

MSBA PROBATE & TRUST LAW SECTION E-NEWSLETTER

January 2020

Call for Submissions

We are always looking for attorneys to write brief articles for this newsletter. Articles can focus on any issues relevant to probate and trust law. This newsletter is distributed to the Probate and Trust Law Section membership, which consists of approximately 1,054 practitioners. Writing for the newsletter is a great way to share your knowledge and expertise with your colleagues.

If you are interested in submitting an article, please contact Kiley Henry (KEH1@ntrs.com) or Jennifer Colich (colich.jennifer@dorsey.com) with your idea.

Please visit the Section's website for ideas and to see the various articles that have been written in the past.

Best Regards,
Kiley Henry & Jennifer Colich
Probate & Trust Newsletter Editors

Upcoming Events and CLE Programs

- **Greater MN Probate & Trust Study Group Conference Call**
 - Wednesday, February 19, 2020 at 9:00 a.m. (the 3rd Wednesday of every month)
 - Call-in Number: (877) 226-9607 passcode: 9295091072
 - Contact Patrick Lowther (pat@lawmanpal.com) with any questions or to join the group

- **MSBA Probate & Trust Law Section Meeting**
 - February 20, 2020 at 3:30 p.m.
 - Location: MSBA Office in City Center, Minneapolis

- **CLEs**
 - MinnesotaCLE, January 29, 2020: [10 Best Practices for Managing Employees with Mental Health Conditions](#)
 - HCBA, January 30, 2020: [Get Your Bounce Back: Using Resiliency to Build Your Fitness to Practice](#)
 - MSBA, January 31, 2020: [One Profession - Third Judicial District](#)
 - MinnesotaCLE, February 3, 2020: [A Lawyer's Guide to Alzheimer's and Dementia](#)
 - MinnesotaCLE, February 6, 2020: [How to Better Manage Your Workload and Your Time \(and Escape Inefficiencies\)](#)

- MinnesotaCLE, February 7, 2020: [Legal Ethics 2020: Case Developments and Hot Topics](#)
- MSBA, February 11, 2020: [10 Advanced Trust Accounting Concepts and Challenges](#)
- MSBA, February 11, 2020: [Accounting for Law Firms in 2020](#)
- MSBA, February 14, 2020: [The Law and Legislation](#)
- RCBA, February 20, 2020: [New Lawyers Section: That's Why They Call it Practicing Law](#)
- RCBA, February 20, 2020: [RCBA Happy Hour Hosted by New Lawyers](#)
- MinnesotaCLE, February 21, 2020: [The Estate Planning, Probate & Trust Law 50](#)
- MSBA, February 26, 2020: [How To Grow Your Professional Network](#)
- RCBA, February 27, 2020: [Small Firm's Practical Guide to Hiring Support Staff](#)
- MinnesotaCLE, March 2, 2020: [Tax Planning and Pitfalls for Advising Business Clients](#)
- HCBA, March 5, 2020: [HCBF Bar Benefit 2020](#)
- MSBA, March 10, 2020: [How to grow your law firm through ethical legal marketing](#)

New Timing Rules: Minnesota Rules of Civil Procedure, Minnesota Rules of Civil Appellate Procedure, and Minnesota General Rules of Practice

By: Kristin Helmers, Mason & Helmers

The Minnesota Supreme Court has promulgated significant amendments to the timing rules in the Minnesota Rules of Civil Procedure, the Minnesota General Rules of Practice, and the Minnesota Rules of Civil Appellate Procedure, effective January 1, 2020. The changes shift most deadlines under these rules to a 28-21-14-7 day system and simplify the counting of deadlines. While the changes predominantly affect litigation practitioners, who should pay careful attention to the changes to pleading and motion timelines, there were also some minor changes to Minnesota General Rules of Practice Probate Rules 410 (on transfer of real estate), 416 (on court visitors in guardianship and conservatorship proceedings), and 418 (on deposit of wills).

For a more thorough discussion of the changes, please see the following article by the Hon. Eric Hylden, Michael B. Johnson and David F. Herr:

<https://www.mnbar.org/msba-home/msba-news/2019/10/02/minnesota-adopts-new-timing-rules>

Benefit Corporations: A Middle Ground Between Profit-Maximizing Corporations and Community-Serving Nonprofit Entities

By: Beth T. Morrison, Lathrop GPM

Benefit corporations and B corporations appeal to companies looking to distinguish themselves as businesses with a social conscience, balancing profit and purpose. There is growing evidence that what is good for society is also good for business. Some brands have joined the movement taking

note that millennials, the largest retail demographic, prefer to take their business to values-driven companies. Although benefit corporations respond to consumers' disenchantment of “big business” and attract shareholders who value social responsibility more than short-term gains, it raises questions regarding benefit enforcement.

Although the Minnesota Public Benefit Corporation Act (the “Benefit Corporation Act”) states that the director of a benefit corporation “may not give regular, presumptive, or permanent priority to the pecuniary interests of the shareholders or any other interest or consideration unless the articles identify the interest or consideration as having a priority,” the Statute provides no direction to directors regarding how to prioritize between the various stakeholder considerations before them.¹ Shareholders and nonprofit constituents who would profit from a benefit corporation often have divergent or even conflicting interests. As a for profit organization, many corporations may be apprehensive to apply for benefit corporation status if the director were compelled to prioritize a public benefit over the growth and prosperity of the business. Under the current Benefit Corporation Act, the director need not slow the trajectory of the company to capitalize on its contribution to the community.

In a typical corporation, directors are held accountable in two ways: (1) for-profit corporation directors can be sued by the shareholders; and (2) nonprofit corporations directors are held accountable through legal actions brought by a state attorney general.² The Benefit Corporation Act only gives the shareholders, who may value their own monetary gain over the stated mission of the benefit corporation, standing to assert a claim for a director’s failure to pursue or create a public benefit.³ Because benefit corporations are for-profit entities and do not receive any unique tax advantages, it is unlikely that the state attorney general would have any power to intervene in a benefit corporation’s internal affairs.⁴

Although a public benefit corporation is required to file an annual benefit report in Minnesota citing its contributions to society throughout the year, it is not required to have its annual benefit report audited, certified, or otherwise evaluated by a third party.⁵ The current structure balances a director’s need for discretion in corporate decision making and a shareholder’s desire to achieve a profit with the benefit corporation’s designated public interest. In the foreseeable future, nonprofit organizations may take issue with benefit corporations reaping the public relations benefits of touting their progressive social and environmental contributions with little accountability. But, as long as nonshareholder constituents are denied standing to enforce the creation of a public benefit, public benefit corporation designations will continue to add value to companies looking to attract socially conscious employees and customers with little added risk to the directors.

¹ Minn Stat. 304A.201

² Minn. Stat. 317A.813

³ Minn Stat. 304A.201

⁴ Dana Brakman Reiser, *Regulating Social Enterprise*, 14 U.C. Davis Bus. L.J. 231, 240 (2014).

⁵ Minn. Stat. 304A.301

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