

# Public Law News

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

**Volume XIII, Issue 2, Winter 2005**

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*Dianne Ward, Co-Chair, 651/266-3211*  
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*Louis Thayer, 651/296-2384*  
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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)

# Public Law Section Seeks Nominations for 2005 Public Attorney Awards

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

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The Minnesota State Bar Association-Public Law Section (PLS) invites nominations for awards honoring Minnesota attorneys and judges engaged in public service and in the public practice of law in Minnesota. 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 in Minnesota. Nominations are **due FEBRUARY 18, 2005**. Please contact either co-chair 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:

1. **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.

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.

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.

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 5 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.

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.

**A nomination should consist of the following:**

- 1) **Nominee's full name, employer, address and phone number;**
- 2) **Nominator's name, employer, phone number and address;**
- 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 February 18, 2005**. You can send an email, fax or mail to (**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: 612-333-1183  
Email: [kbasting@mnbar.org](mailto:kbasting@mnbar.org)

**Co-Chairs of Awards Committee**

Diane Alshouse  
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Minnesota Department of Human Services  
Appeals Division  
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## Meeting Notice

MINNESOTA DEFENSE LAWYERS ASSOCIATION AND  
MINNESOTA STATE BAR ASSOCIATION PUBLIC LAW SECTION  
are pleased to sponsor the following seminar:

### **“PREPARING FOR AN ADMINISTRATIVE LAW HEARING”**

**Presenters:**

Peter Erickson, Social Security Administration  
Beverly Heydinger, MN Office of Administrative Hearings  
Catherine Moore, formerly of MN-Unemployment Compensation  
Louis Thayer, MN Department of Human Services-Appeals Division

Wednesday, April 13, 2005  
University of St. Thomas Law School  
Noon - 1:30 p.m.  
11<sup>th</sup> and LaSalle, Minneapolis

*1.5 hours of Standard CLE credits applied for (MN & WI).*

**REGISTRATION INFORMATION:**

**MDLA & MSBA Co-Sponsored CLE**  
**“PREPARING FOR AN ADMINISTRATIVE LAW HEARING”**  
**Wednesday, April 13, 2005**

Please submit to MDLA **no later than Monday, April 11, 2005.**

Registration Fee:	MDLA members and MSBA Public Law Section Members	\$10.00
	Non-members	\$25.00
	Judicial Law Clerks	Free

Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_

**Amount Enclosed:**    \$ \_\_\_\_\_

Make checks payable to MDLA.  
Send to:

MDLA  
600 Nicollet Mall, Suite 380-A  
Minneapolis, MN 55402

Phone: (612) 338-2717

Fax: (612) 333-4927

E-mail: [director@mdla.org](mailto:director@mdla.org)

*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

# Profile: Laurie C. Beyer-Kropuenske, Director of the Minnesota Department of Administration's Information Policy Analysis Division

*By: Margaret Westin., Assistant District Counsel, Minneapolis School District*

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Government in Minnesota is experiencing a change that has the potential to affect every public law attorney in the state. It's not the routine change every four or eight years in the Governor's mansion or the less predictable changes in the judicial branch, but a change in the leadership in the state Department of Administration's Information Policy Analysis Division. Laurie C. Beyer-Kropuenske is the new Director of that office. Public lawyers who work with data practices will recognize the phenomenon she identifies when she noted that she applied for the position, in part, because, "Data practices became a larger and larger part of my job." It seemed a natural step to take to apply for the director's position when it was open. In addition, the director's job was appealing to her because it will allow her to do training and policy work. Finally, although the office is a small one, the opportunity to be the Director is exciting because the office is often at the center of important policy discussions. The Division serves a number of important constituencies whose interests have to be balanced.

Ms. Beyer-Kropuenske is an attorney and member of the MSBA Public Law Section. She graduated from the University of South Dakota School of Law in 1992. After graduation, she worked for the Prairie Island Indian Community as an Assistant General Counsel. During this time, she was able to help develop aspects of the Prairie Island Tribal Court. After her work with the Prairie Island Community, she moved to the Minnesota Department of Public Safety as an Assistant Director with the Crime Victim & Witness Advisory Council. This work led her to the Minnesota Center for Crime Victim Services where she was their Director of Training, Communication and Research Unit. Most recently, she was with the Minnesota Department of Public Safety. She served that department in various capacities, including service as the Legislative coordinator for the Office of Drug Policy and Violence Prevention and Rules and Records Retention Coordinator. A major part of her responsibilities related to compliance with requirements of the Minnesota Government Data Practices Act. She served as Compliance Official for the

Department and as the Responsible Authority for CriMNet, as well as trainer and advisor on laws governing data practices, records retention and open meetings.

Her perspective of a former compliance official and responsible authority are important as she takes on the responsibility of providing necessary services with fewer resources. In a time of limited resources, her experience can help her identify which services are the most useful to the various constituencies the Division serves. One of the first areas she plans to look at closely is the area of formal Advisory Opinions. The Division may become more strategic in its issuance of the formal opinions. For instance, the law on copy costs has not changed and there may not be a need for a formal opinion on each question about the reasonableness of costs charged for copies. Ms. Beyer-Kropuenske stated that the Division is a resource and the people shouldn't be afraid to call for advice. She emphasized that the Division will continue to be available to help government "do the right thing."

As a public lawyer, she has navigated through the complex interactions of open government and privacy concerns in the turbulent seas of crime victim services, juvenile justice, and the Indian Child Welfare Act. Her experiences with the practical effects of the application of theory to facts should help her as she takes over the leadership of an office that often finds itself in the center of the storm when there is breaking news.

# Allen Giles Assumes Chair of ABA Division

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

At the ABA Annual Meeting in Atlanta in August, Allen Giles became the Chair of the ABA's Government and Public Sector Lawyers Division. The Division, created by the ABA in 1991, acts as an advocate for government lawyers on the national level and provides services and products designed specifically for public sector attorneys. It has sponsored several continuing legal seminars, including one in Minneapolis in October 2003. Members

of the Division receive a quarterly newsletter, Pass It On, and a biannual journal, The Public Lawyer. The Division is governed by a 27-member Governing Council. Allen Giles, a long-standing MSBA and PLS member, has served as an officer of the Division for three years before assuming the Chairmanship in 2004. Allen is currently the General Counsel for the Minneapolis School District.



*Allen Giles presiding over the Division's Council meeting in Miami Beach, Florida, in October 2004.*

## **Allen Giles**

1976-89: Assistant Minnesota Attorney General

1989-99: Administrative Law Judge, Office of Admin. Hearings

1999 - present: General Counsel, Minneapolis School District

American Bar Association  
Gov't & Public Sector Lawyers Division  
740 15th Street NW  
Washington, D.C. 20005  
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[GPSLD@abanet.org](mailto:GPSLD@abanet.org)



*Allen Giles and Susan Kidd, the Director of the Division*

**Visit the Division's Website:**  
[www.governmentlawyer.org](http://www.governmentlawyer.org)

# MSBA Assembly Discusses Proposed Legislation

*By: Marcy Harris, Esq., Community Action for Suburban Hennepin County*

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## **Minnesota State Bar Association Assembly Minutes of the Meeting held Friday, December 3, 2005 at the MN CLE Offices.**

President, David Stowman, presided. President Stowman presented the minutes of the September 17, 2004 meeting, which were unanimously approved.

Treasurer Patrick Kelly reported that 98.1% of budgeted dues revenue has been collected compared to 97.0% at this time last year and expenses are at 25.7% of budget compared to 28.7% in 2003.

President Stowman introduced Publications Committee Chair Mark Hansen, who presented the Wiblishauser Award to Doug Kelley for his article "Constitutional Crossfire: Federal Judge Draws Congressional Ire," which appeared in the July 2003 issue of Bench & Bar magazine. President Stowman introduced Convention Committee Co-chair Aaron Biber, who encouraged attendance at the 2005 MSBA Convention at Madden's Resort in Brainerd on June 15-17. The theme is "It's a Mad, Mad, Madden's World."

## **Legislative Report**

President Stowman introduced and gave a special welcome to Minnesota Senate Majority Leader Dean Johnson, who previewed some of the legislative issues that will be part of the upcoming legislative session. Johnson indicated that money will be tight, since Minnesota has had budget deficits for the past 4 years and he projects that the year will end with a \$750 million deficit. It will be a session of priority-setting, with the basic question being "what services are the people of Minnesota willing to pay for on a long-term basis?" Senator Johnson feels that it may be time to reassess the "no new taxes" pledge by the Governor, in order to provide the money necessary to invest in the state's infrastructure, especially education and transportation. The Senator reported that the Senate is committed to passing a bonding bill in the month of January, that the public defender funding bill will be introduced next week for early hearings, and that he expects the issues of gambling and ballpark funding to be significant this session.

## **President's Report**

President David Stowman discussed the following:

1. Anyone visiting the Detroit Lakes area is invited to stop by his office.
2. The MSBA Fair Response Committee responded to a newspaper story several weeks ago regarding a judge's decision about the custody of a child; the Committee's work helped counter a potentially negative public perception of the judiciary.
3. The MSBA is supporting the nomination of Judge Cara Lee Neville for the ABA Margaret Brent Award.
4. The Insurance for Members Committee is considering creating a separate pool for health insurance for members in order to address the problem of escalating insurance costs. He noted that the MSBA will be offering a program in March at which various health care insurance options will be discussed.
5. Grassroots legislative efforts will be increased during the upcoming legislative session and all members are encouraged to get involved.
6. He has attended numerous meetings of various law-related groups and has stopped to visit law offices he passes while driving. He appreciates the perspectives being shared with him about issues facing the bar and he invited members to continue to share their thoughts with him.

## **A. Elections/Appointments Committee**

Judge Jon Stafsholt, Chair, reported that the Committee has met several times working to develop procedures for the Committee and to interview candidates. He reviewed the Committee's recommendations that are on the Consent Calendar. Judge Stafsholt also noted that the Committee procedures will be reviewed by the Governance Committee before being acted on by the Assembly, and therefore will be removed from the Consent Calendar (Item V. A. a).

## **Consent Calendar**

A. Resolved that the Assembly approve the following recommendations of the Elections/Appointments Committee: a.) that the Assembly adopt procedures for the Elections/Appointments Committee; b.) that the Assembly nominate Richard Diamond to the State Board

of Legal Certification; c.) that the Assembly elect Edward Blomme to the Minnesota State Bar Foundation Board of Directors; and d.) that the Assembly elect Judge George Perez as a delegate to the ABA.

B. Resolved that the Assembly approve the following recommendations of the Governance Committee: a.) that the Assembly approve the report and recommendations delegating responsibilities for the audit functions identified by the MSBA auditors to the Operations Committee; b.) that the Assembly approve the revisions to the Bylaws of the Probate and Trust Law Section; c.) that the Assembly authorize all sections to revise their bylaws to change any reference from “Board of Governors” or “Executive Committee” to “Assembly” or “Council”; d.) that the Assembly authorize the Animal Law Section to provide free membership to Law Students and charge new admittees dues of \$10.00; and e.) that the Assembly revise the LawPAC Constitution

Further discussion of the nominations for outside boards: five candidates applied for the State Board of Legal Certification, one candidate had applied for the Bar Foundation, two candidates indicated interest in being selected for the ABA delegate position. Motion made and seconded to approve all candidates by acclamation passed.

#### **Action Calendar**

**A. Resolved that the Assembly approve the following recommendations of the Legislative Committee:**

**1. that the MSBA endorse recommendations of the Real Property Section: a.) Amendment to 500.20, the 30 year law, to eliminate the current window; b.) Amendment to 559.217, the residential real estate cancellation provision; c.) Amendment to 580.041, the special advice in foreclosure notice; and d.) Amendments to the Minnesota Common Interest Ownership Act**

Real Property Section Legislative Liaison Chuck Parsons summarized the recommendations and Mr. Dornik moved the Legislative Committee’s recommendation for MSBA endorsement. The motion was seconded and passed unanimously. President David Stowman presented a special award, “The Short & Sweet Award,” to Mr. Parsons in recognition of his 20 years of work to make the Real Property Law Section’s legislative proposals concise and understandable.

**2. that the MSBA endorse the recommendations of the Probate and Trust Law Section on: a.) Proper venue; b.) Issue of omitted children; and c.) Principal and income rules**

After being seconded, the motion passed unanimously.

**3. that the MSBA endorse a resolution supporting the history and tradition of a strong, independent bench at the Office of Administrative Hearings**

John Dornik moved the Legislative Committee’s recommendation that the MSBA endorse a resolution supporting the history and tradition of a strong, independent bench at the Office of Administrative Hearings. During discussion it was noted that the effect of the resolution was to place the MSBA on record as favoring a strong and independent administrative law bench. After discussion, the motion carried.

**4. that the MSBA endorse the recommendations of the Legislative Committee on adequate funding for the Justice System**

John Dornik moved the Legislative Committee’s request that the MSBA endorse the Committee’s recommendations on adequate funding for the Justice System. A motion to amend the recommendation to specifically include law clerks in addition to judges and other personnel by amending the last paragraph to read as follows: *“Be it further resolved that the MSBA commend the judges and other court personnel, including judicial law clerks, the public defenders, and the legal aid attorneys and pro bono attorneys providing civil legal services.”* The motion to amend was approved; amended resolution was adopted unanimously.

**5. that the MSBA endorse the recommendation of the Legislative Committee relating to the civil justice system**

A motion was made and seconded to adopt this resolution. Paul Peterson, a member of the MSBA Legislative Committee, gave some background information on the rationale for this proposal, which is designed to preserve the status quo (e.g., allowing the MSBA to oppose lowering the damages cap or to restrict the awarding of attorney’s fees in certain cases).

During the ensuing discussion, concerns were voiced about this type of general proposal, which does not contain specific language and seeks to take a position without having given MSBA sections or other law-related groups an opportunity to react or respond. A motion was made to postpone further consideration of the resolution pending comment by sections and other groups related to the content of the proposal. President Stowman called the question. A voice vote was close so he called for a division. The standing vote then resulted in a tie so it was taken a second time. The resolution failed due to a tie vote.

Discussion on the main motion then continued. A motion was made and seconded to send the proposal to the Civil Litigation Section and any other interested groups for comment, and then to authorize the Council to take a position for the upcoming legislative session, with further consideration as necessary by the Assembly at its April meeting. Following discussion, President Stowman called the question, which passed.

**6. prohibiting the Family Law Section from taking a position on the amendments to: a.) Minnesota Statute 518.58 related to pensions until such time as the Section submits the proposal to the Employee Benefits Section for review. Once the Employee Benefits Section has favorably reviewed the bill, the Family Law Section may take a position in its own name; and b.) Minnesota Statute 518.19 related to division of real property until such time as the Real Property Section has favorably reviewed the bill. Once the Real Property Section has favorable reviewed the bill, the Family Law Section can take a position in its own name**

Mr. Dornik reviewed the recommendations of the Family Law Section and the Legislative Committee's action.

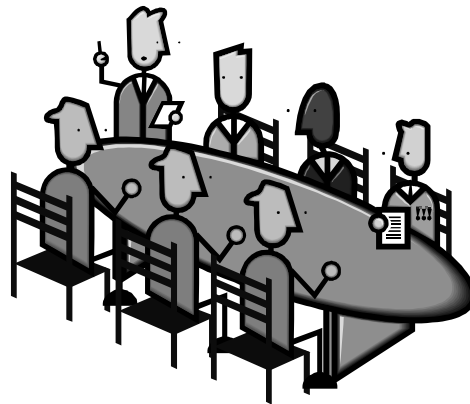
**7. that the MSBA adopt the following legislative housekeeping resolutions: a.) that the attached document reflects the current MSBA legislative positions; and b.) that the authority to allocate the lobbyist's time be delegated to a subcommittee of the Legislative Committee so that the lobbyist's time can effectively be allocated among the MSBA endorsed positions, section or committee endorsed positions, or other bills that may arise as the need arises during the legislative session**

Mr. Dornik and Ms. Holden reviewed the current positions and the subcommittee established to coordinate the allocation of the lobbyist's time throughout the upcoming legislative session.

Ellis Olkon spoke on behalf of the Animal Law Section supporting repeal of the Mourning Dove Hunting Law that was passed during the last legislative session. The Legislative Committee declined to refer this to the Assembly. Mr. Olkon indicated that the Section sees the resolution as appropriate for action by the Assembly because it is related to "quality of life issues" relevant to lawyers. President Stowman received the motion as one to put a resolution approving the repeal of the mourning dove hunting law on the Assembly agenda thus requiring a 75% approval; the motion was seconded. The motion failed.

**B. Resolved that the Assembly approve the following recommendation of the Governance Committee: 1. that the Assembly approve the following separation of responsibilities: all of the President's appointments to Assembly Committees require Assembly approval; all Assembly members and Alternates are eligible to serve on Assembly Committees; only Assembly members are entitled to appointment to an Assembly Committee; and that Alternates could not substitute for an Assembly member on an Assembly Committee**

Mr. O'Connell reviewed the recommendation of the Governance Committee and moved approval. The motion was seconded. Mr. O'Connell clarified that Alternates can serve on an Assembly Committee if they are appointed by the President, but they do not have an absolute right to serve on a Committee. There was unanimous consent to add the word "non-member" before the word "Alternates" following the final semi-colon, after which the motion carried.



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# A Year of Public Service by Section Members

*By: Nancy McLean, Assistant Hennepin County Attorney*

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Thank you volunteers for another year of community service. In 2004, members of the MSBA Public Law Section prepared meals for Loaves and Fishes, helped out Habitat for Humanity, and provided holiday gifts for families. In 2005, we will be again preparing meals for Loaves and

Fishes on the following dates: February 2; April 6; June 1; August 3; October 5; December 7. Contact Nancy McLean at [nancy.mclean@co.hennepin.mn.us](mailto:nancy.mclean@co.hennepin.mn.us) for further details. Watch for notices for Habitat projects and other volunteer opportunities in the coming year.

## **2004 Volunteers In Action**





# Eyes On The Courts

By: Greg Brooker, Assistant U.S. Attorney

## Cases to Watch in the U.S. Supreme Court

### Land Use: Ripeness and Issue Preclusion of Federal Claims



Hotel owners brought a Section 1983 action against the City of San Francisco, challenging the constitutionality of an affordable housing ordinance that limited a hotel owner's ability to convert residential hotel rooms to tourist use. In 1998, the 9th Circuit declared some of the federal claims unripe until after the claims had been litigated in the California courts. In 2002, the California Supreme Court upheld the ordinance, holding that the city properly required the hotel owners to obtain a conditional use permit for its conversion to a tourist hotel and holding that the ordinance's housing replacement fees bore a reasonable relationship to the loss of affordable housing caused by the conversion. The hotel owners then went to federal court on their federal claims, but the 9th Circuit ruled in 2004 that issue preclusion applied to bar relitigation of the takings issues necessarily decided in the state-court proceeding.

The Supreme Court granted the hotel owner's cert. petition to answer the following question: Are Fifth Amendment takings claims barred by issue preclusion based on a judgment denying compensation solely under state law, which was rendered in a state-court proceeding that was required to ripen the federal takings claim? Decisions below: *San Remo Hotel v. City of San Francisco*, 364 F.3d 1088 (9th Cir. 2004); 117 Cal. Rptr.2d 269 (2002); 145 F.3d 1095 (9th Cir. 1998).

### Police Liability: Non-enforcement of Domestic Abuse Orders

Plaintiff's children were abducted by her ex-husband and killed. Prior to the abduction, plaintiff had repeatedly requested the police to enforce the restraining order against her ex-husband. A Colorado statute contains mandatory language in describing a police officer's duty to enforce domestic abuse restraining orders and to arrest suspected violators. Plaintiff brought suit against the city and its officers alleging violations of her substantive and procedural due process rights under the 14th Amendment.

The Tenth Circuit en banc held that Plaintiff's procedural due process claim could go forward but only against the

municipality. It concluded that a protected property interest was created by the existence of a restraining order issued on behalf of a particular person and directed at a specific individual and the police. The Tenth Circuit held that the domestic abuse order gave force to the state statute that provides that a police officer "shall" arrest or seek an arrest warrant for the restrained person upon probable cause of a violation or attempted violation after proper service or actual notice of the order. Because the restraining order contained mandatory language and specific objective criteria, it curtailed the decisionmaking discretion of the police, the appellate court ruled. Such an order is like other types of entitlements and is properly deemed a property interest protected by the due process clause.

The Supreme Court granted cert. to consider whether the Tenth Circuit's decision circumvents the Court's holding in *DeShaney v. Winnebago County Dept of Social Services*, 489 U.S. 189 (1989). Case below: *Castle Rock v. Gonzales*, 366 F.3d 1093 (10th Cir. 2004)(en banc).

### School Law: Retaliation by School Under Title IX

Roderick Jackson is a physical education teacher in the Birmingham, Alabama, school district who claims that he received negative evaluations and was relieved of his coaching duties after he repeatedly complained to his superiors that his girls' team was not getting its share of funding and access to facilities and equipment compared with the boys' teams. The Eleventh Circuit held that Title IX's broad ban on discrimination on the basis of sex in any educational program receiving federal financing does not allow an individual to sue for retaliation. The circuit court distinguished the cases that have interpreted other anti-discrimination statutes that do not specifically refer to retaliation as encompassing retaliation suits.

The Supreme Court granted cert. to consider whether monetary damages against a school district are available to an individual who proves retaliation under Title IX. Case below: *Jackson v. Birmingham Bd. of Ed.*, 309 F.3d 1333 (11th Cir. 2002).

### Civil Rights: Is the Religious Land Use and Institutionalized Persons Act Constitutional?

Did Congress violate the establishment clause by enacting

a provision of the Religious Land Use and Institutionalized Persons Act dealing with prisoners' exercise of religion? The Sixth Circuit found that it did. It held that the statute, which, among other things, limits the power of states and other governments to impose burdens on prisoners' exercise of religion, violates the second prong of the three-part test of *Lemon v. Kurtzman*, 413 U.S. 602 (1971). The establishment clause challenge was raised by state prison officials in Ohio defending themselves against prisoners' claims that various jail regulations failed to accommodate their religious practices. The Act provides that any substantial burden on a prisoner's religious exercise must be the least restrictive means of furthering compelling governmental interest. The statute places similar limits on land use controls on churches, but that section was not at issue in this case.

The Supreme Court granted cert. and will answer the following question: Did Congress violate the establishment clause by enacting the Religious Land Use and Institutionalized Persons Act, which requires state officials to lift unnecessary governmental burdens imposed on religious exercise of institutionalized persons under their control? Case below: *Cutter v. Wilkinson*, 349 F.3d 257 (6th Cir. 2003).

#### **Eminent Domain: Condemning Land for Private Economic Development**

The City of New London, Connecticut, authorized a private, nonprofit economic development corporation to help the city plan economic development in the Fort Trumbull area of the city and to acquire property to effect the plan. Ultimately the city council approved a plan to acquire homes, which were not blighted, by eminent domain to facilitate and complement a new global research facility operated by Pfizer, Inc. Property owners whose homes were taken for the project challenged the condemnation of their property for economic development by private parties, arguing that economic development is not, standing alone, a public use for constitutional purposes. The Connecticut Supreme Court held that private economic development can be a valid public use justifying a municipality's exercise of eminent domain power, noting that economic revitalization projects that have the public economic benefits of creating new jobs, increasing taxes, and contributing to urban revitalization, satisfy the public use clauses of both the state and federal constitutions.

The U.S. Supreme Court will answer the question: What protection does the Fifth Amendment's public use requirement provide for individuals whose property is being condemned, not to eliminate blight or slums, but for the sole purpose of "economic development" that will

perhaps increase tax revenues and improve the local economy? Case below: *Kelo v. New London*, 843 A.2d 500 (Conn. 2004).

#### **Religion: Ten Commandment Monuments**

The Supreme Court agreed to hear two conflicting cases regarding the display of the Ten Commandments on government property. The Fifth Circuit ruled that a granite monument containing the Ten Commandments on the Texas capitol grounds promotes valid secular purposes without endorsing religion. The monument was donated by a private organization in 1961 and placed on the capitol grounds among other historic monuments. The Fifth Circuit held that the monument was placed to honor the organization's efforts to reduce juvenile delinquency and to reflect the role of the commandments in the making of law. The Sixth Circuit held that plaintiffs are likely to succeed on their claim that displays of the Ten Commandments in county courthouses and public schools lack secular purposes and thus violate the First Amendment's establishment clause. Cases below: *Van Orden v. Perry*, 351 F.3d 173 (5th Cir. 2003); *ACLU of Kentucky v. McCreary County*, 354 F.3d 438 (6th Cir. 2004).

#### **Out-of-State Wine: The Dormant Commerce Clause v. the 21st Amendment**

Under consideration by the Supreme Court in several consolidated cases is the regulation of out-of-state wine sold directly to consumers. Several states limit the direct shipment of wine to consumers from other states while allowing in-state wineries to ship straight to the consumer. Most states regulate alcohol sales through the traditional three-tier system: Consumers must purchase alcoholic beverages from licensed retailers, who must purchase them from licensed wholesalers, who must purchase them from licensed manufacturers. An exception in Michigan exists for in-state wineries, which may ship directly to Michigan consumers. New York permits an out-of-state winery to sell directly to consumers if it gets a license from the state, maintains a branch factory, office, or storeroom in the state.

The Sixth Circuit struck down the Michigan regulation as a violation of the commerce clause and because the regulation did not advance a "core concern" of the 21st Amendment. The Second Circuit upheld the New York law as a valid exercise of state authority under the 21st Amendment. The Supreme Court will review both cases by answering the following question: Do such regulatory schemes violate the dormant commerce clause in light of Section 2 of the 21st Amendment, which allows state and local regulation of alcohol. Cases below: *Granholm v. Heald*, 342 F.3d 517 (6th Cir. 2003); *Swedenburg v. Kelly*, 358 F.3d 223 (2nd Cir. 2003).

## Equal Protection and Prison Segregation

In California, prisoners spend their first 60 days of incarceration at a prison reception center. At the reception center, race is only one of many factors that are considered in making cell assignments, but it is the dominant one. The chances of an inmate being assigned a cell mate of another race or ethnicity is close to zero during the first 60 days of confinement. A prisoner sued, challenging the policy as a violation of equal protection. The Ninth Circuit upheld the race-based prison policy, relying primarily on *Turner v. Safley*, 482 U.S. 78 (1987), which adopted a relaxed

standard for determining the constitutionality of prison regulations. The court noted that the practice of racially based cell assignments at the reception centers is narrowly tailored to address a pervasive risk of violence given California's experience with violent, rival prison gangs that are divided along racial lines.

The Supreme Court granted the cert. petition of the prisoner and will consider the equal protection challenge of California's cell assignment procedure. Case below: *Johnson v. California*, 321 F.3d 791 (9th Cir. 2003).

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# MSBA Public Law Section Goals for 2005

*By: Dianne Ward, Assistant Ramsey County Attorney and Jay Heffern, Minneapolis City Attorney*

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Here are Section Goals for 2005:

1. Promote Public Service and Pro Bono

- Develop a model pro bono policy for public law offices and offer implementation suggestions that address the barriers to pro bono work
- Provide information about pro bono opportunities to public lawyers
- Sponsor at least two public service projects in which PLS members can participate
- Continue support of services to low-income and disadvantaged persons in Minnesota

2. Sponsor Continuing Legal Education

- Sponsor at least 15 credits of CLE on topics of interest to PLS members
- Continue to keep the cost free or reasonable
- Provide Ethics and Elimination of Bias CLE's on at least a 3 year cycle

3. Enhance communication among PLS members

- Enhance communication among PLS members by encouraging increased use of electronic communication
- Publish newsletters and maintain the website with current information and resources, e.g. CLE's, pro bono and public service opportunities, etc.
- Improve communication between the PLS Executive Council and the committees

4. Work toward the goal of eliminating bias and promoting diversity in the bar

- Provide quality Elimination of Bias CLE programs
- Participate in minority recruitment conferences
- Provide publicity on Summer Law Clerk programs and other opportunities

5. Provide recognition for public lawyers

- Continue annual public attorney awards
- Conduct review of the awards process, publicity, and other possible improvements
- Use the newsletter and other means to recognize public lawyers

6. Work with the MSBA

- Work with the MSBA membership committee to increase the membership of the Public Law Section and increase participation in the MSBA
- Continue and enhance the ongoing relationship with the MSBA Student Law Section including identifying a designated student liaison with the Public Law Section.
- Respond to issues presented to the MSBA that impact public policy and the practice of public law
- Assist with the MSBA's transition to the new governing structure

7. Monitor legislation that affects the practice of law in the public sector.

# Recruitment Contacts and Events for Public Attorney Offices

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**University of Minnesota Law School**, [www.law.umn.edu/cso/index.html](http://www.law.umn.edu/cso/index.html)  
Career Services Office  
Mondale Hall - Room 96  
229 19th Avenue South  
Minneapolis, MN 55455

Dir—Susan Gainen  
Asst Dir—Steve Marchese  
Ofc Spec—John Malecha

Office Phone: 612/625-1866  
Office Fax: 612/626-7720  
Office e-mail: [lawcso@umn.edu](mailto:lawcso@umn.edu)

**Hamline University School of Law**, [www.hamline.edu/law/cso/index.html](http://www.hamline.edu/law/cso/index.html)  
Career Services  
1536 Hewitt Avenue  
Saint Paul, MN 55104-1237

Career Services Staff  
Nancy Lochner, '98, Director  
Jeanne Eliou, Assistant Director  
Mindy MacRunnel, Administrative Assistant  
Elizabeth Driessen, Student Office Assistant

Telephone: (651) 523-2470  
Fax: (651) 523-2451  
E-Mail The Office: [cso@gw.hamline.edu](mailto:cso@gw.hamline.edu)

**William Mitchell College of Law**, [www.wmitchell.edu/services/career/](http://www.wmitchell.edu/services/career/)  
Career Services Office  
875 Summit Avenue  
St. Paul, MN 55105  
(651) 290-6326  
1-888-WMCL-LAW, option 3  
Fax: (651) 290-6465

**University of St. Thomas School of Law**, <http://www.stthomas.edu/law/careerservices/>  
Mail # MSL 414  
1000 LaSalle Ave.  
Minneapolis, MN 55403-2015

Career and Professional Development  
Amy J. Klugherz  
Director 651-962-4865  
[ajklugherz@stthomas.edu](mailto:ajklugherz@stthomas.edu)  
Larniece L. McKoy Moore  
Assistant Director 651-962-4862  
[llmckoymoore@stthomas.edu](mailto:llmckoymoore@stthomas.edu)

Kathy A. Lattu  
Administrative Assistant 651-962-4860  
[kalattu@stthomas.edu](mailto:kalattu@stthomas.edu)

Fax (651) 962-4881

## **Twin Cities Quad School and MJF Public Interest Career Expo**

The location of this annual career fair rotates between the four law schools. The fair typically is held on a weekday evening the first week of November. Each public interest/public sector employer has a table with their name. Students circulate among the tables to talk with the attorneys about career paths, organization missions, etc.

## **Minnesota Minority Recruitment Conference**, [www.tcc-mmrc.org](http://www.tcc-mmrc.org)

The MMRC is an annual event sponsored by the Twin Cities Committee on Minority Lawyers in Large Law Firms. The conference receives administrative support from the Minnesota State Bar Association. The MMRC is usually held the Friday and Saturday of September following Labor Day. There is a fee for employer participation.

Contact: Kristen Hasler  
MMRC, c/o MSBA  
600 Nicollet Mall #380  
Minneapolis, MN 55402

phone 612-824-6988  
fax 612-333-5194

### **Hennepin County Attorney's Office Minority Law Student Reception**

The HCAO hosts this annual reception (usually in January). The reception provides an opportunity for minority law students to hear from the heads of the following agencies about public sector attorney work: Hennepin County Attorney, Mpls City Attorney, Hennepin County Public Defender, Minnesota State Public Defender, Fourth Judicial District Court. Other attorneys from each office also attend to provide a "mix and mingle" opportunity for conversation.

### **Minnesota Justice Foundation (MJF), [www.mnjustice.org](http://www.mnjustice.org)**

MJF posts volunteer law clerk opportunities on its website that are available to students from all four law schools. MJF typically contacts participating law offices prior to the Fall, Spring, and Summer sessions to confirm whether they want to renew or modify their postings. Most recently, the MJF contact for the Mpls City Attorney's Office has been Sara Schwews (651.962.4859), an MJF staff attorney.

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## **Public Attorneys on the Move**

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**Michael Rugani** has joined the Minneapolis City Attorney's Office. He is a 1996 graduate of the University of Minnesota Law School and previously worked in Minnesota with the law firm of Collins, Buckley, Sauntry & Haugh in St. Paul.

**Sydney Wood** has joined the Minneapolis City Attorney's Office. She is a 1996 graduate of Tulane Law School and previously was with the Meagher & Geer law firm in Minneapolis.

Governor Pawlenty appointed **Rene Diebold** to the Commission on Judicial Selection. Diebold, of Granite Falls, is an attorney in private practice in Marshall. Her practice focuses on family and real estate law, mediation and arbitration. Diebold replaces Christopher Dietzen, who resigned from the Commission on Judicial Selection when he was appointed to the Minnesota Court of Appeals. Diebold will serve as an at-large attorney member to complete a four-year term that expires on January 1, 2007.

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## **News From the Bench**

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Governor Pawlenty appointed Minnesota Court of Appeals Judge **G. Barry Anderson** to fill an Associate Justice vacancy on the Minnesota Supreme Court. The vacancy occurred with the resignation of Associate Justice James H. Gilbert on August 9, 2004. Anderson has been a judge on the Minnesota Court of Appeals since 1998. He was an attorney and partner with the law firm of Arnold, Anderson and Dove in Hutchinson from 1983 to 1998 where he chaired the litigation department and had a general civil practice with an emphasis in personal injury litigation, both plaintiff and defense. He was also the Hutchinson City Attorney from 1987 to 1998. Anderson was an associate attorney with the law firm of Erickson, Zierke, Kuderer, Myster and Madsen in Fairmont from 1979 to 1983, practicing in both civil and criminal law, and was a law clerk for the LeVander, Zimpfer law firm in Minneapolis from 1977 through 1978. Anderson earned

his juris doctorate degree from the University of Minnesota Law School in 1979 and his bachelor of arts degree magna cum laude from Gustavus Adolphus College in St. Peter in 1976. Anderson is as a member of the Warren E. Burger Inn of Court and has served as a member of the Minnesota Academy of Certified Civil Trial Specialists, American Arbitration Association of Minnesota No Fault Arbitration Panel, volunteer attorney panel of the Southern Minnesota Regional Legal Services, the Supreme Court's Uniform Local Rules Task Force, Minnesota State Bar Association's Board of Governors, Court Rules Committee, Judicial Elections Task Force and Task Force on Multi-Disciplinary Practice. He is past president of the Eighth District as well as the Martin County Bar Association. Anderson's current community activities include serving as president of Hutchinson Community Video Network, a cable-television public access programming non-profit

organization, writing a book review column for the Hutchinson Leader newspaper, serving as a member and President of the Hutchinson Rotary Club where he co-chaired their STRIVE scholarship program, and serving on the Minnesota Valley YMCA Board of Directors in Burnsville. He was a member of the Hutchinson Area Chamber of Commerce and Hutchinson Community Foundation Boards of Directors. Anderson was also a member and chair of the Minnesota Campaign Finance and Public Disclosure Board, a member of Prince of Peace Lutheran Church in Burnsville and Faith Lutheran Church in Hutchinson where he was an adult forum leader Sunday school instructor and volunteer attorney. Anderson, 49, resides in Apple Valley with his wife and their three children.

Governor Pawlenty appointed **Elena L. Ostby** to a Second Judicial District trial court bench vacancy in Ramsey County. The vacancy occurred with the Supreme Court's conversion of a vacant referee position into a district court judgeship. Ostby has been an attorney in private practice in Roseville since 2001. She was an attorney and shareholder with the law firm of Briggs and Morgan in St. Paul from 1986 to 2001. Ostby earned her juris doctorate degree (1986) and her bachelor of arts degree (1983) from the University of Minnesota. Ostby is a member of the Supreme Court's Public Trust and Confidence Committee and Implementation Committee on Multicultural Diversity and Racial Fairness. She is also co-chair of the Ramsey County Bar Association Diversity Committee and serves on the Minnesota State Bar Foundation Board of Directors. Ostby, 45, resides in Roseville.

Governor Pawlenty appointed **Mary Yunker** to a Tenth Judicial District trial court bench vacancy in the city of Elk River in Sherburne County. The opening occurred with the retirement of the Honorable Mary E. Carlson on June 13, 2004. The Supreme Court transferred the chambers of this position from Washington County to Sherburne County. At the time of her appointment, Yunker was the chief deputy Sherburne County attorney, a position she held since 2003. She was an assistant Stearns County attorney, where she served as chief of the criminal division, from 1986 to 2003, assistant Scott County attorney in 1985, assistant Mankato city attorney from 1984 to 1985, a law clerk in the Ninth Judicial District in Brainerd from 1982 to 1984, and a staff attorney with the Civil Aeronautics Board in Washington, DC from 1980 to 1982. Yunker earned her juris doctorate degree from Northwestern University School of Law in Chicago, Illinois in 1980 and her bachelor of applied studies from the University of Minnesota in 1977. Yunker teaches business law classes at Rasmussen

Business College in St. Cloud, was an adjunct faculty in the criminal justice department at Minnesota State University, St. Cloud and has served as a faculty member of the James E. Preece Trial Advocacy School in Bemidji. She is a member of the National District Attorneys Association, Minnesota County Attorneys Association, John E. Simonett Inn of Court, and is a past president of the Stearns/Benton County Bar Association. Yunker, 49, resides in St. Cloud.



# 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>
2/9/05	Legal Procedures – Infectious Disease	Noon to 1:00 p.m.	Radisson City Center 411 Minnesota Street St. Paul	Attorney General’s Office/ Marty Casserly (651) 297-5919
2/16/05	Monthly Luncheon – Magistrate Judge Arthur Boylan	Noon to 1:15 p.m.	Walker Room Palomino Club Minneapolis	Federal Bar Association/ Laura Mitchell (612) 492-7185
2/16/05	New Rules of Professional Conduct	3:00 p.m. to 5:00 p.m.	US Bank Center 7th Floor St. Paul	Ramsey County Bar Association/ Alexandra Hennekens (651) 222-0846
2/17/05	Navigating HIPAA	Noon to 1:30 p.m.	First National Bank Bldg., Suite E-1400 St. Paul	Ramsey County Bar Association/ Alexandra Hennekens (651) 222-0846
3/9/05	Immigration Law – Elimination of Bias	1:00 p.m. to 4:30 p.m.	Radisson City Center 411 Minnesota Street St. Paul	Attorney General’s Office/ Marty Casserly (651) 297-5919
3/16/05	Monthly Luncheon – Judge Michael Davis	Noon to 1:15 p.m.	Walker Room Palomino Club Minneapolis	Federal Bar Association/ Laura Mitchell (612) 492-7185
4/13/05	Electronic Discovery	Noon to 1:00 p.m.	Radisson City Center 411 Minnesota Street St. Paul	Attorney General’s Office/ Marty Casserly (651) 297-5919
4/20/05	Monthly Luncheon – Judge John Tunheim	Noon to 1:15 p.m.	Walker Room Palomino Club Minneapolis	Federal Bar Association/ Laura Mitchell (612) 492-7185
5/11/05	Civil Sex Offender Laws	10:00 a.m. to Noon	Radisson City Center 411 Minnesota Street St. Paul	Attorney General’s Office/ Marty Casserly (651) 297-5919
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

## Upcoming CLE Seminars Continued

<b>Date</b>	<b>Seminar</b>	<b>Time</b>	<b>Place</b>	<b>Sponsor/Contact</b>
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
6/10/05	Environmental/Agricultural Issues	All day	To be announced	Attorney General's Office/ Marty Casserly (651) 297-5919
<i>To include a notice of an upcoming CLE in the next issue, contact Mary Miller 651/284-5306</i>				

## Keep These Dates Open for Upcoming Public Law Section Events

<b>Date</b>	<b>Topic</b>	<b>Location</b>	<b>Credits</b>	<b>Sponsor(s)</b>
May 13, 2005	PLS Annual Meeting, Awards and CLE to be announced	Bandana Square- Mintahoe Center	6	MSBA PLS
June 16, 2005	MSBA Convention CLE, to be announced, in the afternoon	Madden's, Brainerd	3	MSBA PLS

# 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
04-046	7/12/04	ISD #832	Disclosure of name of parent/child in conjunction with their complaint - and to whom.	"X"
04-047	7/22/04	Minneapolis Park and Recreation Board	Complaint/charge and disciplinary action concerning "x" employee; Meaning of "status".	"X"
04-048	7/29/04	Department of Revenue	Use of social security number; Tennesen warning.	Vomhof
04-049	8/6/04	Red River Watershed Management Board	Adoption of public access procedures.	Stengrim
04-050	8/12/04	Minnesota Board of Water	Request to inspect v. fee. and Soil Resources	Stengrim
04-051	8/18/04	Middle-Snake-Tamarac Rivers Watershed District	Use of a tape recorder in viewing session.	Stengrim and Dietrich
04-052	8/18/04	Hennepin County Children Family and Adult Services Department	Data challenge.	Mr. & Mrs. "X"
04-053	8/25/04	Benton County Recorder	Charges for copies.	<u>St. Cloud Times</u> , Scott
04-054	8/25/04	Benton County Auditor/ Treasurer	Charge for computer printout.	<u>St. Cloud Times</u> , Scott
04-055	8/25/04	Todd County	Charge for copying and faxing-rate.	<u>St. Cloud Times</u> , Knaak
04-056	8/26/04	Todd County	Charge for copies; collect payment and issue receipt.	<u>St. Cloud Times</u> , Aeikens
04-057	8/31/04	Cannon Falls Township	Open Meeting Law: notice/posting of meeting - moved regular meetings and special meetings. Obligation to make and preserve records.	Brown and Banks
04-058	9/13/04	City of Warren	Public access procedure; fee.	Elseth
04-059	9/16/004	Eagan – Charter Commission	Data practices access procedures – Official Records Act. Interrelationship of government entities.	Bakken
04-060	9/16/04	ISD #833	All legal data documenting all legal fees and expenses pertaining to X's child.	"X"
04-061	10/8/04	City of Warren	Timeliness of response to request.	Elseth

# Department Of Administration

## Data Practices Opinions Index Continued

No. of Opinion	Date of Opinion	Gov't Entity Involved	Topic	Opinion Requestor
04-062	10/13/04	Department of Education	Any special education fiscal complaints against ISD 832... and responses/corrective action; redaction.	Pachl
04-063	10/15/04	City of Richfield	Radio log for a specific case #, criminal record check log, and audio & video recording inventory log; General Records Retention Schedule for Minnesota Cities.	"X"
04-064	10/15/04	ISD #276	Existence and status of complaints against a Board member.	Slowter
04-065	10/18/04	ISD #832	Information designated as directory information by the school board.	Wachlarowicz
04-066	10/20/04	City of Warren	Public access procedures; resolution adopting policy; public hearing record; responsible authority and date of appointment. Seeking clarification.	Elseth
04-067	10/20/04	Gary L Fischler and Associates/Department of Employment and Economic Development	Release of private data/ authorization.	"X"
04-068	10/21/04	ISD #832	X's child's special education records.	"X"
04-069	10/28/04	Lake County Sheriff's Office	Criminal active investigative material.	Lake County/Conrow
04-070	10/29/04	Hennepin County	Developmental disability data related to X's child as listed; data used in calculating fee.	"X"
04-071	11/3/04	Department of Commerce/ Minnesota Joint Underwriting Association	Names and addresses of policyholders-individual v. other entities; laws concerning.	Bjorkman
04-072	11/3/04	Department of Corrections	Charge for programming and copy; review of request and verifying accuracy.	<u>Saint Paul Pioneer Press</u> , Roberts
04/073	11/12/04	Middle-Snake-Tamarac Rivers Watershed District	Removal of a water main – data involved.	Wesolowski
04-074	11/12/04	Middle-Snake-Tamarac Rivers Watershed District	The source of funds paid out in attorneys fees; checks from U.S. Treasury; purchase club membership.	Wesolowski
04/075	11/28/04	Department of Human Services	Day care provider licensing complaint where no corrective/ enforcement action taken.	Washington County/ Hodsdon
04-076	11/29/04	Middle-Snake-Tamarac Rivers Watershed District	Data on velocity/volume measurements of river near bridge.	Wesolowski
04-077	11/29/04	City of St. Paul	Sites enhanced by STAR grant funding.	<u>Saint Paul Pioneer Press</u> , Coleman

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