provided 24 community legal education sessions to more than 250 people. Nine of these sessions were given in non-English languages, including Oromo, Somali, Hmong and Russian. Community leaders from the groups specifically requested the legal topics, and SMRLS recruited interpreters and attorneys for each of the nine requested sessions.

Fifteen volunteer attorneys from across the metropolitan area delivered the other fifteen community education sessions. Volunteer attorneys Bill Hefner (Environmental Law Group) and Nancy McLean (Hennepin County Attorney's Office) gave a talk on Identity Theft and Personal Scams. Public lawyer Sara Wolff (Ramsey County Attorney's Office) and the team of Benjamin Feist and Ian Dobson (Minnesota Attorney General's Office) gave additional Identity Theft sessions throughout the day. Mark Vavreck (Scrimshire, Martineau, Gonko & Vavreck) is an expert on consumer law problems

such as debt collection and was generous enough to present three times on the issue and received high praise from the seniors.

Beyond the community education sessions, the Senior Legal Fair offered private one-to-one advice tables. Ten volunteer attorneys staffed these advice tables, giving seniors the opportunity to ask specific legal questions in 15-minute sessions. Among the ten volunteers fielding questions, Nick Slade of Barry and Slade spent the morning talking to seniors about their concerns over the growing foreclosure crisis in our community.

SMRLS' special project during the Senior Legal Fair was a partnership with Dorsey & Whitney and UnitedHealth Group (UHG) to produce free wills for seniors on-site. The logistics of this project were significant and were handled almost entirely by volunteers from the two organizations, headed by Alysia Zens from Dorsey & Whitney. Forty-one volunteers from Dorsey & Whitney and UHG donated their time, resources and talent to draft and execute forty separate wills at the fair.

Based on attendance numbers and the overwhelmingly positive response of the seniors' evaluations of our event, the 2008 SMRLS Senior Legal Fair provided excellent service to low-income and otherwise disadvantaged elders. In this time of growing client need, it is particularly important for attorneys to share their critical knowledge with those who cannot afford to hire a lawyer. SMRLS thanks the public lawyers, and all the volunteer attorneys, who participated in this year's Senior Legal Fair, and we hope they had as gratifying an experience as our seniors did.

Loaves & Fishes—Pro Bono Clinic

By Nancy McLean

On December 3, 2008, the Public Law Section sponsored its first legal clinic at Holy Rosary Church in Minneapolis as part of its work at the Loaves & Fishes Project there. Mark Kerr, Barb Lindberg, Pete Connors, and Nancy McLean provided legal advice to clients during the Loaves & Fishes dinner hour. We talked to about 14 people about civil and criminal problems ranging from benefits to expungements. The clinic followed the PLS regularly scheduled preparation of Tater Tot Hotdish for 300. On February 4 and April 1, we will once again cook and provide the legal advice clinic. If you'd like to volunteer for either the cooking or legal advice part of the project (or both), please contact Nancy McLean at Nancy.McLean@co.hennepin.mn.us.

Hennepin County Attorney's Office Mentorship Program

By Mark Chapin, Deputy Hennepin County Attorney

In 2007, the Hennepin County Attorney's Office ("HCAO") conducted an organizational Diversity Assessment and from it prepared a 5-Year Diversity Action Plan. A key recommendation was the creation of a mentoring program for new employees.

The HCAO Mentorship Program started on June 30, 2008 as a six-month pilot project. The purpose of the program is to facilitate the successful transition of new employees to their jobs and to the office and to assist the County Attorney's Office in meeting its goal of retaining valuable employees. The Mentorship Program includes attorneys and professional support staff, as well as newly promoted supervisors and managers.

The mentor program matches new or promoted employees with experienced staff members to ease the stress most new employees encounter when starting a new job. Mentors were selected based upon interest and as a development opportunity for future supervisor/managers or leaders in the office.

These informal relationships are expected to last at least six months, or through the new and/or promoted employees' probationary period. Mentors help build confidence by providing critical job-related information and by offering insight into the office culture. The program also provides an opportunity for seasoned staff to share their

knowledge and be a friendly resource to the new employee.

Mentors and mentees meet informally and frequently. The mentors have provided important feedback during the pilot to the program coordinators that have improved the program and enhanced its success.

Twenty-eight employees have successfully completed the HCAO Mentorship Program. Feedback from program participants has been universally positive and in December 2008, the pilot program ended and the Mentorship Program became a permanent and integral part of the way the HCAO does business.

Public Law Section Sponsored CLEs in 2008-2009

By Todd Schoffelman, Assistant
Sherburne County Attorney

On October 3, 2008 the Public Law Section co-sponsored three hours of a CLE entitled, "To Know It, Is To Love It - Data Practices 2008", with the Minnesota County Attorney Association. It was very well attended with over 70 attendees. This is the second time that the Public Law Section co-sponsored a data practices CLE with the Minnesota County Attorney Association. The event code is 124023. The entire course was approved for six standard CLE credits.

On January 27, 2009 the Public Law Section sponsored a one-hour CLE entitled, "A Retrospective on the Republican National Convention." This panel discussion reviewed the expectations of the convention and compared those expectations to the reality of the event. The panelists were John Choi, St. Paul City Attorney, Susan Gaertner, Ramsey County Attorney, John Lundquist, ACLU Coordinating Attorney, Greg Brooker, Deputy U.S. Attorney and Chief Judge Kathleen Gearin, Ramsey County District Court. This free CLE to MSBA members continues the Public Law Section's dedication to provide cost effective and timely CLEs to its members.

The Public Law Section will be sponsoring a one-hour CLE at the 2009 MSBA Convention in Duluth. The topic will be the Minnesota Open Meeting Law and it will concentrate on recent legislative changes. The details of the CLE will be announced as they are completed.

Eyes on the Court

(Recent federal and state court decisions of interest to public lawyers.)

Moyle v. Anderson et al., [Civ. No. 07-848](#) (RHK/RLE) (D. Minn. 10/15/2008)

This action arises out of the murder of Carl Moyle at the Sherburne County Jail on August 8, 2006. Plaintiffs assert that Defendants failed to provide for Moyle's physical safety as required by the Fifth, Eighth, and Fourteenth Amendments of the United States Constitution. Defendants now move for summary judgment. For the reasons set forth below, the Court will grant the Motion.

Excerpts:

"On the morning of August 8, 2006, Moyle was pulled over by the Elk River police and arrested for the gross misdemeanor of no proof of insurance. Moyle was [taken to and] to remain in [a unit of the Sherburne County jail] until the following day, when he was to appear before a Sherburne County judge... Also on August 8, 2006, Bruce Christenson was transported from Oak Park Heights prison ('OPH') to Sherburne . . . to appear before the Sherburne County District Court . . . to be charged with second-degree assault with a dangerous weapon for [an] inmate attack.. While there, Christenson detached a handicap rail from the wall of his cell. . . He then walked through the open door of Moyle's cell and bludgeoned him to death.

Plaintiffs and Defendants advocate for the application of different legal standards for determining whether a constitutional violation has occurred. Plaintiffs argue that an 'objective reasonableness' standard should apply because Moyle was an arrestee, not a convicted prisoner or a pre-trial detainee. (Mem. in Opp'n at 26-34.) Defendants, on the other hand, argue that the Eighth Amendment 'deliberate-indifference' standard that applies to convicted prisoners should be applied. (Def. Mem. at 15-17; Reply Mem. at 1- 5.) For the reasons set forth below, the Court determines that the deliberate-indifference standard is the appropriate standard to be applied in this case."

The Court finds evidence of negligence at most, not deliberate indifference.

Kassera v. I.S.D. No. 11, [Case No. 07-CV-2292](#) (PJS/JJG) (D. Minn. 10/15/2008)

Court's introduction:

"Plaintiff Julie Kassera contends that defendant Independent School District No. 11 ('District 11') harassed and constructively discharged her because of her age and because she protested discrimination against minority students. District 11 moves for summary judgment. For the reasons that follow, the Court grants summary judgment to District 11 on all of Kassera's claims.

Excerpt:

"These incidents [Kassera points to] demonstrate, at most, that Kassera was closely supervised and unfairly criticized. The Eighth Circuit has consistently held, however, that the feeling of being unfairly criticized would not cause a reasonable person to quit her job. *Tork v. St. Luke's Hosp.*, 181 F.3d 918, 919 (8th Cir. 1999); *Breeding v. Arthur J. Gallagher & Co.*, 164 F.3d 1151, 1159-60 (8th Cir. 1999). Although close supervision, criticism, and questioning of the type described by Kassera may render a work environment objectively unpleasant, it does not render the work environment objectively intolerable. Accordingly, no reasonable jury could find that Kassera was constructively discharged by District 11."

Obara vs. Minnesota Dept. of Health, No. A08-0085 (Minn. Ct. App. Dec. 23, 2008).

The constitutional right to due process does not require an evidentiary hearing on the factual question of whether a health care worker being disqualified for certain employment committed disqualifying criminal offenses when the worker has been duly convicted of such offenses. [Published decision.]

Clark, and Robins vs. Pawlenty, No. A08-1385 (Minn. Ct. App. Sept. 5, 2008) *per curiam*

1. The Secretary of State is a proper party to a ballot challenge under Minn. Stat. § 204B.44 that concerns an office for which voting is conducted statewide and for which the Secretary of State has provided the challenged ballot information to the county auditors.

2. Because petitioners have not been diligent in asserting known rights, coupled with the prejudice that would result from granting petitioners' requested relief after judicial candidates have filed for office, filing deadlines have passed, official ballots and electronic voting machines have been prepared for the primary election, and absentee ballots have already been cast in the primary election, laches bars consideration of petitioners' claims on the merits with respect to the September 9 primary election.

3. Article VI, § 8, of the Minnesota Constitution does not bar judges who were initially appointed to fill judicial vacancies from running for election to retain their offices.

4. A candidate for judicial office, running in his or her first election after appointment to the bench, is eligible for the incumbent designation on the ballot provided for in Minn. Stat § 204B.36, subd. 5 (2006).

5. Use of the incumbent designation does not violate Minn. Stat. § 204B.35, subd. 2 (2006), the Minnesota Constitution, or the First Amendment to the United States Constitution.

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If you have a case that you think might be of interest to public lawyers, write a short summary of the case and email it to Kim Mesun at kim.mesun@mpls.k12.mn.us for inclusion in the spring newsletter due out in May 2009.

News From The Bench

Recent State District Court Appointments

First Judicial District –

Governor Pawlenty appointed **Caroline “Carrie” H. Lennon** to a First Judicial District trial court bench vacancy in Scott County. The vacancy occurred with the retirement of the Honorable William F. Thuet. The Minnesota Supreme Court transferred the chambers of Judge Thuet's position to the City of Shakopee in Scott County.

Lennon was an Assistant Hennepin County Attorney in Minneapolis, a position she had held since 1990. She has also been appointed as a Special Assistant County Attorney in Ramsey, Dakota, Washington, and Scott counties on individual cases. Lennon was a law clerk in the Hennepin County Attorney's office from 1988 through 1989. Lennon earned her juris doctorate degree from William Mitchell College of Law in St. Paul in 1989 and her bachelor of arts degree from St. Olaf College in Northfield in 1985.

Lennon is involved in numerous training programs, including Hennepin County District Court jury selection, Hennepin County probation officers, and Minneapolis Police Department in-service training on child abuse. She has also been a speaker and consultant with the American Prosecutor's Research Institute, a presenter for the Minnesota County Attorney's Association, a member of the Suspected Child Abuse and Neglect Team (SCANT), and a member of the Hennepin County Vulnerable Adult Law Enforcement Team. Her community activities include serving as a group facilitator and confirmation mentor for Augustana Lutheran Church, a parent volunteer for Heritage Middle School, and a Sibley High School basketball booster. She was also a parent volunteer for Somerset Elementary School, served on the Independent School District #197 Curriculum Advisory Board, and as a coach and parent volunteer for Mendota Heights Athletic Association.

Lennon, 45, lives in Mendota Heights with her husband, Michael. They have two sons.

Governor Pawlenty appointed **M. Michael Baxter** to a First Judicial District trial court bench vacancy in Le Sueur County. The vacancy occurred as a result of the death of the Honorable Jean A. Davies. The Minnesota Supreme Court transferred the chambers of Judge Davies' position to the City of Le Center in Le Sueur County.

Baxter was an attorney and shareholder with the Baxter Engen, Ltd. law firm in Burnsville, a position he had held since 2003. He has also been an adjunct professor at William Mitchell College of Law in St. Paul since 1995. Previously, Baxter was a solo practitioner in Apple Valley from 2000 to 2003, an associate attorney with the Robins, Kaplan, Miller and Ciresi law firm in Minneapolis from 1991 to 2000, and an associate attorney with the Robbin & Thompson law firm in Wayzata in 1991. Baxter earned his juris doctorate degree *magna cum laude* from William Mitchell College of Law in St. Paul in 1991. Prior to his career in law, Baxter was general sales manager with United Products Corporation from 1987 to 1989, and a sales representative and regional manager for Genstar Roofing Products Company from 1976 to 1987. Baxter earned his bachelor of arts degree from the College of St. Thomas in St. Paul in 1987.

Baxter is a member of the First Judicial District and Dakota County Bar Associations, is a volunteer attorney in family law matters with Legal Assistance of Dakota County, has served as a Ramsey County volunteer Guardian ad Litem, presented continuing legal education classes on the role of Guardian ad Litem, and served on a Hennepin County Juvenile Court Guardian ad Litem attorney panel. His community activities include serving on the Rosemount City Council, the Regional Foreign Trade Zone Commission, the Dakota County Communications Center Executive Board, and chairing the Rosemount Port Authority. He has also chaired the St. Joseph's Board of Education, Independent School District (ISD) #196 Budget Advisory Committee, Rosemount Downtown Development Commission, Rosemount St. Joseph's Facility Task Force, and the Rosemount High School Senior Party Committee. He has also been a member of the Rosemount High School Site Council and the ISD 196 Levy Planning Task

Force.

Baxter, 59, lives in Rosemount with his wife, Paula Barnes. They have three adult children.

Fourth Judicial District –

Governor Pawlenty appointed **Karen A. Janisch** and **Thomas M. Sipkins** to two Fourth Judicial District trial court bench vacancies in Hennepin County. The vacancies occurred with the retirement of the Honorable Pamela G. Alexander on June 6, 2008, and the retirement of the Honorable E. Anne McKinsey on October 3, 2008.

Karen Janisch is general counsel to the Governor, a position she has held since 2003. Previously, she was a partner (1999 to 2003) and an associate attorney (1993 through 1998) with the Rider, Bennett, Egan and Arundel law firm in Minneapolis, and a judicial law clerk to Idaho State Supreme Court Justice Byron J. Johnson from 1992 to 1993. Janisch earned her juris doctorate degree *magna cum laude* from the University of Minnesota Law School in 1992, and her bachelor of arts degree in government *cum laude* from the College of St. Benedict in St. Joseph in 1987.

Janisch is a member of the Minnesota State Bar Association and Hennepin County Bar Association, National Governor's Association Legal Counsel, and National Association of Extradition Officials. She was also a member of the Minnesota Supreme Court Committee on Rules for the Board on Judicial Standards, Minnesota Department of Health Pandemic Ethics Project, and the Rider Bennett United Way Fund Campaign Drive.

Janisch, 43, lives in Minneapolis with her husband, Daniel Tschida and their two daughters.

Thomas Sipkins, is an attorney and partner with the Minneapolis law firm of Maslon, Edelman, Borman, and Brand, where he heads the firm's Labor and Employment Group, and is a member of its Competitive Practices and Litigation groups. He has been an attorney with the Maslon firm since 2004.

Previously, Sipkins was an attorney and shareholder with Hallelund, Lewis, Nilan, Sipkins

and Johnson in Minneapolis from 1996 to 2004, an attorney and shareholder with Popham, Haik, Schnobrich, Kaufman and Doty in Minneapolis from 1986 to 1996, an attorney and partner with Peterson, Popovich, Knutson and Flynn in St. Paul from 1977 to 1986, a city of St. Paul staff attorney from 1975 to 1977, and a staff attorney with the United States Renegotiation Board in Washington D.C. from 1973 to 1975. Sipkins earned his juris doctorate degree from the University of Minnesota Law School in 1973, and his bachelor of arts degree from Williams College in Williamstown, Massachusetts in 1969.

Sipkins is a member of the American, Federal, Minnesota, Hennepin and Ramsey County Bar Associations, and serves on the ABA's Litigation and Labor and Employment Sections. He has been selected by Minnesota Law & Politics as a "Super Lawyer" every year since 1977, and has been recognized as a Top 40 Employment Lawyer since 2003. Sipkins' community activities have included serving on the boards of directors of the Minnesota Sudden Infant Death Center, YMCA Camp Warren, Temple Israel, as well as a member of the Edina Men's Choir, Edina Athletic Booster Board, a class agent for the Williams College Class of 1969 Alumni Fund, and a reading tutor of minority students at Bethune Elementary School in Minneapolis.

Sipkins, 61, lives in Edina with his wife, Jessica. They have two adult daughters.

Tenth Judicial District –

Governor Pawlenty appointed **James A. Cunningham, Jr.** to a Tenth Judicial District trial court bench vacancy in the City of Anoka in Anoka County. The vacancy occurred with the retirement of the Honorable Dan Kammeyer on August 31, 2008.

Cunningham was the Commissioner of the Minnesota Bureau of Mediation Services, a position he had held since 2003. He was an Assistant Minneapolis City Attorney from 1999 to 2003, an Assistant District Counsel with the Minneapolis Public Schools from 1993 to 1999, an associate attorney with the Rider Bennett law firm in Minneapolis from 1990 through 1992, and a law clerk to U.S. District Court Judge Charles E. Clevert in Milwaukee, Wisconsin from 1989 to 1990.

Cunningham earned his juris doctorate degree (1989) and his bachelor of arts degree (1986) from the University of Wisconsin, Madison.

Cunningham is an adjunct professor in the Hamline University Graduate School of Education, has been an instructor at the Hamline University School of Law, and an adjunct professor at St. Mary's University in Minneapolis. He is a member of the Minnesota State Bar Association, the Association of Labor Relation Agencies, and the Association for Conflict Resolution. He is also chair of the Fremont Community Health Services Board, and chair of the Center for Communication and Development/KMOJ Radio Board.

Cunningham, 45, lives in Spring Lake Park, with his wife, Karon, and their three sons.

Governor Pawlenty appointed **Michele A. Davis** and **Geoffrey W. Tenney** to two Tenth Judicial District trial court bench vacancies in the City of Buffalo in Wright County. The vacancies occurred with the retirement of the Honorable Kim R. Johnson, and the resignation of the Honorable Michelle A. Larkin, who was sworn in as a judge of the Minnesota Court of Appeals.

Michele Davis was an Assistant Anoka County attorney, a position she had held since 2000. She was an Assistant St. Paul City Attorney from 1998 to 2000. Davis earned her juris doctorate degree from William Mitchell College of Law in St. Paul in 1998, and her bachelor of arts degree from the University of St. Thomas in 1993.

Davis is a member of the American, Minnesota State, and Anoka County Bar Associations; the National District Attorneys Association; 21st District Ethics Committee; and Anoka County Fire Investigation Team. She has been a presenter at numerous continuing legal education seminars, and has conducted a variety of training programs for law enforcement.

Davis, 37, lives in Ramsey with her husband, Edward Siemek.

Geoffrey Tenney was a self-employed attorney in Buffalo, a position he had held since 1998. He has also been the Buffalo City Prosecutor since 2005.

Tenney was a part-time Tenth Judicial District Assistant Public Defender from 1999 through 2004, a Tribal prosecutor with the Spirit Lake Tribe in Fort Totten, North Dakota and an interim Tribal prosecutor with the Standing Rock Sioux Tribe in Fort Yates, North Dakota from 1996 to 1998, and a law clerk to First Judicial District Judge Thomas G. McCarthy in Sibley County in 1996. Tenney earned his juris doctorate degree from the University of North Dakota School of Law in Grand Forks in 1996, and his bachelor of arts degree from St. John's University in Collegeville in 1993.

Tenney is a member of the Minnesota State Bar Association, and the 18th District Bar Association, where he served as president. He is a volunteer firefighter with the Buffalo Fire Department, a volunteer and sponsor with the American Cancer Society's Relay for Life, mock trial judge, and is active with Buffalo's National Night Out. He has also been a sponsor and supporter of the Wright County Community Health Foundation, a committee member with Buffalo Days Parade, and a speaker in Parenting Through Divorce classes in Wright County.

Tenney, 37, lives in Buffalo.

Other News From the Bench

The Hon. Elizabeth Hayden, the Hon. Denise Reilly and the Hon. Kurt Marben have been selected to serve on a three-judge panel, which will hear testimony and inspect evidence on the legal challenges to the recount involving the U.S. Senate race between Al Franken and Norm Coleman. In December, the Minnesota State Canvassing Board certified DFLer Al Franken to be the winner of the election by 225 votes over Republican Norm Coleman. That result was challenged by Coleman. Judge Hayden has been on the Seventh Judicial District Court bench since 1986 when she was appointed by Governor Rudy Perpich. Judge Reilly has been on the Fourth Judicial District Court bench since 1997 when she was appointed by Governor Arne Carlson. Judge Marben has been on the Ninth Judicial District Court bench since 2000 when he was appointed by Governor Jesse Ventura.

Governor Pawlenty appointed **Judge Jill Flaskamp Halbrooks** and reappointed **Douglas Fuller** to the Board on Judicial Standards. Both are appointed to four-year terms that expire on January 7, 2013. Fuller, of Bemidji, is a broker with, and the owner of First Realty GMAC in Bemidji. He is a volunteer firefighter with the Bemidji Pioneer Fire Department, a member of the Bemidji Masonic Lodge, Grand Forks Shrine Club, Bemidji Chamber of Commerce, and Junior Chamber of Commerce. He also served three terms in the Minnesota House of Representatives from 1999 to 2005. Fuller, who has been a member of the Judicial Standards Board since 2005, is reappointed as a public member. Halbrooks, has been a judge of the Minnesota Court of Appeals since 1998. Previously, she was an attorney with the Rider, Bennett, Egan and Arundel law firm in Minneapolis. She is an adjunct law instructor at William Mitchell College of Law and a member of its Alumni Board of Directors, a member and past president of the Warren E. Burger Inn of Court, and a member of Minnesota State Bar Association Governing Council where she chaired the Civil Litigation Section. Halbrooks replaces the Honorable Terri J. Stoneburner as a Court of Appeals judge member of the board.

Public Attorneys on the Move

Governor Tim Pawlenty appointed John D. Kelly to the Commission on Judicial Selection. Kelly, is a partner with the Duluth law firm of Hanft Fride and has over 30 years of experience as an attorney. He is a member and past president of the Minnesota State Board of Law Examiners, a member of the Minnesota and Wisconsin State Bar Associations, International Association of Defense Counsel, American Board of Trial Advocates, and is a Fellow of the American College of Trial Lawyers. Kelly replaces Larry Stauber, who resigned to accept an appointment to the Court of Appeals. Kelly will serve as a Sixth Judicial District attorney member on the Commission on Judicial Selection to complete a four-year term that expires on January 3, 2011.

Thomas Canan has joined the staff of the Olmstead County Attorney's Office in the civil

division replacing Bob McIntosh who retired after 22 years of service. Canan was an Assistant City Attorney for the City of Rochester from 1991-1999. In 1999 he opened a solo practice and served as City Attorney for the Cities of Plainview, Oronoco and Eyota, as well as counsel for Oronoco and Salem Townships.

Ken Jorgensen resigned as a District Court Judge for the Tenth Judicial District effective January 7, 2009. He has accepted a position in the Trial Department at Dorsey & Whitney.

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

In Memoriam—Kristen Schroeder

Kristen Schroeder, 35, of St. Paul, MN passed away on December 24, 2008 of ovarian cancer. Kristen was born on June 18, 1973 in Stillwater, Minnesota. She grew up in Cook, Minnesota and graduated from Cook High School in 1991. Kristen joined her life with her partner, Megan Gluth, in May 2006 and the couple publicly professed their vows in a Service of Holy Union on September 13, 2008.

Kristen graduated from the University of Wisconsin-Stevens Point with a B.A. in English and secondary education. She obtained her juris doctorate degree from William Mitchell College of Law in 2001. Upon graduating from law school Kristen worked for the Minnesota Department of Education. She came to work for Minneapolis Public Schools (MPS) in 2004 where she was employed until her death. At MPS Kristen advised the district on the multitude of issues involved with the federal No Child Left Behind Act. She was a member of the MSBA Public Law Section and on the PLS newsletter committee and had agreed to be a co-editor of the PLS newsletter just prior to her diagnosis.

Kristen was a member of Central Lutheran Church in Minneapolis and volunteered on many committees there. She also served on the board of Camp Amnicon, a high adventure camp for at-risk youth

located on the shores of Lake Superior in Northern Wisconsin. Kristen's other volunteer interests included membership on a board of a start-up charter school, the membership in Lutherans Concerned, an organization devoted to the full inclusion of gays and lesbians in the Evangelical Lutheran Church in America. She also volunteered with MICAH, a local affordable housing organization. Her hobbies included running in the 2006 Twin Cities Marathon, triathlons, hiking, camping, canoeing, and playing hockey in a local women's league.

Kristen cared passionately for issues of social justice and the stewardship of creation. Her warmth, generosity, and compassion touched the lives of countless individuals. Throughout her illness she demonstrated remarkable strength, humor and grace. She loved life, her family, and her friends. She was devoted to her two cats Peanut and Mira, and her dog Ruthie. Kristen will be missed by all who knew her.



Kristen Schroeder (left)
with partner Megan Gluth

Announcements

Beginning September 15th, the U.S. District Court moved back to the Warren E. Burger Federal Building and U.S. Courthouse. The public notice concerning the St. Paul Courthouse move may be found on the District Court's website at <http://www.mnd.uscourts.gov>.

The U.S. District Court has implemented new attorney admission procedures. The public notice regarding the changes to the attorney admission procedure and the new Petition for Admission to Practice form and Admission to Practice procedure may be found on the Court's website at <http://www.mnd.uscourts.gov>.

The U. S. District Court has adopted an amendment to Local Rule 83.5(d), which provides for the pro hac vice admission of attorneys. The public notice regarding rule change may be found on the Court's website at <http://www.mnd.uscourts.gov>.

Effective May 1, 2009, the U.S. District Court, District of Minnesota will increase its Case Management System (CM/ECF) PDF file size limit from 2.5MB per document to 5MB per document. The change affects both attorney e-filers and public (PACER) users. Please review the complete notice regarding this change on the Court's public website at <http://www.mnd.uscourts.gov>.

2008 PLS Adopt a Family Project

The Public Law Section provided gifts and gift certificates to 10 families during the 2008 holiday season. Many public lawyers, public law offices, and friends of public lawyers participated in this year's effort. *Sponsor a Family*, a joint project with Lutheran Social Services and Catholic Charities, had to reduce the number of families it served this year because of the economy - fewer volunteers and fewer dollars. Despite the difficult economy, the public lawyers continued our annual tradition of providing for those less fortunate.

A Thank You Regarding PLS 2008 Adopt a Family Project

Dear Public Lawyers,

On behalf of the volunteers and families, thank you for your wonderful gift of generosity to support a family in need this holiday season.

Sponsor A Family 2008 was very successful thanks to the number of community supporters like you who stepped forward to help a family. We began with nearly 1,750 families registered and matched them with sponsors. And we were overjoyed from the outpour of additional gifts that we served another 144 families on the last day of the program.

We have received many words of thanks and appreciation from the families. We will be sending these notes to you in early 2009. In addition, we hope that you will check out the full program summary report that will be posted at www.sponsorfamily.org in mid January. If you didn't get a chance to come in a see the warehouses filled with gifts check out our photos and see what this incredible outpour of support looks like when a community comes together to help others in need.

Sponsor A Family is just one way that Lutheran Social Service of Minnesota and Catholic Charities are helping the community. To learn more and stay in touch all year a long please visit: Lutheran Social Service of Minnesota www.lssmn.org or <http://ga3.org/lssmn/join.tcl> Catholic Charities www.cccspm.org

Thank you again for sponsoring and supporting families at the holidays.

To you and yours, may you be blessed this Holiday Season and have a wonderful New Year!

~Krista

Krista Borchers

Volunteer Services Manager

Lutheran Social Service of MN

651-969-2257

Election Results— 2008 Contested Judicial Elections

Supreme Court:

Paul Anderson 60.41%
Tim Tingelstad 39.21 %

Lorie Skjerven Glidea 55.00%
Deborah Hedlund 44.57%

Court of Appeals:

Terri Stoneburner 58.70%
Dan Griffith 40.89%

First Judicial District:

Joseph Carter 61.02%
Nathaniel Reitz 38.62%

Second Judicial District:

Gail Chang Bohr 51.87%
Howard Orenstein 47.49%

Third Judicial District:

Lawrence Agerter 59.40%
Anthony Moosbrugger 40.28%

Fourth Judicial District:

Philip Bush 63.87%
Eugene Link 35.44%

Jane Ranum 54.12%
David Piper 45.10%

James Swenson 63.18%
Thomas Haeg 36.09%

Eighth Judicial District:

Randall Slieter 56.44%
Glen (Jake) Jacobsen 43.36%

Tenth Judicial District:

Nancy Logering 63.43%
Luke Stellpflug 36.20%

Robert Varco 52.52%
John Dehen 47.10%

Why Not Try Out Our New President's Chili Recipe?

Obama Family Chili Recipe (As run by Good Morning America on 3/4/08.)

- 1 large onion, chopped
- 1 green pepper, chopped
- Several cloves of garlic, chopped
- 1 tablespoon olive oil
- 1 pound ground turkey or beef
- 1/4 teaspoon ground cumin
- 1/4 teaspoon ground oregano
- 1/4 teaspoon ground turmeric
- 1/4 teaspoon ground basil
- 1 tablespoon chili powder
- 3 tablespoons red wine vinegar
- Several tomatoes, depending on size, chopped
- 1 can red kidney beans

• Saute onions, green pepper and garlic in olive oil until soft. Add ground meat and brown. Combine spices together into a mixture, then add to ground meat. Add red wine vinegar. Add tomatoes and let simmer, until tomatoes cook down. Add kidney beans and cook for a few more minutes.

• Serve over white or brown rice. Garnish with grated cheddar cheese, onions and sour cream.



Minnesota Department of Administration Data Practices Opinions Index

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

Copies of these opinions can be requested by calling the Department of Administration at 651/296-6733 or 800/657-3721. The full text of the Data Practices Opinions are now available online at www.ipad.state.mn.us.

No. of Opinion	Date of Opinion	Gov't Entity Involved	Topic	Opinion Register
08-015	07/09/08	Roseville	Open meeting law; e-mail sent before council meeting.	Kysylyczyn
08-016	07/17/08	Department of Agriculture	Timeliness of response.	Tyler
08-017	07/22/08	Department of Natural Resources	Conference involving personnel and investigations.	DNR/Gebhard
08-018	07/23/08	Department of Human Services	Open meeting law. Whether Drug Formulary Committee was conducting public business; trade secret.	Pharmaceutical Research and Manufacturers of America/Borger
08-019	07/31/08	School District #544	Anonymous complaints about "X" (former employee).	"X"
08-020	08/06/08	Minneapolis Civilian Police Review Authority	Complaints and their existence or status.	City of Vadnais Heights/Bell Beckman
08-021	08/08/08	City of Vadnais Heights	Competitive bids for projects and evaluation completion.	City of Vadnais Heights/Bell Beckman
08-022	08/12/08	St. Paul	Property addresses without power for over 30 days and the reason.	St. Paul/Staul
08-023	08/26/08	ISD #192	Superintendent's employment contract, underacted.	Burke
08-024	08/26/08	City of Buffalo	Personal e-mail address and cell phone numbers provided to GovDelivery under contract with city.	City of Buffalo, Mogen
08-025	09/04/08	ISD #877	Addresses and telephone numbers of community education students.	ISD #877, Martell

No. of Opinion	Date of Opinion	Gov't Entity Involved	Topic	Opinion Register
08-026	09/08/08	City of Palisade	What happened to CD amount deposited in fund; maintain records.	Morris
08-027	09-29-08	ISD #834	Names, addresses and information about interviewees for principal position.	Lorenz
08-028	09/29/08	School District #846	Tape recording of part board meeting asserted to be personal, but made in superintendent's capacity at board meeting; obtaining data from former employee.	Fronning
08-029	09/29/08	University of Minnesota	Outside income reports of head coaches.	Minnesota Daily, Lavrusik
08-030	10/08/08	Carver County Sheriff's Department	Booking photo of juvenile.	Chaska Herald/Anfinson
08-031	10/23/08	Workers' Compensation Court of Appeals (WCCA)	Written decisions of WCCA are public.	WCCA/Johnson
08-032	11/25/08	City of Hibbing	Investigation of police testimony at trial.	Hibbing Daily Tribune, Jennings
08-033	12/03/08	City of Duluth	Names, etc. for employees "whose last date of employment...was in August and September."	Duluth News Tribune, Stahl
08-034	12/03/08	Ultra High Speed Broadband Task Force	Open Meeting law applicability, meetings, video conferencing, website use, and subgroups.	Department of Commerce/ Quintela, Jr.
089-035	12/16/08	Ramsey County Sheriff's Department	All data of which "X" is the subject.	"X"/Dooley

Upcoming CLE Seminars

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

DATE	SEMINAR	TIME	PLACE	SPONSOR AND CONTACT
2/24/09	Law Practice— Innovation and the Internet	8:30 a.m. — 11:40 a.m.	Law Center, Nicollet Mall	Hennepin County Bar Association, Carol Berg 612-752-6679
3/11/09	Injunctions— Temporary, Permanent and TRO's	11:00 a.m.— Noon	Elmer Anderson Building, 540 Cedar St., St. Paul	Attorney General's Office Marty Casserly 651-297-5919
3/18/09	Reservists Coming and Going	3:00 p.m. — 5:00 p.m.	First Nat'l Bank Building, Conference Center, 332 Minnesota St., St. Paul	Ramsey County Bar Association, Sharon Elmore 651-222-0846
4/24/09	Ethics for Public Lawyer 2009	8:30 a.m. — 11:45 a.m.	Elmer Anderson Building, 540 Cedar St., St. Paul	Attorney General's Office Marty Casserly 651-297-5919
4/28/09	Evidence: Making a Record	8:30 a.m. — 10:30 a.m.	First Nat'l Bank Building, Conference Center, 332 Minnesota St., St. Paul	Ramsey County Bar Association, Sharon Elmore 651-222-0846
5/13/09	Elimination of Bias	Noon — 2:00 p.m.	Elmer Anderson Building, 540 Cedar St., St. Paul	Attorney General's Office Marty Casserly 651-297-5919
5/15/09	CLE tba PLS Annual Meeting & Awards Luncheon	A.M.	Midland Hills Country Club, Roseville	MSBA Public Law Section Todd Schoffelman 763-241-2565
5/20/09	Working with Clients with Mental Illness (EOB)	3:00 p.m. — 5:00 p.m.	First Nat'l Bank Building, Conference Center, 332 Minnesota St., St. Paul	Ramsey County Bar Association, Sharon Elmore 651-222-0846
6/25/09	Open meeting law	P.M.	MSBA Convention, Duluth	MSBA Public Law Section Todd Schoffelman 763-241-2565

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