

Hearsay

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If you have questions about the newsletter, or would like to submit an article for a future issue, please contact one of the co-editors.

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Greetings From The Chair

By: S. Jamal Faleel

We've accomplished a lot as we enter the second half of the bar year, but there's plenty more to be done. Here are a few highlights from the last few months and a preview of upcoming events:

Toys for Tots

For the first time in recent memory, the New Lawyers Sections of the Minnesota State and Hennepin County Bar Associations conducted a joint fundraising event to benefit Toys for Tots at Infinity Lounge at the Graves 601 Hotel on December 7, 2006.

The event raised over \$3,000 and generated 125 toys for disadvantaged kids throughout the Twin Cities. The checks, cash, and toys were presented to Toys for Tots at the KARE 11 studio during a news telecast the day after the event. MSBA and HCBA NLS members solicited support from the bar in two ways. First, a group of MSBA and HCBA NLS members called dozens of local law firms to encourage donations to Toys for Tots. Several law firms donated \$250 to the cause. Additionally, each of the guests at the event brought a new toy or made a \$10 donation to Toys for Tots. We then arranged the airtime and trip to the KARE 11 studio, and several fully loaded SUVs and vans navigated rush-hour traffic in time to meet a representative of Toys for Tots, who was on hand at the studio to accept the checks and toys.

Toys for Tots, which is operated by the United States Marine Corps Reserves, began in Los Angeles in 1947, and became a nationwide program in 1996. Since its inception, the program has distributed more than 332.5 million toys to 158.7 million needy children, and received countless accolades as a leading philanthropic organization. Accordingly, as the MSBA New Lawyers Section did last year, both the County and State New Lawyers Sections made Toys for Tots the object of their charity this year at their holiday social events.

Thanks to everyone who attended and donated to this worthy cause. A special thanks to Deanna Dailey, Christina Webber and Kathryn Gettman for all their hard work on behalf of the MSBA-NLS. And thanks also to our joint sponsors the HCBA-NLS, and in particular, Elizabeth Larsen, Nick Furia, and Tiffany Quick, who worked extremely hard to make sure this event was a success. Because of the success of this event, the New Lawyers Sections hope to conduct similar joint charity events in the future.

CLEs

We continue to offer free hour-long CLEs just before our monthly section meetings. So far, we have offered CLEs on "Ethics and Professionalism in the Law" and "The New Rule 26 and E-Discovery." We will be offering another hour-long CLE on February 15, 2006, where a panel of state and federal judicial clerks will provide useful tips and information for lawyers appearing before their respective judges.

Choose Law Program

We are in the process of contacting local high schools to implement the ABA Young Lawyers Division 2006-07 pipeline project designed for high school students of color: "Choose Law: A Profession for All." Choose Law encourages individuals of color to become attorneys through use of a new video, a written guide, a website, attorney volunteers and educators. Through Choose Law, students learn about the importance of the legal profession and how the law affects all aspects of their lives. Although Choose Law is primarily directed at students of color, its message about the importance of the legal profession and of overcoming obstacles and pursuing an education is appropriate for everyone. We will provide more information about this program and how you can help in the upcoming weeks.

You can visit the New Lawyers Section's website to stay apprised of upcoming programs, projects, and events. As always, the Section wishes to provide its members with services that are relevant to their professional needs. I encourage each of you to participate in the Section in some way this year, by attending meetings, volunteering to serve on a committee, volunteering to help with a community service project, or attending a CLE. Watch for opportunities and announcements in Bench and Bar or on the MSBA website.

Our meetings are held every third Thursday of the month at 5:30 p.m. at the MSBA offices in Minneapolis. Hope to see you all there!

Jamal Faleel is the chair of the MSBA New Lawyers Section. He can be reached at jfaleel@fredlaw.com.

Blogs: A New Medium for Defamation

By: Shawn L. Pearson

The internet has become an integral medium of communication and self-expression. Online media sources increasingly compete with print media due to the electronic power to transfer information to hundreds of thousands of people in mere seconds. The benefits of such immediate access to information are myriad, yet the speed with which news stories and other information is disseminated may create potential liabilities for those, including seasoned journalists, who accidentally or intentionally publish inaccurate or false statements.

“Web Logs,” or “Blogs” as they are known, are the Town Hall message boards of the new millennium. A blog is an online message board on which computer users post comments discussing specified topic areas. Blogs can be informal and open to the public, or can be highly specialized and limited to a specific group of participants. As a result, the quality of blog information content and sophistication varies widely, prompting some publications to compile “Best Blogs” lists.¹ Through “blogging,” the internet has become a powerful marketplace of ideas and opinions, rants and raves, critique and compliment and, unfortunately, false statements that may cause harm to people or businesses.

Written defamation, or libel, is the publication of a false statement of fact that results in harm or damage.² Statements of opinion cannot constitute defamation, and truth is a complete defense to allegations of defamation.³ In the eyes of the law, public figures are given less protection from such type of gossip and rumor, requiring a showing of malice before a lawsuit may proceed to trial.⁴ Also, Minnesota law requires that in order to recover certain damages through a lawsuit, the defamed party (except where unchastity is imputed to a plaintiff) must unsuccessfully demand a retraction.⁵ As “bloggers” often communicate anonymously through screen names or pseudonyms, satisfying this requirement may necessitate using a blog website to demand retraction and carries the potential to bring increased publicity to legal disputes that normally could be resolved through private negotiations. Clearly, libel claims are no longer limited to traditional print media.

In order to reduce the risk of civil defamation liability for internet service providers and others’ use of electronic communication, Congress passed the Communications Decency Act (CDA) as

part of the Telecommunications Act of 1996. In 1997, the Supreme Court struck down the CDA’s regulations on obscenity as unconstitutional, *Reno v. ACLU*, 521 U.S. 844 (1997), but left intact Title V of the CDA, which purports to immunize internet service providers and internet users from liability for content that was provided by another source. Specifically, the CDA states that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”⁶ Thus, under the CDA, a re-publisher of false information arguably has a defense to a defamation claim. This significantly differs from traditional common law defamation in that re-publishers of false information can be held liable. Because this provision is largely untested, for now, bloggers should use discretion in their posts and online communications.

Notwithstanding section 230 of the CDA, companies that permit their employees to use internet portals may be at risk for being unwitting participants to a defamation lawsuit. As computers are integral tools for most employees’ jobs, blogging at work (and particularly on the subject of one’s own work environment) is becoming increasingly popular. Because section 230 has not been interpreted by Minnesota courts as to what type of entity is a “publisher,” employers should adopt policies that prohibit blogging using company-owned internet connections. Aside from the potential liability associated with murky statutory interpretation, blogging also presents potential risks as to intellectual property and security for companies whose trade secrets, inventions, or client lists derive independent economic value.⁷ Companies have little incentive to permit blogging at work.

Through the use of blogs, the risk of committing defamation via electronic media is higher now than it was through the use of simple e-mail. Posting statements to a blog permits the entire internet community to read statements and assess them for veracity. Yet, defamation defendants have succeeded in the scant number of reported blog defamation cases.⁸ Such cases highlight many courts’ inclination to permit the free exchange of ideas and opinions and, in the case of *bona fide* journalists, protect confidential sources of information. The Minnesota Free Flow of Information Act (FFIA)⁹ generally protects a journalist from

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¹ See <http://www.forbes.com/lists/2003/04/14/bestblogslander.html>; <http://www.washingtonpost.com/wp-adv/market-ing/blog/>; <http://www.time.com/time/business/article/0,8599,1072872,00.html>

² *Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 255 (Minn. 1980).

³ *Id.*

⁴ *Jadwin v. Minneapolis Star & Tribune Co.*, 367 N.W.2d 476, 480 (Minn. 1985) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 283-86 (1964)).

⁵ See Minn. Stat. § 548.06.

⁶ See 47 U.S.C. § 230(c)(1).

⁷ See generally *Olson v. Int’l Bus. Machs.*, No. 05-118, 2006 WL 503291 (D. Minn. Mar. 1, 2006) (in discrimination suit, company alleged that it terminated employee for writing unflattering statements about a company client in a blog posting).

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being compelled to reveal confidential sources. However, the FFIA also removes such protection “where the person seeking disclosure can demonstrate that the identity of the source will lead to relevant evidence on the issue of actual malice.”¹⁰ Minnesota courts have yet to consider the issue of whether bloggers are protected by the FFIA. The FFIA does appear to contemplate that “news media” be given certain protections and for the purposes of the Act, a “person who is or has been directly engaged in the gathering, procuring, compiling, editing, or publishing of information for the purpose of transmission, dissemination or publication to the public” can claim protection for compelled disclosure of confidential sources.¹¹ Minnesota court opinions provide some guidance as to who is a journalist for purposes of the Act.¹² For now, a review of relevant cases suggests that the FFIA applies to traditional print media sources, including high school newspapers, but self-proclaimed internet journalists will face closer scrutiny in the courts.

In 1927, United States Supreme Court Justice Brandeis asserted that in the face of offensive political speech, “the remedy to be applied is more speech, not enforced silence.” See *Whitney v. California*, 274 U.S. 357, 377 (1927). In overturning *Whitney*, the

Supreme Court’s holding in *Brandenburg v. Ohio*, 395 U.S. 444 (1969) (speech dedicated to inciting violence is not protected), confirms that harmful speech has little value in a free society. Blog content and the responsibility associated with posting factual information differs little from traditional media. Also, blogging offers a false promise of anonymity because electronic forensics methods permit the discovery of a blog author’s identity.

As courts become more sophisticated as to new methods of communication, it is likely that the same basic principles of defamation law will prevail. Truth will always remain a complete defense to defamation claims. At present, the reach of common law defamation to blogs is uncertain. What is clear, however, is that the internet continues to provide a parallel “virtual” world in which traditional concepts of liability will be challenged and litigated.

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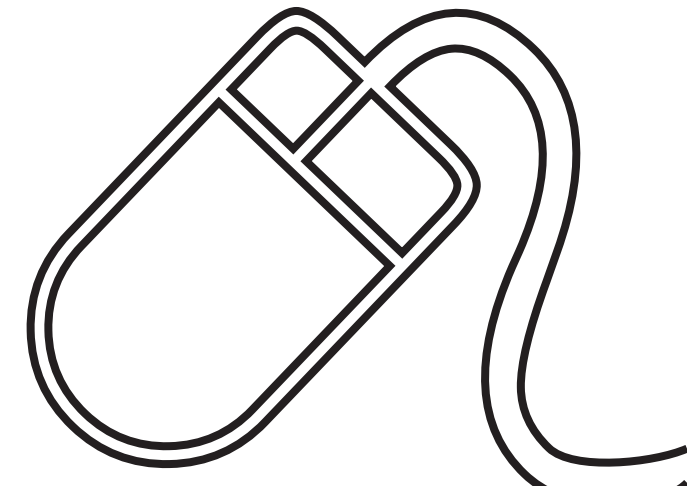
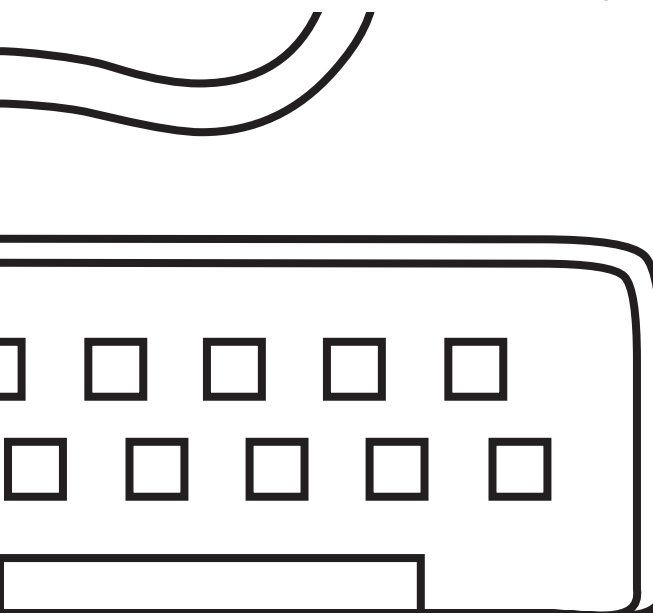
⁸ See *O’Grady v. Superior Court*, 44 Cal. Rptr. 3d 72 (Cal. Ct. App. 2006) (in trade secret case, court refused to compel blogger to reveal sources where web log was dedicated to publishing news about computer software); *Dimeo v. Max*, 433 F. Supp. 2d 523 (E.D. Pa. 2006) (CDA barred defamation claim brought by celebrity who sued proprietor of internet web site, stemming from online publication of allegedly slanderous statements); *Doe v. Cabill*, 884 A.2d 451 (Del. Super. Ct. 2005) (appeals court reversed order requiring internet service provider to disclose identity of anonymous defendant where statements at issue could not be capable of defamatory meaning); see also *Dennis v. Coventry Local Sch. Dist. Bd. of Educ.*, No. 22913, 2006 WL 1540840 (Ohio Ct. App. June 7, 2006) (slander per se claim dismissed due to failure to provide evidence of defamation).

⁹ Minn. Stat. § 595.021, *et seq.*

¹⁰ See Minn. Stat. § 595.025, subd. 1.

¹¹ See Minn. Stat. § 595.023.

¹² Compare *Workman v. Serrano*, 2006 WL 771580 (Minn. Ct. App. March 28, 2006) (upholding jury verdict finding that a county commissioner had been defamed by local newspaper’s editorial); *Weinberger v. Maplewood Review*, 668 N.W.2d 667 (Minn. 2003) (compelling disclosure of confidential sources involving a high school newspaper); *Bauer v. Gannett Co., Inc. (Kare 11)*, 557 N.W.2d 608 (Minn. Ct. App. 1997), *rev’d by Weinberger, with Faegre & Benson, LLP v. Purdy*, 367 F. Supp. 2d 1238 (D. Minn. 2005) (civil contempt fines exceeding \$106,000 issued against individual who ran web sites designed to be identical to Plaintiff law firm’s web site, but whose content criticized firm’s alleged support of abortion and contained graphic photographs of aborted fetuses).



Client Counseling in a Multicultural Environment: Integrating Minnesota's Rich Tapestry of Diversity Into Your Legal Practice

By: Artika Tyner

We all should know that diversity makes for a rich tapestry and we must understand that all the threads of the tapestry are equal in value no matter what their color. – *Maya Angelou*

Minnesota is evolving into a “rich tapestry” with threads representing every ethnicity. Minnesota is characterized as having “the fastest growing population in the Midwest,” which includes the largest Hmong, Somali and Liberian communities in the United States.¹ Based upon these demographics, Minnesota attorneys must be prepared to serve a diverse community. The presence of this diversity can create an enriching experience for attorneys to explore various cultural practices and respect cultural differences, while meeting their client's needs. In order to partake in this exchange, attorneys must gain the tools that will enable them to effectively counsel clients from diverse cultural backgrounds in a culturally competent manner.

Using an Ethnographic Approach as a Tool for Serving Diverse Communities

Attorneys can effectively serve diverse populations through the application of an Ethnographic framework. The Ethnographic approach (which is derived from the ethnos, which means nation and graphein, which means writing) requires attorneys to study and learn about other cultural groups. Through this approach, attorneys can gain knowledge of cultural practices and build rapport with their clients. Attorneys should be mindful of each client's background and gain cultural competence by:²

Assuming nothing about a client's background

Assumptions can create a communication barrier and destroy the attorney-client relationship. Attorneys should express a willingness to learn from their clients about their heritage. Also, attorneys should ask questions regarding specific practices, behaviors, or perspectives of the client in order to honor and respect the client's cultural background.

Seeking out cultural experiences and sharing personal experiences with members of various cultural groups

Minnesota offers a vast array of cultural exploration opportunities, whether it be visiting the Anthropology Hall at the Sci-

ence Museum of Minnesota or exploring the Midtown Global Market. These opportunities extend across the Twin Cities and enable attorneys to establish community ties. Each experience will demonstrate the attorney's investment in the community and desire to create a multicultural Minnesota.

In addition, attorneys can share personal experiences with clients during the rapport building process. This is a natural process so long as attorneys see themselves as “helping people rather than treating legal problems.”³ Each client interaction will then become an opportunity to share life experiences and discover ways to help the client reach his or her goals. Through this process, attorneys will honor the client's autonomy while exercising zealous advocacy.

Explaining the need for any and all information requested and, if possible, delay asking the most personal questions until the client feels comfortable and has had sufficient time to understand the nature of the questions

Attorneys can build rapport by educating their clients about the legal process during the client interviewing sessions. For instance, in family law matters, attorneys should begin by trying to understand the family structure and dynamics before offering recommendations on a course of action. In addition, when seeking personal information, such as immigration status, criminal background or paternity, clients should be educated on the necessity of the information and reminded of the confidential nature of attorney-client communications.⁴

Acknowledging the legacy and presence of cultural and racial bigotry and prejudice in the United States

American history is plagued by racial disharmony and intolerance of diversity. This is evidenced in case law related to America's concentration camps in *Korematsu v. United States*⁵ and efforts to end school desegregation in *Brown v. Board of Educ-*

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¹ University of Minnesota College of Education and Human Development, *Minnesota – A Great Place to Live, Demographics of Diversity*, <http://www.education.umn.edu/MN/diversity.html>.

² Adapted from *Understanding Families Through Culture*, <http://tinyurl.com/2hqbyn>.

³ Kenney Hegland, *Trial and Clinical Skills* 266 (2005).

⁴ Minn. Rules of Prof'l Conduct R. 1.6

⁵ 323 U.S. 214 (1944).

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ation.⁶ Our society has made significant strides in remedying past discriminatory practices, but the seeds of discord are still present. The legacy of discriminatory practices in America may cause clients to be skeptical of the judicial system and reluctant to participate in the system due to doubts that their voices will be heard. Attorneys can overcome these characterizations of our judicial system by engaging in a more honest dialogue with clients about racial tensions and navigating collaboratively through the “treacherous terrain” of our historical past.⁷

The Benefits of Cultural Competence in the Context of the Attorney-Client Relationship

The benefits of cultural competence are endless. Client and attorney experiences will be enhanced through the cultural exchange. The following benefits will be derived from an attorney’s ability to integrate cultural competency in their practice:⁸

- Building confidence
- Breaking down barriers
- Building trust
- Motivating

- Broadening of horizons
- Developing listening skills
- Discovering and using common ground

Conclusion

As Minnesota’s “rich tapestry” continues to evolve into a multicultural masterpiece, attorneys must be prepared to meet the needs of Minnesota’s diverse community. Attorneys will be challenged to explore cultural differences and discover methods to build cultural bridges. Both attorneys and clients will benefit through this cultural sharing experience. Attorneys will be able to more effectively represent clients, and clients will feel more confident that their legal needs have been met in a competent manner.

Artika Tyner is a Clinical Law Fellow in the Family Law practice group at the University of Saint Thomas School of Law Interprofessional Center. She has demonstrated her commitment to the furtherance of public service and social justice by volunteering with domestic violence coalitions and local nonprofit organizations, mentoring at-risk youth, and advocating for legislative reform. She can be reached at artyner@stthomas.edu or (651) 962-4960.

⁶ 349 U.S. 294 (1955).

⁷ Dottie Blais, *Teaching Tolerance*, in *Ivory Tower* 22 (Fall 2006).

⁸ Adapted from *Cross Cultural Competence Training*, <http://www.kwintessential.co.uk/cross-cultural/competence-training.html>.

Efficiency Matters - Using Topic Review Technology in Document Review

By: Rhea Frederick

Introduction

“Efficiency matters” and “we need more value for the amount of money we’re spending.” According to a recent survey by Fulbright & Jaworski, these two comments were a common remark among the 422 senior corporate counsel surveyed.¹

It is no surprise that many corporations are demanding increased efficiency of their legal teams and seeking more value for the money they are spending on litigation -- especially when it comes to discovery. Discovery has gone through many changes over the past decade. Gone are the days when the review process was synonymous with warehouses full of paper documents. Today litigation teams are tasked with responding to changes in corporate document creation and retention practices by living in the “e-era” -- collecting, searching, reviewing and producing documents electronically. In addition, the volume of electronically stored information subject to discovery dwarfs the largest

hardcopy discovery productions of the past. While many law firms and the corporations they represent have been faced with e-discovery for several years, best practices still are developing, the technology is evolving, and challenges abound when litigation costs outpace corporate budgets.

Technology savvy attorneys already know that leveraging new technical developments is one method to increase efficiency. Manual document review no longer is a viable method for preparing a production. Instead, highly automated filtering and searching paradigms, along with web-based document review databases, are essential parts of any e-discovery exercise today.

The newest enhancement to enter the document review landscape is topic review. Topic review is being incorporated in the review process to help legal teams better understand

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¹ <http://www.fulbright.com/index.cfm?fuseaction=correspondence.formfindings>

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the topics and themes involved in the case long before any document is viewed in detail by an attorney. Topic grouping technology uses a mathematical algorithm that analyzes the associations among words and documents, and groups the data into themes. It reads your documents, learns what your data is about and shows you what themes it has uncovered.

This article addresses the importance of reviewing discovery documents using topic review technology, with the objective of addressing the following questions:

- How does topic review compare to custodian review?
- What are the advantages?
- How can lawyers and litigation support professionals use topic review technology?

Custodian-based Review vs. Topic Review

Custodian-based Review

A custodian-based workflow exercises the theory that a legal team can effectively categorize and analyze documents with a similar context – the ownership of the document. Traditionally, this is how most review teams have chosen to review their documents. In fact, prior to the development of topic review technologies, most review tool features and functionality were designed to improve the speed and efficiency of custodian reviews. Typically, custodian-based review features include:

- *Keyword Searching* – identifies documents that contain keywords or eliminates documents in the filtering stage that do not record keyword hits
- *Subject Matching* – gathers e-mails with the same or similar subject lines
- *Conversation Tracking* – locates the rest of the conversation surrounding an interesting document
- *Concept Searching* – identifies word patterns and occurrences

However, each of these technologies has drawbacks that limit their effectiveness in legal document review. For example, keyword searching can be both under-inclusive and over-exclusive and does not account for human error in developing a keyword list. Subject matching does not account for situations where the subject line is altered, so an e-mail may be overlooked. Conversation tracking is dependent upon locating an initial interesting email that can start the conversation analysis. Concept searching requires the search to be “seeded” with the entry of a search term around which to build the concept search.

While valuable to the review team, the techniques described above depend on input by the reviewer and a matching of words to the search parameters entered. Topic-based review, on the other hand, starts before reviewers even log into the system.

Topic-based Review

Using technology that “understands” documents and other data according to conceptual meaning, the online repository

tool organizes the data set into orderly groups according to intuitive topics and subtopics. These themes are then presented to the review team in the tool’s interface. In practice, attorneys will likely analyze these themes at the outset of a review to determine how to assign the work based on topics and/or custodians. Once assigned, reviewers will proceed through their documents to determine responsiveness and privilege, make redactions, and further analyze the data while bearing in mind the themes that link their documents together.

Combining Custodian and Topic Review

Every case demands its own review strategy, and every case team has its own way of analyzing and reviewing data. The best review tool will allow you the flexibility of choosing custodian review or topic review, or combining the two. Combining the two methods allows you to assign data by custodian while also grouping the data within the custodian by theme, thus providing the benefits of topic grouping while at the same time making sure reviewers get through the priority custodians’ documents first.

Benefits of Topic Review

Topic review offers many benefits to review teams, including time and cost savings. Knowing that the documents in topic folders are similar allows you to categorize them faster, decrease review time and lower the overall costs of e-discovery. It also encourages greater accuracy of review and provides an additional way to control the quality of your work. Users of topic review have cited the following benefits:

- *Data Assessment* – assists in developing and testing theories of the case
- *Workflow Management* – gives you the ability to assign documents based on topics rather than custodian, if you so choose. You also can assign the important documents to your experts and not bog them down with data that is not likely to be relevant.
- *Prioritization* – allows you to organize the review based upon topic priority and address the important documents first
- *Categorization* – responsiveness and privilege decisions can be made more quickly based on topic; and some data sets can be mass categorized

An example of how topic review can aid in more effectively managing your review is with the assignment of documents. Folders containing privileged topics can be assigned to a designated privilege team while documents containing potentially non-relevant topics can be reviewed by temporary or contract reviewers. While e-mails discussing fantasy football may be important to their authors, a client is not likely to want to pay top dollar to have a senior member of the review team look at these documents. In addition, legal teams can prioritize topic groupings for review to impart an earlier understanding of the smoking gun documents to your case team.

Topic review also maximizes the efficiency of reviewers by allowing them to focus on a set of documents all related to a single

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subject matter. Reviewers can identify patterns and relationships within the topic groupings, looking for connections that reveal critical details of the case. On the flip side, an anomaly is more likely to stand out in a group of like themed documents than when hopping from one topic to another. As such, document categorization decisions can be made more quickly, and even some sets of topically related documents can be mass categorized on a whole scale basis. When evaluating large volumes of documents for relevance and responsiveness, topic review ensures consistent treatment of like documents based on patterns and relationships within the topical groupings of data. Ultimately, legal teams employing this technology are able to approach the matter from another angle, with more control, flexibility and functionality at their fingertips.

Conclusion

No longer are online review tools just repositories for your data. The newest discovery technology helps you understand your data by analyzing it before you even review a single document. Legal teams seeking to improve their efficiency and add value certainly will want to consider cutting edge topic review technology in their next document review.

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Minnesota's New Child Support Law: The Basics

By: Allison Maxim and Melissa Chawla

Last spring the Minnesota legislature passed a bill that overhauled the decades-old child support law. As of January 1, 2007, there is a new way to calculate child support in Minnesota. This article provides a basic overview of the new child support statute, Minnesota Statutes Chapter 518A.

Purposes of the New Law

According to the chief author of the bill, Senator Tom Neuville, the primary goal of the new law is to create a more fair and equitable child support guideline.¹ Under the previous version of the statute, only the non-custodial parent's income was considered when calculating child support. In contrast, the new law is based upon an "Income Shares" model followed by a majority of states, which means that child support is determined based upon the income of both parents.

A second goal of the new law is to increase compliance with child support orders.² The underlying idea is that compliance with child support orders will increase if child support obligors feel that the order was calculated in a fair and even-handed manner. The shift to the "Income Shares" approach is the most visible way in which the new law attempts to appear more fair. The new law also incorporates current USDA economic data

of the actual costs to raise children in the state of Minnesota.

A third goal of the law is to provide recognition that both parents incur expenses for the child when the child is in his or her care, which is accomplished by factoring a "parenting expense adjustment" into the child support calculation.³ Other stated goals of the law include simplifying the calculation of child support, and providing greater flexibility in setting child support orders.⁴

Application and Timing of the New Law

The new statute applies to motions and actions filed after January 1, 2007.⁵ This includes motions or actions for past support or reimbursement. Thus, if a child support action filed after January 1, 2007 includes a claim for two years of past support, the amount of past support due will be calculated under the new child support guidelines.⁶

The enforcement provisions of the new law apply to orders in effect prior to January 1, 2007.⁷ For example, if an individual currently has a child support order, the collection mechanisms of the new law apply as of January 1, 2007.

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¹ State Senator Tom Neuville, *The New Income Shares Model for Calculating Child Support in Minnesota*, Family Law Forum, Winter 2006, Volume 15, No.1.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See Minn. Stat. § 518.34, *Historical and Statutory Notes*.

⁶ *Id.*

⁷ *Id.*

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Further, the new law will also be used in joint physical custody situations, and the *Hortis-Valento*⁸ formula currently used, which like the new law contemplates each parent paying support while the other parent has custody of the children, will no longer be needed.

From Basic Support to Child Support and In Between

All new child support orders will contain three separate amounts for each of the following: (1) basic support, (2) child care support, and (3) health care support.⁹

Basic support (what used to be known as “child support”) includes housing, food, clothing, transportation, education costs and other expenses related to the child’s care. The revised statute provides the steps to calculate basic support.¹⁰ The Department of Human Services has also developed a web-based child support calculator that is available online at <http://childsupportcalculator.dhs.state.mn.us/>.

One of the most significant changes in the new law is that the gross income of both parents is included in support calculations and combined to determine the Parental Income Available for Child Support (PICS).¹¹ The PICS amount is important as it is also used to calculate how much each parent shall contribute to child care and health care support.

Other important changes include:

- No deductions are allowed from gross income for retirement contributions.¹²
- Spousal maintenance is income to the recipient for child support purposes and thus, must be determined before child support can be calculated.¹³
- The new statute creates “potential income,” which replaces the concept of imputed income, and applies to both parents – even if one of them is a stay at home parent.¹⁴
- There is a deduction for non-joint children (a child of one, but not both of the parties). The child must live in the parent’s household and the parent must have a legal responsibility to provide for the child. The parent must not pay child support

for the non-joint child. Stepchildren are not considered non-joint children.¹⁵

- A “parenting expense adjustment” applies to the obligor parent if parenting time is between 10% and 45%. This is intended to reflect a presumption that while exercising parenting time, a parent is responsible for and incurs costs of caring for the child. Non-custodial parents get a 12% discount if they care for the children between 10% and 45% of the time.¹⁶
- A Financial Affidavit is now required to help the court decide who must pay support and the amount of support. It must be served and filed with a parent’s initial pleadings or motion documents in all cases where child support must be decided.¹⁷

The statute also includes steps for calculating child care support and medical support.¹⁸ If the custodial parent has child care expenses, then the net child care expense per month – after deducting federal and state child care credits from the custodial parent’s actual cost of child care – is divided between the parents based on the proportionate share of their combined PICS.

There are also significant changes to the medical support provision of the law. It, too, is divided proportionately between the parents, but there are additional provisions detailing how to order and collect insurance coverage and expenses. All support orders must include (1) which parent carries the insurance, (2) the cost of the premium and how the cost is allocated between parents, (3) how un-reimbursed expenses are allocated and collected by the parties, and (4) circumstances under which the obligation to provide coverage shifts to the other party.¹⁹

If appropriate health and dental insurance is available to either parent, then the court will order one parent to carry such insurance for the benefit of the minor child. “Appropriate health care coverage” is described as accessible, comprehensive and affordable, and is explained in detail in the statute.²⁰ The amount of each parent’s medical support obligation is then determined by multiplying the cost of such medical and dental insurance per month by the share of PICS of each parent, and the parent carrying the insurance receives a credit equal to the amount of the other parent’s share. In addition, uninsured medical and dental

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⁸ *Valento v. Valento*, 385 N.W.2d 860 (Minn. Ct. App. 1986); *Hortis v. Hortis*, 367 N.W.2d 633 (Minn. Ct. App. 1985).

⁹ Minn. Stat. § 518A.26, subd. 20.

¹⁰ Minn. Stat. §§ 518A.27-518A.36.

¹¹ Minn. Stat. § 518A.26, subd. 15.

¹² Minn. Stat. § 518A.29(a).

¹³ *Id.*

¹⁴ Minn. Stat. § 518A.32.

¹⁵ Minn. Stat. § 518A.33.

¹⁶ Minn. Stat. § 518A.36.

¹⁷ Minn. Stat. § 518A.28.

¹⁸ See Minn. Stat. §§ 518A.40 & 518A.41, respectively.

¹⁹ Minn. Stat. § 518A.41, subd. 2(b).

²⁰ See Minn. Stat. § 518A.41, subd. 3.

²¹ Minn. Stat. § 518A.41, subd. 5(a).

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expenses, co-pays and deductible expenses are divided between the parents according to their shares of PICS.²¹

If both parties have health care coverage that is comparable as to accessibility and comprehensiveness, it is presumed that the least costly coverage is the most appropriate.²² If a child receives benefits from MinnesotaCare, then the non-custodial parent's income is applied to MinnesotaCare's sliding scale to determine the amount due, and the non-custodial parent's medical support obligation is the greater of that amount or \$50. The custodial parent has no medical support obligation in such cases.²³

After determining the above support amounts, other factors may increase or decrease the resulting figures. For example, if one parent receives social security or veteran's benefits on behalf of the child, then that amount is subtracted from the other parent's child support obligation.²⁴ If the parent or parents cannot meet their own expenses after a presumptive child support obligation, there are adjustments that reflect that as well.²⁵

Review and Modification

Another important aspect of the new law is that every family court order or divorce decree that addresses the issues of child support, custody or parenting time will include an attached form and instructions for either party to seek a review of the order after a six month period.²⁶ The six-month review gives the parties the ability to make sure child support is current and assess whether both parties are complying with the parenting time provisions of the order without the burden of court motions and additional filing fees.

The new law also contains changes that will affect the modification of child support orders. A child support order existing prior to January 1, 2007 is not subject to modification during the first year that the new law is in effect except under very limited circumstances set forth in the statute.²⁷ These include a 20% change in the obligor's gross income, a change in the number of joint children, a child who is the subject of the order becoming disabled, or a party beginning to receive public assistance. Unless one of the specific circumstances are met, modification will not be allowed until after January 1, 2008. However, the new law does not restrict parties from agreeing to a modification under the new law prior to that date.²⁸

Conclusion

Big changes have occurred in how you must calculate your client's child support obligation or award. Under the previous version of the law, only the obligor's net income was considered. Under the new law, the costs of raising a child are divided proportionately between the parents based on both parent's gross income. There have also been changes to parenting time presumptions, modification, and child care and medical support. Only time will tell if the revised statute will meet its stated goals of creating more equitable child support guidelines and increasing compliance with child support orders.

Allison Maxim and Melissa Charwla are associate attorneys in the Minneapolis law firm of Walling, Berg & Debele, P.A. They practice in all areas of family law, including marriage dissolution, adoption, custody and third party custody, parenting access, paternity, and related appeals.

²² Minn. Stat. § 518A.41, subd. 3(b).

²³ Minn. Stat. § 518A.41, subd. 4(f)(2).

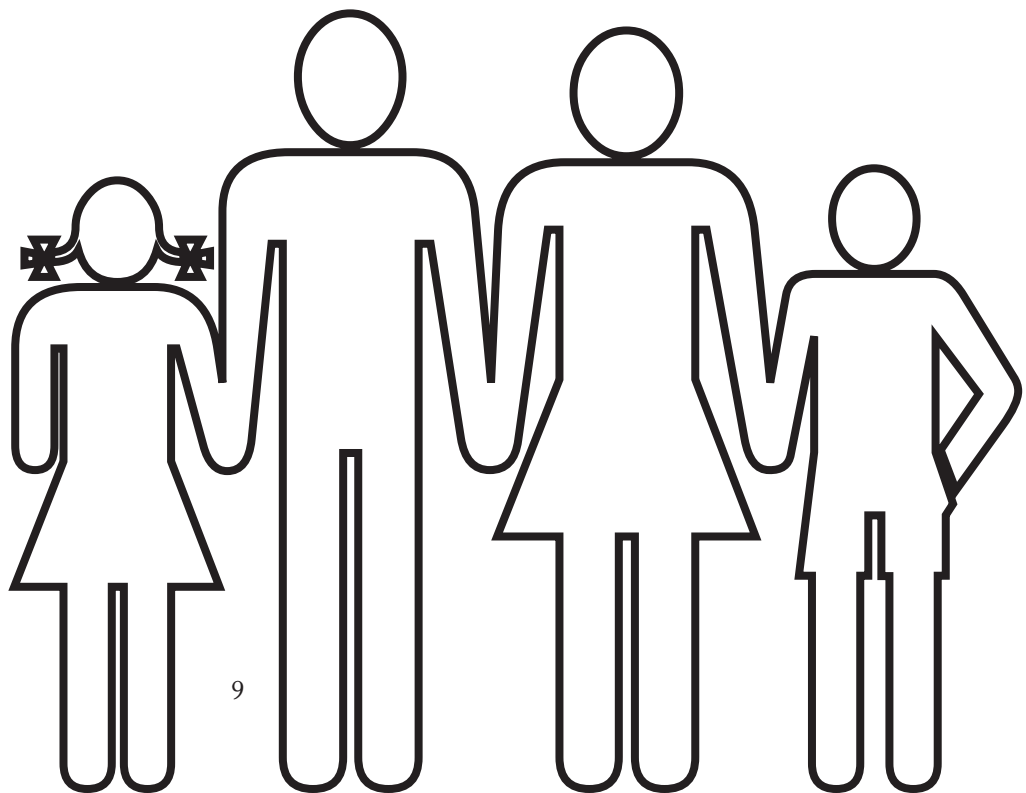
²⁴ Minn. Stat. § 518A.31.

²⁵ Minn. Stat. § 518A.42, subd. 1.

²⁶ Minn. Stat. § 518.178.

²⁷ Minn. Stat. § 518A.39, subd. 2(j).

²⁸ Minn. Stat. § 518A.39, subd. 2(j)(7).



Web Sites for Family Law Practitioners: Amaze Your Friends and Possibly Confound Your Boss!

By: Karen Terese Kugler

Everyone knows about Google, but there are a myriad of websites that a family law practitioner can use to save time and save the firm money. Instead of purchasing hard copy NADA guides or spending hours on the phone with someone in the Torrens department at the county to find out property information, much of the information and resources needed in family law practice can now be found on the web.¹ Please note that these websites would also be helpful to attorneys practicing in areas other than family law.

Real Property Information:

Many counties in Minnesota now have a great deal of property information online. In Hennepin County, for example, you can even view an aerial photo of the parties' home, in addition to finding out the tax value. However, property search websites are not always available outside of the metro area. Here are some selected property information websites:

Anoka: <http://tinyurl.com/yr6qkw>

Carver: <http://tinyurl.com/yvkn4>

Dakota: <http://tinyurl.com/29f4a8>

Hennepin: <http://tinyurl.com/27j46a>

Olmsted: <http://tinyurl.com/28ttgs>

Ramsey: <http://tinyurl.com/22nlbl>

Scott: <http://tinyurl.com/ytms08>

Sherburne: <http://tinyurl.com/2zks66>

Stearns: <http://tinyurl.com/2dwm29>

Washington: <http://tinyurl.com/26y25x>

Criminal & Court

Records and Information:

Especially in cases dealing with domestic violence, it can be helpful to have access to the criminal history of the opposing party. The following websites may provide some criminal history information. For in depth information, or information about a case that did not result in a conviction, it is still necessary to go to the police or sheriff's department, or county court.

Minnesota Bureau of Criminal

Apprehension (BCA):

<http://tinyurl.com/2cltoo>

You will need the first and last name of the person about whom you are seeking information, as well as their date of birth. The search only goes back the last 15 years.

Minnesota Prison System Search,

Department of Corrections (DOC):

<http://tinyurl.com/26fjfh>

This site provides information about persons who are incarcerated in the prison system.

Victim Notification (VINE) system:

<http://tinyurl.com/88gpe>

This site provides information about persons who are incarcerated in county jails.

Wisconsin Court System Search:

<http://tinyurl.com/ymtu>

This site provides information regarding almost all Wisconsin court matters, including domestic assaults and DWIs.

Asset Valuation:

Not only can you value the parties' car with these websites, you can also value their R.V. or classic car. If your client tells you that they purchased real property for 200,000 Rand in South Africa, it is no problem to find out how much the property is worth in U.S. Dollars.

Kelley Blue Book: <http://www.kbb.com/>

Provides value for new and used cars, trucks, SUVs, and vans.

NADA: <http://www.nada.com/>

Provides value for new and used cars, trucks, SUVs, vans, classic cars, and recreational vehicles.

Exchange Rate Calculator:

<http://tinyurl.com/2cayj4>

Debt Information:

If your client was not responsible for the finances during the marriage, it might be helpful to have them get a credit report. Here are the websites for the three credit bureaus:

Equifax: <http://www.equifax.com/>

TransUnion: <http://tinyurl.com/28zyb8>

Experian: <http://www.experian.com/>

Determination of Income:

In a spousal maintenance case, it can be helpful to know how much a person could be earning in a given field. The Minnesota Salary Tool provides not just salary information, but job descriptions and requirements.

Minnesota Salary Tool:

<http://tinyurl.com/yt5zxr>

Karen Terese Kugler is an associate attorney with J. Oakes & Associates. Ms. Kugler practices family law. She can be reached at (651) 628-0265 or karen_atty@yahoo.com.

¹ Some of the longer URL strings have been truncated for better functionality.

Duluth Affiliate News

By: Anna Mickelson

The Eleventh District Bar Association New Lawyers Section remained quite active this season:

On Election Day, the New Lawyers staffed a voting precinct for the Kids Voting project. It was great fun to see how excited the kids were to cast their ballots and to observe their thought processes in deciding which candidate to vote for.

In November, we held a “Pre-Holiday Party” at Tejas Texas Bar and Grill in Duluth. This event was a great opportunity to kick back and relax with fellow New Lawyers and also served as the kick-off for our holiday community service project fundraising efforts.

We are very excited about the holiday community service project that we did this year! On December 21, the New Lawyers hosted a holiday party for the children at Safe Haven, a local shelter for battered women. It was estimated that there would be 20-30 children spending the holiday season at Safe Haven. We decorated cookies, did craft projects, played games, sang a few holiday songs, and just had a good time with the kids! Additionally, we coordinated fundraising activities to raise enough funds to purchase a gift for each child and care packages containing useful items for the women who live there.

The Duluth New Lawyers also carried on a holiday tradition this season by once again hosting our “Santa Brings a Law-Suit” clothing drive. The drive collects professional apparel from local law firms and donates them to the “Clothes That Work” program at the Damiano Center in Duluth. The drive was extremely successful.

Our lunch speakers included the Honorable John T. Oswald (6th Judicial District) who joined us just before his retirement from the bench in December. Our January speaker was fellow New Lawyer, Nicole Weinand, of Reyelts, Leighton, Bateman, Hylden & Sturdevant, who spoke about her experiences arguing before the Court of Appeals.

Anna Mickelson is the President of the Duluth New Lawyers Section. She can be reached at acm@hanftlaw.com.

Hennepin and Ramsey County Affiliate News

No reports submitted.

2006-2007 NLS Liasons

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NLS Open Liason Positions

Committees

Convention Committee
Diversity Committee
Fair Response Committee
Insurance for Members Committee
Judicial Elections Committee
Law School Liason Committee
Legal Assistance to the
Disadvantaged Committee
Life and the Law Committee
Membership Committee
Multijurisdictional Practice Committee
Paralegal Committee
Professionalism Committee
Pro Se Implementation Committee
Publications Committee
Rules of Professional
Conduct Committee

Sections

Administrative Law Section
Alternative Dispute Resolution Section
Animal Law Section
Appellate Practice Section
Art & Entertainment Section
Bankruptcy Law Section
Business Law Section
Civil Litigation Section
Children and the Law Section
Criminal Law
Communications Law Section
Computer & Technology Law Section
Elder Law Section
Employee Benefits Section
Environmental & Natural
Resources Law Section
Family Law Section
Food and Drug Law Section
General Practice Solo
Small Firm Section
Health Law Section
International Business Law Section
Outstate Practice Section
Practice Management
& Marketing Section
Probate & Trust Law Section
Public Utilities Section

As the list indicates there are a number of openings for New Lawyers to become liaisons to various sections in the MSBA. This is a great opportunity to get involved with a substantive or procedural area of law. If you are a new lawyer and interested in becoming a liaison you should contact the New Lawyers Section Chair, Jamal Faleel at JFaleel@fredlaw.com for more information.

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