

▲ **Medicare Set-Asides**

Federal legislation signed into law on December 29, 2007, imposes additional notice requirements for liability insurers, including self-insurers, no-fault insurers and workers compensation insurers. One of the primary purposes of this amendment is to increase the amount of money that Medicare is able to recover under the Medicare Secondary Payer Act. (See 42 U.S.C. 1395y(b)).

Beginning on July 1, 2009, all liability insurers will be required to determine the Medicare/Medicaid entitlement status for all claimants (including those whose claim is unresolved). If a claimant is entitled to benefits on any basis, the insurer *must* within a time certain provide the Centers for Medicare and Medicaid Services ("CMS"), with that individual's identity and any other information as may be required by the secretary of health and human services. There is no deference given to whether liability has been determined or admitted. The secretary will use the information obtained to coordinate the Medicare benefits for the claimants and determine whether Medicare has made any conditional payments for Medicare beneficiaries and, if so, to recover the money paid.

Failure to comply with the notification requirements may result in a civil penalty. This right of recovery stands against the tortfeasor or its carrier regardless of whether the claimant has received the full settlement funds.

Many unanswered questions about the implementation of this provision remain; however, it is abundantly clear that Medicare will now receive notice of every single claimant beneficiary who files a claim.

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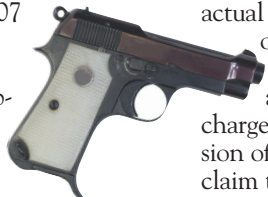
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▼ **Felon-in-Possession**

Both federal and state criminal laws forbid certain individuals from possessing firearms if they previously have been convicted of certain crimes. The 8th Circuit Court of Appeals and Minnesota Court of Appeals recently ruled upon four such cases, in each case upholding the convictions. See, e.g., *U.S. v. Radash*, 490 F.3d 612 (8th Cir. 2007); *State v. Soderbeck*, 2007 WL 2600845 (Minn. App. 2007) (unpublished).

But the federal and state laws differ. The federal law, 18 U.S. §921, extends to a variety of



specified statutes, including a catch-all measure covering illegal "business practices," which has been interpreted broadly. *U.S. v. Stanko*, 491 F.3d 408 (8th Cir. 2007).

Under Minnesota law, Minn. Stat. §624.713, subd. 1(b), those convicted of a "crime of violence" are barred from future firearm possession. Prosecutors need to establish the prior offense, that it falls within a prohibited category, and that the defendant had actual constructive possession of a firearm. There are a number of defenses available to those charged with felon-in-possession offenses. They include a claim that the defendant did not possess a firearm and that the prior offenses do not fall within the proscribed cate-

gories. But the expiration of the sentence for the prior offense, including completion of probation, does not constitute a defense. *State v. Paulitschek*, 2007 WL 2472074 (Minn. App. 2007) (unpublished).

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▲ **Noncompetes & Trade Secrets**

Noncompete agreements are generally enforceable under Minnesota law if a potential employee is told when a job offer is made that a noncompete agreement is required as a condition of employment; and the employee signs the agreement on or before the first day of employment. But even the departing employee who manages to avoid the strictures of a non-compete agreement may run afoul of the Minnesota Trade Secrets Act if he's careless in handling the employer's property. Such was the lot of Par Ridder, former publisher of the *Pioneer Press*, who went to work for the rival *Star Tribune*

when his paper was sold. Ridder signed a noncompete agreement *after* he started work at the *Pioneer Press* but apparently was not told it was a condition of his employment; thus, the district court held it couldn't be enforced against him if he later breached its terms. Ridder's mistake lay in taking his laptop computer with him when he left the *Pioneer Press*. The court concluded the computer contained confidential information of the *Pioneer Press* and that Ridder shared that information with employees at the *Star Tribune*. Therefore, while he avoided the reach of the defective noncompete agreement, he tripped over the Trade Secrets



Act. The moral? If you are a Minnesota employer that wants enforceable noncompetes, tell new employees when you offer the job that a noncompete is required, and have the employee sign it before they start work. And if you are an employee leaving employment, make sure you leave everything at your former employer, including the pencils.

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▼ **Who Owns the File?**

Attorney case files are considered property of the client, not the attorney. Therefore, a donation of such client files to a charitable organization will not afford the attorney-taxpayer a charitable income tax deduction. Even if the case files were considered attorney work-product they would be "ordinary income property" under Code Sec. 170(e), so the charitable deduction would be limited to the taxpayer's income tax basis, which in most cases is zero. This was the result in the recent Tax Court case involving the donation of client files and materials to the University of Texas at Austin by Leslie Stephen Jones, one-time lead trial attorney for convicted and executed Oklahoma City bomber Timothy McVeigh. *Jones v. Comr*, 129 T.C. No. 16 (11/1/07).

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