

Public Law News

A Publication of the Minnesota State Bar Association Public Law Section

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SWEET 16 AND STILL DRIVING ALONG !

Public Law Section

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2006 Public Law Section Awards of Excellence

On May 19, 2006, the Public Law Section presented its annual awards of excellence. The following articles are from comments made at the awards ceremony.

Douglas K. Amdahl Public Attorney Career Achievement Awards



Alan R. Mitchell
*Presentation and comments
by The Honorable Thomas
Kalitowski*

I consider it an honor to present the Douglas K. Amdahl Public Attorney Career Achievement Award to my long-time friend, golfing partner, and softball teammate

for the past 33 years, Alan R. Mitchell.

After receiving his Bachelor of Science in Chemical Engineering from Michigan Tech and his law degree from the University of Oregon, Al came to Minnesota in October of 1972 to work as an attorney in the Office of the Minnesota Attorney General. For most of the 28 years Al worked for the Attorney General he was assigned to the Minnesota Pollution Control Agency. In fact, a review of Al's career representing the MPCA is really a review of the history of environmental regulation in the State of Minnesota. The cases and projects Al worked on are of course too numerous to mention but, here are a few highlights:

- In the early 1970s Al was one of the state's attorneys who worked on the *Reserve Mining* case, a landmark environmental enforcement action in federal and state court to stop the Reserve Mining Company from disposing of taconite waste in Lake Superior.
- Al was involved in the development and promulgation of the State of Minnesota's first hazardous waste rules in 1981 – even before the federal Environmental Protection Agency promulgated its first rules on this subject.
- Al was the attorney involved in Minnesota's adoption of the first formal rules in the country addressing acid rain.
- Al worked for a number of years in the water quality area, regulating and permitting publicly owned

treatment works.

- Al worked on enforcement of Minnesota's Superfund Law, which was enacted to clean up the state's hazardous waste sites.

Al also spent a number of years as the attorney for the Environmental Quality Board (EQB) and in December of 2000 he left the Attorney General's Office to become Manager of the Power Plant Siting Program at the EQB. In this capacity, he was instrumental in developing and promulgating the state's current Rules regarding the siting of power plants.

Over the years Al also found the time to help develop and train future environmental lawyers by teaching Environmental Law at three of the state's four law schools. He was a Practitioner in Residence at the University of Minnesota Law School in 1992, 1996, and 2000; an Adjunct Professor at William Mitchell College of Law in 1990 and 1991; and an Adjunct Professor at Hamline Law School from 1996 to 2005.

Finally, Al has also been involved in local government, serving as a member of the Birchwood City Council from January 2001 to the present.

In conclusion, I can only say that Al Mitchell represents all of the very best qualities of an attorney who has devoted his career to public service. And Minnesota's citizens have directly benefited from Al's dedication to the environment. During his 32½ years in state government, he has worked enthusiastically and tirelessly to protect and improve the quality of both the state's waters and the air we breathe. Al is one of the world's "good guys." In addition to professional competence, he brings an engaging sense of humor to everything he does. I am proud to have the opportunity to participate in giving him this well-deserved recognition today.



James F. Lammers
Presentation and comments by Margaret Westin

It is my honor to present a Douglas K. Amdahl Public Attorney Career Achievement Award to James Lammers, an attorney who, among other duties, has represented the City of Woodbury since 1967. This simple statement really belies the level of commitment and dedication exhibited by Jim Lammers over nearly 40 years representing a community that has grown from 1300 to over 57,000 people during that time.

Jim Lammers' first year out of the University of Minnesota Law School was 1967. He graduated from there in 1966 and went to work with Lyle Eckberg, a solo practitioner in Stillwater. Mr. Eckberg handed off the representation of the City of Woodbury to Jim Lammers and the rest, as they say, is history. Woodbury was incorporated in 1967 and it was also the year it completed its first comprehensive land use plan; both major milestones that established the basis for Woodbury's phenomenal yet successful growth. Woodbury, despite its many changes, has maintained open spaces, a diverse economy, and impressive civic life. Beginning in 1967 Jim Lammers has done everything for the City of Woodbury, from criminal prosecution to comprehensive planning. He has played a pivotal role in the planning and implementation of the City's growth and development, working as a team member with the city staff in implementing what has been a dynamic and successful progression from unincorporated town to major metropolitan city. His contributions have been tangible and direct.

To quote Mark Vierling, a law partner who nominated him for this award, "Jim has provided assistance in all aspects of the City's management and operation, from zoning and comprehensive planning to assisting the city building out its infrastructure with its municipal water and sewer systems, roads, and related acquisitions. Although he no longer covers all of the city's meetings, he remains involved with the city on a daily basis."

His contributions to the profession are also significant. Jim has held leadership positions in the Washington County Bar Association, the 19th District Bar Association, and the MSBA Real Property Section. He has also been a member of the Public Law Section, Trust and Probate Section and General Practice Section.

Jim has contributed to his community through service as

a City Council member for Stillwater and as a Stillwater Lions club member and past president. He was elected to the St. Croix Valley Sports Hall of Fame in recognition of his pro bono legal services to the youth athletic associations in the St. Croix Valley.

His many professional and personal contributions have earned the respect of his peers throughout the metropolitan area. He is looked to as an authority and model of dedication in his representation of the City of Woodbury. On a personal note, when I began my practice of law as an Assistant Washington County Attorney in 1982, I was told to look to Jim Lammers for an example of professionalism. That advice was as good then as it is today. It is my honor to present to James F. Lammers the Douglas K. Amdahl Public Attorney Career Achievement Award.

Julius E. Gernes Prosecutor Award of Excellence



Cary W. Schmies
Presentation and comments by The Honorable Diane Alshouse

I am pleased to be able to present this award to a man I have known for over 15 years. I met Cary in 1990 when he was working as a St. Paul City Attorney and I was working as a Ramsey County Public Defender. But a little background...

Cary grew up in a law enforcement family in Central Wisconsin. His father was a police chief and later County Sheriff. His two older brothers became police officers. His mother even was involved – she was the jail matron and cooked for the prisoners. Cary was a New London, Wisconsin Police Officer for about six years before deciding he didn't want to pull a gun on anyone anymore, didn't want to wrestle with drunks on bar room floors and didn't want to chase people in fleeing vehicles.

So Cary traded in his badge and gun and went to law school at Hamline University where he received his Juris Doctorate in 1988. After graduation he became a prosecutor in Chisago County and then the City of St. Paul in 1990. He moved to Duluth in 1995 where he is presently an Assistant City Attorney. He is currently the Supervising Attorney and Chief Prosecutor of the Duluth City Attorney's Office criminal division.

I recall working with Cary as a true pleasure. He was always first and foremost a professional and a gentleman. I recall him as fair, willing to listen and a worthy advocate. As Judge Timothy Blakely, Judge of the First Judicial District, said in his nominating letter, "What no resume can show is the depth of commitment Cary has demonstrated for the fair administration of justice in the trial courtroom. . . . He has an unassuming manner and respect for routine litigants, frequently the poor, weak and unrepresented. Cary treats all litigants with dignity. He possesses the optimal balance between zealous advocate and fair-minded public servant."

I could not have said it better. It is my honor to award the Julius E. Gernes Prosecutor Award of Excellence to Cary William Schmies.

William E. McGee Public Defender Award of Excellence



Daniel M. Scott
Presentation and comments by Greg Brooker at a separate ceremony at the Minneapolis federal courthouse on June 5, 2006.

I have the honor of presenting the MSBA Public Law Section's William E. McGee Public Defender Award of Excellence to Daniel M. Scott.

I first met Dan Scott in 1986, when I was a law clerk to his father, George M. Scott of the Minnesota Supreme Court. It was at a holiday party Judge Scott was hosting. Upon meeting Dan, I must say I was impressed with his rich and well-developed sense of humor.

Dan Scott is a 1973 graduate of the University of Minnesota Law School, having received his Bachelor of Arts degree from the University three years earlier in 1970.

On December 3, 1973, Dan Scott was appointed an Assistant United States Attorney for the District of Minnesota by U.S. Attorney Robert Renner. After four and one-half years prosecuting, Dan jumped ship, and on August 14, 1978, he was appointed Federal Public Defender for the District of Minnesota by the Eighth Circuit Court of Appeals.

For many years, Dan Scott was the only federal public defender in the District of Minnesota. Over time he built a well-respected federal public defender office in Minnesota

and was ultimately appointed Chief Federal Public Defender for the District of Minnesota.

Dan recently left public service and I notice has started wearing new suits and ties in private-practice land. We all know, however, Dan's heart is in serving the public.

For all his years of dedicated public service and as a federal public defender, the Minnesota State Bar Association's Public Law Section is pleased to present the William E. McGee Public Defender Award of Excellence to Daniel M. Scott.

Public Attorney Award of Excellence: Public Law Office/Civil Law



Douglas J. Gregor
Presentation and comments by Nancy McLean

Doug Gregor grew up in central Illinois in the 1960s. In 1974, he graduated from the University of Minnesota Law School. For the past 27 years, Doug has been a public attorney. He has worked for

the Goodhue County Attorney's Office, the Rochester City Attorney's Office, and for the past 16 years, the Minnesota Attorney General's Office.

For more than a decade, Doug was the Attorney General's "Lone Ranger". He was the only Assistant Attorney General based out of the Iron Range outpost in Eveleth. As a point of reference, the Eveleth office is closer to Canada than to St. Paul.

Doug advises the Iron Range Resources and Rehabilitation Board (IRRRB) and Iron Range Resources, an economic development agency in northeastern Minnesota, on a variety of legal matters. Doug has made a significant contribution toward the economic revitalization of northeastern Minnesota through the numerous economic development transactions he has helped structure.

Doug has also advised his clients through the difficult ups and downs of the Iron Range economy. Doug has worked on virtually every major economic development project in northeastern Minnesota over the past 16 years, including multi-million dollar bond transactions, the construction of two championship golf courses at Giants Ridge, and the Northwest Airlines Reservation Center in Chisholm. This work has brought hundreds of new jobs to the Iron Range.

During his tenure with the Minnesota Attorney General's Office, Doug has distinguished himself by providing quality legal advice while maintaining an upbeat attitude. He uses a collaborative approach to resolving legal problems. Doug recently qualified to become certified as an MSBA real estate specialist.

In addition to his legal work, Doug is active in the local community on various boards and church groups. He is the father of a teenage daughter. He has also successfully dealt with various health problems in recent years, including cancer and an artificial hip. We are proud to present this Public Attorney Award of Excellence to Doug Gregor.

Public Attorney Award of Excellence: Government Agency



Dennis W. Erickson

Comments by Kevin Goodhue, Commissioner of the Minnesota Department of Human Services, delivered by Anne Barry.

Good afternoon. It is a pleasure for me to be here today to help honor my trusted colleague, Dennis

Erickson, a truly deserving recipient of the 2006 Public Attorney Award of Excellence. Dennis has provided 33 years of dedicated service to the State of Minnesota. He started as a Management Analyst in the Minnesota Department of Human Services' (DHS) Management Services Division back in 1973. His talents allowed him to rise quickly in the department to his present position as Assistant Commissioner for Finance and Management Operations.

Dennis has provided strong and capable leadership to DHS, as a key member of the department's Senior Management Team for more than 20 years, and in the positions of Chief Operating Officer, Chief Financial Officer, Budget Director and Legislative Director.

As Assistant Commissioner, Dennis oversees agency operations, including technology, facilities management and development of the agency's biennial budget of more than \$12 billion dollars. Dennis is respected for his management skills both inside the department and throughout state government. He has been an enthusiastic champion for technology development in the department and has provided able leadership for budget development,

legal issues and capital improvements.

Throughout his career, Dennis has proven his dedication and commitment to public service, and has distinguished himself through the numerous contributions he has made to the development and implementation of sound public policy and law.

For the past 10 years, Dennis has managed the legal and regulatory functions within the department, providing leadership and an example of the highest integrity for the more than 50 attorneys employed by DHS who provide day-to-day operational support, ensure system-wide compliance with federal and state laws and provide a variety of in-house legal functions.

Dennis oversees our Division of Licensing, the Appeals and Regulations Division and Internal Audits. In these three divisions alone, Dennis oversees the work of more than 25 agency staff members who are attorneys. He has provided them strong guidance in the way they deliver legal services to our partners and clients.

I nominated Dennis because of his high level of dedication and commitment to public service and the public practice of law. Congratulations Dennis!

Rosalie E. Wahl Judicial Award of Excellence



The Honorable Ann Montgomery

Presentation and comments by Nancy McLean at a separate ceremony at the Minneapolis federal courthouse on June 5, 2006.

It is my privilege to introduce Judge Ann Montgomery as the recipient of the 2006 Rosalie Wahl Judicial Award of Excellence.

Judge Montgomery is celebrating her tenth year on the federal bench, having been nominated by President Bill Clinton in November, 1995, confirmed by the United States Senate in August 1996 and sworn in on August 6, 1996.

Prior to her appointment to the United States District Court, Judge Montgomery was a United States Magistrate Judge from 1994-1996. Before that, she served as a Judge of the Fourth Judicial District – Hennepin County from 1983-1994.

Before being appointed to the Hennepin County bench, Judge Montgomery was an Assistant United States Attorney from 1976-1983 and before that a law clerk for the United States Court of Appeals for the District of Columbia Circuit.

Judge Montgomery is a 1971 graduate of the University of Kansas and a 1974 graduate of the University of Minnesota Law School.

Judge Montgomery is the past president of the Federal Bar Association of Minnesota. She is currently the president of the Eighth Circuit District Judges Association.

In 1993, Judge Montgomery received the Professionalism Award from the Hennepin County Bar Association. In 2001, she was a member of the United States Delegation to the 2001 Conference on the Hague Convention on the Civil Aspects of International Child Abduction.

Judge Montgomery currently teaches trial practice at the University of Minnesota Law School. She is also the co-author of the Minnesota Edition of Objections at Trial.

Throughout her career, Judge Montgomery has been an excellent role model for law students, young lawyers and the rest of us! She has demonstrated all the attributes we admire in great judges – she’s smart, she’s fair, and she’s dedicated to justice.

It is my great privilege to present Judge Montgomery with this award.

Pro Bono Attorney Award of Excellence



Kenneth Kohnstamm
Presentation and comments by Jay Heffern

This year the Public Law Section’s Executive Council decided to establish an annual Pro Bono Award of Excellence. This award recognizes outstanding public attorneys who are engaged in activities to provide volunteer services to underserved communities. This year’s recipient of the first Pro Bono Award of Excellence is Kenneth Kohnstamm.

Ken is a career public lawyer – having joined the Minnesota Attorney General’s Office in 1974. Over his career, he has represented many state entities including

the Minnesota Department of Human Services, the Public Utilities Commission, and the state judiciary. Currently, Ken manages the Civil Litigation Division in the Attorney General’s Office.

When you ask people about Ken, they use words such as:

- professional,
- smart,
- hard working,
- dedicated,
- highest integrity, and
- committed to public service.

Simply stated, Ken is an outstanding public lawyer! But that is not why we honor Ken here today.

The Public Law Section’s Pro Bono Award seeks to honor lawyers who exemplify the principles of Rule 6.1 of the Rules of Professional Responsibility. If you look at Rule 6.1, you will see that a lawyer can meet his or her responsibilities under that rule by:

- seeking to improve the law, legal system or profession,
- providing financial support for organizations that provide legal services to people of limited means, and/or
- providing free legal services to people of limited means.

Ken has done it all! Let me give you 3 examples.

- **Improving the legal profession:** Ken was an integral part of the group that drafted the MSBA’s Pro Bono Policy and the chief architect and advocate for the Minnesota Attorney General’s Pro Bono Policy – a model policy that has been adopted by many other states and emulated by the United States Department of Justice.
- **Providing financial support:** over the past three years, Ken has organized and held benefits for SMRLS – the Southern Minnesota Regional Legal Services Organization – raising over \$12,000.
- **Representing those needing legal services:** Ken personally represents clients in Ramsey County – usually on landlord/tenant matters.

I do not know another person who is more deserving of this award. It is my honor to present the Public Law Section’s first Pro Bono Award of Excellence to Kenneth Kohnstamm.

***PUBLIC LAW SECTION ANNUAL AWARDS LUNCHEON: MAY 19, 2006
COMMODORE HOTEL, ST. PAUL***



Alan Mitchell and Judge Tom Kalitowski.



Doug Gregor surrounded by his Eveleth office team and Supervisor Christie Eller.



Doug Gregor and Nancy McLean.



Anne Barry and Denny Erickson.



Greg Brooker and Dan Scott.

PUBLIC LAW SECTION ANNUAL AWARDS LUNCHEON: MAY 19, 2006, continued



Margaret Westin and Jim Lammers.



Cary Schmies and Judge Diane Alshouse.



Ken Kohnstamm and Jay Heffern.



Nancy McLean and Judge Ann Montgomery.

MSBA Public Law Section 2005-2006 Annual Report

By: Jay M. Heffern and Judge Diane Alshouse, Co-Chairs of the Public Law Section

The Public Law Section of the MSBA had another active year:

Continuing Legal Education: During the past twelve months the Public Law Section sponsored the following continuing legal education courses for a total of more than 9 CLE credits:

- “*Strategies to Address Livability Crimes,*” co-sponsored with the Minneapolis City Attorney’s Office, October 14, 2005 - 3 CLE credits
- “*Police Pursuit Issues,*” co-sponsored with the Minneapolis City Attorney’s Office, November 19, 2005 – 1.5 CLE credits

- “*Overview of Affordable Housing Issues, Financing Affordable Housing with Low Income Credits, and Municipal Use of Tax Increment Financing for Affordable Housing,*” May 19, 2005 - 3 CLE credits
- “*Lost in Translation: Interpreters in Minnesota Courts,*” co-sponsored with the Criminal Law Section June 22, 2006 – 1.5 Elimination of Bias credits

Public Law Section News: The Section continues to publish and send its members the Public Law News, the section’s newsletter. The newsletter has been cited locally and nationally for its quality and content and has been noted as an example of a successful bar association newsletter. Regular features include profiles of public law offices and public lawyers, discussion of current legal issues and recent court decisions, data practices opinion indices, and notices of upcoming CLE’s of interest to public lawyers. The Public Law Section distributes the newsletter to most of its members by e-mail three times per year.

Community and Public Service: The Section continued its active involvement in the community through public service this past year. The Section coordinated a day of work on a Habitat for Humanity project. Section members and friends cooked and served meals every other month throughout the year for over fifteen hundred people through the Loaves and Fishes program. The Section contributed to the LRAP Program, which provides assistance with the repayment of student loans. The Section “adopted” twenty families for holiday gift giving last year.

Section Committees: Seven section subgroups continued to perform the essential planning and implementation work that enables the Section to operate. The subgroups include the Newsletter Committee, the Awards Committee, the Community / Public Service Committee, Data Practices Committee, the Local Government Committee, Membership Liaison, and Pro Bono Legal Services Task Force. The subgroups offer an opportunity for Section members to become actively involved in the work of the Section. Please contact one of the Public Law Section Co-Chairs if you would like to become involved in the work of any of the subgroups.

This past year the Section has placed specific emphasis on pro bono activities. The Pro Bono Legal Services Task Force reviewed the Minnesota State Bar Association’s pro bono policy and will be making suggested changes to encourage greater involvement by attorneys in public law departments and government agencies. In addition, the Task Force is planning a fall CLE which will focus on providing pro bono services to seniors.

Recognition Awards of Public Attorneys: For the eleventh year in a row, the Public Law Section presented awards recognizing outstanding public attorneys and judges. The following awards were presented at the May 2006 Section CLE and Annual Meeting:

Douglas K. Amdahl Public Attorney Career Achievement Award:

Alan R. Mitchell, Assistant Attorney General (Retired), Minnesota Attorney General’s Office
James F. Lammers, City Attorney, Woodbury, Minnesota

Rosalie E. Wahl Judicial Award of Excellence:

The Honorable Ann Montgomery, Judge, Federal District Court of Minnesota

The Julius E. Gernes Prosecutor Award of Excellence:

Cary William Schmies, Assistant City Attorney, Duluth, Minnesota

The William E. McGee Public Defender Award of Excellence:

Daniel M. Scott, (former) Federal Public Defender of Minnesota

The Public Attorney Award of Excellence: Public Law Office-Civil Law:

Douglas J. Gregor, Assistant Attorney General, Minnesota Attorney General’s Office

The Public Attorney Award of Excellence: Government Agency:

Dennis Wade Erickson, Assistant Commissioner, Minnesota Department of Human Services

Pro Bono Award of Excellence:

Kenneth Kohnstamm, Assistant Attorney General, Minnesota Attorney General’s Office

Law Students: The Public Law Section continued to work on its goal of developing relationships with law students and the local law schools. We continued to have two student representatives to the Council over the past year. They attended meetings, participated in Section activities, and provided new ideas and perspectives. Additionally, members of the Public Law Section attended receptions held at the local law schools to provide law students the opportunity to learn about the exciting work being done in public law.

Public Law Section Executive Council Election Results

At the May 19, 2006 Annual Meeting, the following individuals were elected to the Public Law Section Executive Council starting on July 1, 2006.

Co-chairs:

The Honorable Diane Alshouse, Second Judicial District
Louis Thayer, Appeals Referee, Department of Human Services

Secretary:

The Honorable Tom Kalitowski, Minnesota Court of Appeals

Treasurer:

Kim Buechel Mesun, Minneapolis School District

Executive Council:

Jay Heffern, Minneapolis City Attorney
Jim Alexander, United States Attorney's Office
Mary Miller, Minnesota Department of Labor & Industry
John Choi, St. Paul City Attorney

These individuals will join the Honorable Joanne Smith (Second Judicial District), Barry Greller (Minnesota Attorney General's Office), and Blair Buccicone (Ramsey County Public Defender's Office) who will be serving the second year of their two-year terms. There is currently one vacancy on the executive council created by the recent resignation of Luci Botzek from the council.

Data Practices And Candidates For Office: What Can and Cannot Be Released To The Public

By: Terry L. Adkins, Rochester City Attorney

In many local jurisdictions, those who are elected or appointed to the governing body are considered employees of the city, county, school district, township or special district. These officials receive a salary and benefits similar to that provided to the jurisdictions' other employees. As a result, in cases when the friendly local news media representative comes knocking on the door asking to see every document filed by those seeking election or appointment to the governing body, local government attorneys have consulted Minn. Stat. §13.43, subd. 3. It is this statute that describes the status of data on current and former applicants for employment in a government entity.

According to Section 13.43, subd. 3, personnel data on applicants for public employment or appointment are considered private data except for the following:

1. Veteran status
2. Relevant test scores
3. Rank on eligible list
4. Job history
5. Education and training
6. Work availability

7. Names of the applicants when the applicants are certified as eligible for appointment or are selected for an interview.

When those who serve on local governing bodies are considered to be employees, local government lawyers relied upon the above laundry list in determining what data is private and what data is public. The Commissioner of Administration has agreed with this approach. For example, in Opinion #01-039, the Commissioner repeated the holdings of previous opinions that "elected officials are employees for purposes of section 13.43 if the government entity so considers them. ... Accordingly, the applicants for the vacant Council position are applicants for employment, and data about them are classified at section 13.43, subdivisions 3 and 4."

However, in 2005, the Minnesota Legislature changed the rules on this subject, or so it appeared at the time. In adopting Section 13.601, subd. 3, the Legislature declared that the following data on those seeking election or appointment to a public body are public:

1. Name
2. City of residence
3. Education and training

4. Employment history
5. Volunteer work
6. Awards and honors
7. Prior government service or experience

Yet, in Opinion #05-036, the Commissioner of Administration concluded that “Section 13.601, subdivision 3, provides that certain data are public - essentially, restating the general presumption. This does not mean that all other data on applicants for election or appointment to a public body are not public. Given the operation of Chapter 13, if the Legislature intended for all other data on applicants for election/appointment to be not public, the Legislature needed to enact a provision so stating.” According to the Commissioner, all data pertaining to applicants or candidates seeking appointment or election to a governing body must be considered public. There are no exceptions.

On July 14, 2006, in an opinion issued to this author, the Minnesota Attorney General disagreed with the Commissioner of Administration’s Opinion. According to

the Attorney General, “subdivision 3 [of Section 13.601] is not merely a partial restatement of the general presumption that all government data are public, but a limited exception to a private classification that might be imposed under another statute such as Minn. Stat. §13.43. ... [I]t is our opinion that, where members of a governing body are considered employees of the governmental unit, data submitted by applicants for appointment to positions on the body would be classified as private personnel data pursuant to Minn. Stat. §13.43, except for those items expressly made public by Minn. Stat. §13.43, subd. 3 or 13.601, subd. 3.” (emphasis in original)

So, where do we stand? Assuming your governmental entity considers its governing body members to be employees of the entity, any and all data submitted by or pertaining to those seeking to be appointed or elected to the body are considered to be private data with two exceptions. The first exception is the list of seven categories found at Minn. Stat. §13.43, subd. 3. The second exception is the list of seven categories found at Minn. Stat. §13.601, subd. 3. Data falling within either exception is public data.

IMLA News

By: Corrine Thomson, Kennedy & Graven

The International Municipal Lawyers Association (IMLA) will hold its 71st annual conference from September 17 to September 20, 2006 in Portland, Oregon. The conference features a comprehensive array of presentations on issues of concern to government lawyers. Topics to be covered include post-Kelo legislative responses from around the country, the Clean Water Act, the Voting Rights Act

amendment of 2006, electronic discovery, discharge in the public sector, and other subjects. This year also marks the retirement of IMLA’s executive director, Henry Underhill, who will be honored at the conference. More information regarding the conference and registration can be found at the IMLA website, www.imla.org.

Legislative Update 2006

Issues Of Interest To Public Lawyers

By: Michelle L. Timmons, Revisor of Statutes and Jeff Kase and Craig Gustafson, Senior Assistant Revisors

It is well known that the 2006 Minnesota legislative session included a major state bonding bill, Laws 2006, Chapter 258, and specific provisions are undoubtedly of interest to public lawyers in particular jurisdictions affected. Legal topics of more general applicability included a number of laws regarding land use by public entities, especially eminent domain, and tort liability limit revisions.

Eminent Domain. One of the most high profile bills of the

2006 legislative session places limits on local governments’ use of eminent domain to take private property, in response to the controversial U.S. Supreme Court decision, *Kelo v. New London* (No. 04-108, 6/23/05).

Sponsored by Representative Jeff Johnson and Senator Tom Bakk, the new law provides that eminent domain may only be used for a “public use or public purpose,” which is defined to be: “(1) the possession, occupation,

ownership, and enjoyment of the land by the general public, or by public agencies; (2) the creation or functioning of a public service corporation; or (3) mitigation of a blighted area, remediation of an environmentally contaminated area, reduction of abandoned property, or removal of a public nuisance.” The law also specifies the public benefits of economic development, including “an increase in tax base, tax revenues, employment, or general economic health,” do not by themselves constitute a public use or purpose.

The law also provides the court may award compensation to an owner for attorney fees, appraisals, and other related fees, costs, and expenses under certain conditions. In addition to a number of public hearing, notice, and other procedural requirements, the law provides for an evidentiary standard if the taking is for the mitigation of a blighted area, remediation of an environmentally contaminated area, reducing abandoned property, or removing a public nuisance; a condemning authority must show the district court by a “preponderance of the evidence that the taking is necessary and for the designated public use.”

Finally, the law provides compensation to owners for removal of legal, nonconforming uses under certain conditions, as well as compensation to business owners for a loss of going concern if a business or trade is destroyed by a taking. Laws 2006, Chapter 214.

Tort Liability Limits. Another new law adopted by the 2006 legislature limits state and municipal tort liability. Laws 2006, Chapter 232. The law was sponsored by Representative Ron Abrams and Senator Ann Rest and amends Minnesota Statutes, sections 3.736, subdivision 4; 466.04, subdivision 1; and 471.59, by adding a new subdivision 1a.

The law raises caps on liability awards against the state for single claims involving death by wrongful act or omission from \$300,000 to \$400,000 on January 1, 2008, and to \$500,000 on January 1, 2009. Caps on liability awards for multiple claims against the state will be raised from \$1 million to \$1.2 million on January 1, 2008, and to \$1.5 million on July 1, 2009.

The law also raises caps on liability awards against municipalities for single claims involving death by wrongful act or omission from \$300,000 to \$400,000 on January 1, 2008, and to \$500,000 on January 1, 2009. Caps on liability awards for multiple claims against municipalities will also be raised from \$1 million to \$1.2 million on January 1, 2008, and to \$1.5 million on July 1, 2009.

The law also addresses the liability of governmental units participating in a joint venture or joint enterprise. In *Reimer*

v. City of Crookston, 421 F. 3d 673, (2005), the United States Court of Appeals for the Eighth Circuit held that under Minnesota law, a joint enterprise established by the city and school district to operate a swimming pool was not a separate entity for the purpose of applying statutory liability caps. Thus, the court ruled that the liability caps applied to the city and school district separately. In response to this decision, the new law provides that for purposes of determining total liability, the participating governmental units and the joint board are considered a single entity.

Release of Financial Security upon Project Completion. Under Laws 2006, Chapter 209, municipalities are required to release a letter of credit or other financial security within 30 days of the completion of a project by a builder or developer. The new law took effect August 1, 2006, and permits cities and townships to require developers to establish escrow accounts or other financial securities to reimburse direct costs related to the review and approval of projects. Upon completion of such projects, the municipalities have 30 days to release and return the letters of credit or financial securities. Finally, the law also requires that the charge on any such securities be equal to the value of the professional services supplied to the municipality, and provides that municipalities failing to meet the 30-day deadline must pay any accrued interest to the developers.

Preliminary Plat Approval. Laws 2006, Chapter 270 modifies municipal and county planning and zoning provisions by providing standards for preliminary plat approval in a proposed development and clarifying restrictions on nonconforming use of certain kinds of properties. Effective August 1, 2006, it requires a county or city to approve a preliminary plat that meets the county’s or city’s zoning and subdivision regulations’ standards and criteria unless the county or city adopts written findings, based on the public record, as to why the application should not be approved. Effective retroactively from August 1, 2004, legal nonconforming use of certain classes of property — homestead and non-homestead residential real estate and seasonal residential real estate occupied for recreational purposes — may be continued except in certain circumstances when the nonconformity or occupancy is discontinued for a period of more than one year or any nonconforming building or structure is destroyed to the extent of 50 percent of its market value. The law also makes a number of changes to the current annexation statutes and establishes a “municipal boundary adjustment task force” to study the state’s annexation laws further. The task force will include representatives of city and township interests as well as legislators and shall report its findings and recommendations to the Legislature by January 1, 2007.

Public Lawyers Continue To Serve Their Renowned Tater Tot Hot Dish At Loaves & Fishes On June 7 And August 2, 2006

Scenes from June 7.



Always leave the kitchen as you find it.



The pb&j assembly line: Louis Thayer (trainee) and Al Harris (lead chef).



Tom Kalitowski does clean up.



Mary Miller cools off on a warm June afternoon in the non-air conditioned kitchen.



PLS friends and Loaves & Fishes regulars, Nancy Gove and Paul Casey.

**Next Public Law Section
Loaves & Fishes days:
October 4 and December 6.**

All volunteers welcome!

**Contact Nancy McLean at
Nancy.Mclean@co.hennepin.mn.us**

Public Law Section Public Service Projects

By: Nancy McLean, Assistant Hennepin County Attorney

Adopt a Family 2006

The Public Law Section will be “adopting” families for the holidays again this year. Last year we provided food and gifts for over 100 people, most of them children under ten. We have supported families identified by Catholic Charities and Lutheran Social Services. It’s really easy to volunteer - you can adopt a family, join with friends, colleagues, or family members to adopt a family, make a financial contribution, or help with organizing the shopping, wrapping, and delivering of gifts. If you would like more information or are interested in participating, please contact Nancy McLean at 612-348-6755 or Nancy.McLean@co.hennepin.mn.us.

Warm Hands/Warm Hearts

Each year Person to Person, a social service organization, partners with local businesses, faith organizations, and public service groups to collect more than 1,300 new winter coats and mittens for children in need. The project provides coats so parents don’t have to make the difficult decision between paying rent and purchasing warm coats for their children. The timeline is early - new coats and mittens must be dropped off at St. Joan of Arc Church in South Minneapolis by October 8. If you would like more information or to volunteer to purchase new coats and mittens for children in the program, contact Nancy McLean at 612-348-6755 or Nancy.McLean@co.hennepin.mn.us.

Public Law Section Pro Bono Task Force

By: Nancy McLean, Pro Bono Task Force Co-Chair

The Public Law Section Pro Bono Task Force was formed to encourage public law offices to formalize their internal pro bono policies to facilitate pro bono legal work by public lawyers. The membership reflects public attorneys at all levels and specialties. The group has been meeting monthly and is chaired by Nancy McLean and Cliff Greene.

The Task Force has completed its work on the Model Pro Bono Policy for Public Law Offices. In reaching this goal, the task force considered policies from many jurisdictions

at the federal, state, and local level and developed a blue print offices can use in implementing their individual policies. This fall Task Force members will distribute the policy to agency heads and begin discussing implementation strategies.

Currently, the Task Force is planning an event that will include both an educational program and an “advice only” clinic.

Public Law Section Annual Meeting And CLE

By: Louis Thayer, Appeals Referee, Minnesota Department of Human Services

The annual meeting of the Public Law Section was held on May 19, 2006 in conjunction with the presentation of the annual public attorney awards and a half-day CLE.

The outgoing co-chair of the Public Law Section, Jay Heffern presented the annual report to the section. He noted the section’s goals were accomplished with emphasis in 2005-06 on a Pro Bono Task Force and planning outreach activities for public sector attorneys to perform more pro bono work. The PLS sponsored twelve credits of continuing legal education credits in 2005-06.

The day began with a 3-hour CLE on issues related to the development and financing of affordable housing.

Speakers and topics included:

- An Overview of Affordable Housing Issues by Angie Skildum, Research and Policy Director, Family Housing Fund and Rebecca Rom, Faegre & Benson;
- Financing Affordable Housing with Low Income Tax Credits by Angela Christy, Faegre & Benson; and
- Municipal Use of Tax Increment Financing for Affordable Housing by Stephen Bubul, Kennedy & Graven and Peter Berrie, Faegre & Benson.

Thank you to Carol Lansing for organizing the CLE.

[Editor's note - and to Louis Thayer for organizing the awards ceremony!]

Bar Convention Attendees Learn About Interpreters

By: Jay M. Heffern, Minneapolis City Attorney

Katrin Johnson, the Coordinator for the State Court Interpreter Program, gave a lively presentation on the use of interpreters in Minnesota's courts to the attendees at the 2006 Minnesota State Bar Association convention in Brainerd. Entitled "Lost in Translation," the two-hour program was co-sponsored by the Public Law and Criminal Law Sections. Ms. Johnson's program included explaining the differences between simultaneous and consecutive

interpreting. Attendees were challenged to try both types of interpreting with classroom exercises. Rule 8 was reviewed in detail and Ms. Johnson shared her tips for both judges and attorneys who work with interpreters in the courtroom. Many of the attendees commented that this was the most helpful program on use of interpreters that they had attended.

MSBA Public Law Section Goals for 2006-2007

1. Promote Public Service and Pro Bono
 - Continue to 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.
 - Examine ways to support legal and other 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 CLEs on at least a 3-year cycle.
3. Enhance Public Law Section communications
 - Enhance communication among PLS members by encouraging increased use of electronic communications (particularly outstate members).
 - Publish newsletters and maintain the website with current information and resources; e.g., CLEs, pro bono and public service opportunities, etc.
4. Work toward the goal of eliminating bias and promoting diversity in the bar
 - Improve communication between the PLS Executive Council and the committees.
 - Provide publicity on law clerk employment opportunities.
 - Implement mentorship opportunities.
 - Provide quality Elimination of Bias CLE programs.
 - Participate in minority recruitment conferences.
5. Provide recognition for public service
 - Continue annual public attorney awards.
 - 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, including education on Judicial Independence.

MSBA Assembly Meeting of June 23, 2006: Notes Of Interest

By: Mary Miller, Public Law Section Assembly Delegate Alternate

The meeting began with Memorials for Members who had passed away over the last year. Then the Annual meeting of the Minnesota State Bar Foundation occurred. Grants awarded in the 2004 – 2005 year were reviewed.

Awards presented. The Assembly meeting began with the annual MSBA awards. Bar President Susan Holden awarded the President's Awards to Mary Vasaly and the Task Force on Diversity in the Profession. The Professional Excellence Awards went to Thomas J. Conlin and Judge Kenneth L. Jorgensen.

Outgoing Assembly members, including our own Public Law Section Delegate, Dianne Ward, were then recognized with plaques and appreciation.

Reports. The President's and Treasurer's Reports were made to the Assembly.

Consent Calendar. Items enacted in one consent agenda approval by the Assembly included:
Brian Melendez as MSBA President-elect.
Michael J. Ford as MSBA Treasurer.
Patrick Kelly's recommended MSBA Committees and Chairs.
The 2006-07 MSBA Assembly meeting schedule.

The Black Women Lawyer's Network was approved as an affiliated organization of the MSBA.

Elections/Appointments Committee. Actions recommended by the committee that passed included:
Election of Leo Brisbois as MSBA Secretary.
Election of Judge George Perez as MSBA Delegate to the ABA.
Nomination of Edward Cassidy to the Legal Services Advisory Committee.
Election of Joani Moberg to the Loan Repayment Assistance Program (LRAP) Board.

General Policy Committee. The Assembly voted to support the ABA Access to Civil Justice resolution on the right to legal counsel in civil proceedings (supported by the MSBA Legal Assistance to the Disadvantaged Committee).

The Assembly also voted to support the same ABA Task

Force's resolution setting forth principles of a state system for the delivery of civil legal aid.

Legislative Committee. The Legislative Committee requested that Assembly members achieve 100% participation in the Committee's Grassroots lobbying work.

Operations Committee. A committee subgroup is studying Whistleblowing. Another committee subgroup is studying the size of MSBA Section resources. Input on either of these topics can be forwarded to Mike Ford.

General Reports included reports by:

- Martin Cole, Director of the Office of Lawyers Professional Responsibility;
- the Pro Se Implementation Committee presented by Jean Lastine; and
- the Task Force on Diversity in the Profession studying race, religion, ethnicity and sex. The Assembly also passed this Task Force's recommendation to co-sponsor with the ABA a resolution to improve diversity in the educational pipeline to the legal profession. This Task Force will proceed with implementation aspects of its work.

Passing the Gavel. The President's gavel was officially passed from Susan Holden to 2006-07 MSBA President Patrick Kelly. Next year's MSBA convention will be in St. Paul.

Announcements. MSBA members interested in being nominating to the following positions were encouraged to submit Statements of Interest to the MSBA:

- Lawyers Professional Responsibility Board (2 positions)
- Minnesota Volunteer Attorney Program (2 positions).

Eyes On The Courts

By: Greg Brooker, Assistant U.S. Attorney

Sign Ordinances and the First Amendment: *Advantage Media v. City of Eden Prairie* No. 06-1035 (8th Cir. August 1, 2006)



On February 13, 2004, Advantage Media submitted sign permit applications to the City of Eden Prairie for construction of fourteen large commercial billboards. At the time, Eden Prairie had a comprehensive sign code, which regulated the dimension, construction, height, location, and setback of commercial signs. Under the ordinance, noncommercial/political signs were exempt from many parts of Eden Prairie's sign code. Fourteen days after Advantage Media submitted the applications, the City informed the sign company that its submissions were incomplete with regard to setback and location. Advantage Media responded by providing scaled aerial photos of all the proposed signs. Thereafter, the City notified the sign company that it was extending the period of consideration of the applications to 120 days due to the number of applications submitted. On May 28, 2004, the City formally denied the sign applications, meticulously detailing which provisions of its sign ordinance prohibited the applications at issue. The City stated that the proposed signs exceeded the size and height limits in the City's sign code and noted that the thirteen signs that proposed double-sided freestanding signs had excessively large bases, were too close to nearby roadways, had too much space between each sign face, and violated the City's prohibitions on motion signs and commercial non-accessory signs.

Advantage Media could have appealed the denial of the sign permits to the City's Board of Appeals and Adjustments, but it did not. Instead, two months following the denials, it commenced suit in U.S. District Court under 42 U.S.C. § 1983. Advantage alleged that the City's entire sign ordinance was unconstitutionally overbroad under the First and Fourteenth Amendments because it favored commercial speech over noncommercial political speech. Advantage Media also contended that the City's sign permit process was both facially invalid and invalid as applied because the ordinance lacked necessary procedural safeguards and afforded city officials unbridled discretion. Advantage Media asked the federal court to declare Eden Prairie's sign ordinance "invalid in its entirety" and requested injunctive relief.

The U.S. District Court (The Honorable David S. Doty) granted the City's motion for summary judgment, holding

that Advantage Media lacked standing to bring an overbreadth challenge on behalf of noncommercial/political speakers and that its as-applied challenges failed on the merits. Advantage appealed.

On August 1, 2006, the Eighth Circuit affirmed. The court of appeals first held that there is no exception to normal standing requirements for overbreadth challenges under the First Amendment, noting that the traditional elements of Article III standing is an "inescapable threshold question" for federal jurisdiction. Here, Advantage Media attempted to litigate the rights of others in federal court, violating prudential standing doctrines. The appellate court also noted that the severability provision of Eden Prairie's ordinance prevented Advantage Media from alleging that the city's entire sign code was unconstitutional.

The appellate court did find that Advantage Media had standing to allege that the city's code discriminated against it on the basis of content in a manner unjustified by compelling or substantial government interests. The court of appeals, however, noted that under existing U.S. Supreme Court case law, a governmental restriction on commercial speech need not always be content neutral, for the government "may distinguish between the relative value of different categories of commercial speech." The court also held that in this case there was no impermissible discretion granted to city officials under the ordinance and that when Advantage Media's applications were denied, the official followed narrowly drawn, reasonable, and definite standards.

School Law:

Straight and Gays for Equality v. Osseo Area Schools No. 05-2100 (D. Minn., April 4, 2006)

In the fall of 2005, students at the Maple Grove High School formed a new student group entitled "Straight and Gays for Equality" (SAGE). The high school labeled SAGE a "non-curricular" group, denying SAGE the ability to announce its activities on the school's PA system, scrolling screen, and other communication systems. SAGE was also prohibited from fundraising and taking field trips. Previously the Maple Grove High School had labeled cheerleading and synchronized swimming as "curricular" activities, allowing these groups to use the school's communications systems, fundraise, and take field trips.

SAGE commenced suit in U.S. District Court seeking injunctive relief under the Equal Access Act, 20 U.S.C. sec. 4071-4074, and the First Amendment. SAGE argued that under federal law it was entitled to greater access to Maple Grove High School.

The Equal Access Act (EAA) makes it unlawful for any public secondary school that receives federal funds and that has a “limited open forum” to deny equal access or fair opportunity to any students who wishes to conduct a meeting “on the basis of religious, political, philosophical, or other content of the speech at such meetings.” 20 U.S.C. sec. 4071(a). Under the EAA, if a secondary school allows one truly non-curriculum related student group to meet, the Act’s obligations are triggered and the school may not deny other non-curriculum clubs, on the basis of the content of their speech, equal access to meet on school premises during non-instructional times.

The U.S. District Court (The Honorable Joan E. Ericksen) found that SAGE was likely to prevail on its claim that truly non-curricular groups like cheerleading and synchronized swimming were afforded greater rights than SAGE. The Court noted that in her deposition the high school principal testified that cheerleading is an after-school activity and that the subject matter of cheerleading does not concern any body of courses at the school. Because the school denied SAGE’s ability to communicate its message based on the content of its speech and because some members of SAGE were seniors soon to be graduating, the Court found irreparable harm and issued an injunction requiring the Maple Grove High School to provide SAGE equal access for meetings and avenues of communication as other “curricular” groups.

Zoning and Planning:

Bartheld v. Koochiching County

No. A05-2124 (Minn. App., July 11, 2006)

Jeff and Dana Bartheld wanted to convert their residence on Rainy Lake into a bed and breakfast (B&B). Their residence was in a district zoned by the county as “residential-recreation,” which permitted one- and two-family dwellings. Home occupations or commercial businesses were listed as conditional uses requiring a conditional use permit. The Barthelds applied to Koochiching County for a conditional use permit to operate the B&B as a home occupation. They asserted in their application that they met all the requirements under the county’s conditional use ordinance to gain approval for their B&B.

At a public hearing before the county zoning commission, several neighbors expressed concern about the proposal

including parking, traffic, noise, and declining property values. The neighbors filed a petition urging the county to deny the application, stating that the B&B would “introduce strangers into the neighborhood.” Despite the neighborhood opposition, the county zoning commission voted to recommend approval of the B&B, noting that all the requirements for approval under the ordinance had been satisfied. When the recommendation reached the county board, however, county board members indicated that they had received a number of phone calls in opposition to the B&B, and the testimony at the board hearing was overwhelming in opposition to the proposal. After the public hearing, the county board voted to deny the application. The board also passed a motion to place a moratorium on all B&Bs until guidelines could be established. The county board, however, did not enact a moratorium ordinance and did not begin work on any B&B guidelines.

The Barthelds appealed the county board’s denial to the Minnesota Court of Appeals. The Barthelds argued that the county board did not properly follow state law in enacting an interim zoning moratorium on B&Bs. In addition, the Barthelds contended that neighborhood opposition based on very general concerns not factually supported in the administrative record cannot be a legally sufficient reason for the denial of a conditional use permit.

The Minnesota Court of Appeals held that the county did not comply with the requirements of Minn. Stat. sec. 394.34 in adopting, as an emergency measure, an interim moratorium prohibiting B&Bs. The court noted that the county board failed to adopt a written interim zoning ordinance; failed to make any findings that an emergency with regard to B&Bs existed; and failed to study or hold a hearing on B&Bs. Although there was a motion by the county board to adopt a moratorium on B&Bs, such a motion did not follow the state law on interim ordinances. The state appellate court also held that the Barthelds met all the ordinance requirements for a conditional use permit to operate a B&B in their home under the county’s existing ordinance. Thus, the appellate court held that the denial of the permit was an arbitrary act and ordered that a conditional use permit be issued for the B&B.

Police Liability:

Samuelson v. City of New Ulm

No. 04-3332 (8th Cir., July 20, 2006)

On the night of January 18, 2003, Tracy Samuelson was awakened when the motion light on his garage was activated. Samuelson noticed two people trying to break into his garage. He immediately called 911. Samuelson’s conversation with the dispatcher was incoherent at times,

but the operator elicited enough information to conclude he was complaining of the presence of burglars in his garage. New Ulm police were then dispatched to Samuelson's home. After the dispatcher alerted Samuelson that the police had arrived at his home, he walked outside to meet the police by the back fence. New Ulm Police Officer Brennan saw Samuelson through the back fence, but Samuelson did not announce his presence. Thereafter, Officer Brennan ordered Samuelson to the ground. Initially Samuelson did not comply but eventually did kneel with his hands up in the air as ordered. Officer Brennan asked Samuelson who owned the garage and Samuelson stated that he did.

Samuelson testified that an officer got on top of him and punched him on the ribs, head, and neck. Then other officers piled on. Samuelson testified that once he was restrained, an officer grabbed him by his pinky fingers and brought him to his knees. The same officer then pushed him back to the ground, only to pick him up again by his pinky fingers. Samuelson stated that then another officer brought him to his feet by pulling on his wrists. Samuelson asked the officers, "What the hell is going on here? I am the one that called." At that time the officer took Samuelson's wallet and examined his license. Thereafter Samuelson was placed in the squad car. When investigating the garage, the officers detected a strong odor of varnish in the garage, and Samuelson stated that he had been varnishing that day.

While in the squad care, Samuelson asked the officers why the wheels were turning on a stationary police car. The New Ulm sergeant on the scene determined that Samuelson was hallucinating due to the varnish smell. The sergeant decided to transport Samuelson to the New Ulm Medical Center based on Samuelson's demeanor. The physician who examined Samuelson observed that Samuelson's mind would all of a sudden not track." The doctor placed Samuelson on a 72-hour hold.

Following the incident with the police, Samuelson testified that he experienced severe pain in his shoulder and neck, causing him to take eight weeks off from his job as a logger. He participated in several weeks of physical therapy and underwent surgery on his rotator cuff but the orthopedic surgeon found no tear. The surgeon stated that Samuelson's treatment was a direct result of the alleged police incident since he had no preexisting arm or shoulder injuries.

Samuelson sued the individual officers and the City of New Ulm under 42 U.S.C. sec. 1983 and Minnesota law alleging excessive force and unreasonable seizure. The U.S. District Court granted summary judgment in favor of

the City of New Ulm and the officers. Samuelson appealed.

The Eighth Circuit affirmed in part and reversed in part. The court of appeals first held that the facts viewed in the light most favorable to Samuelson demonstrate that he was compliant with the officers' requests and did not resist arrest. Based on this evidence, the appellate court found a genuine issue of material fact existed whether the amount of force used against Samuelson both in restraining him and after he was restrained was excessive. The appellate court disagreed with the district court, which had held that Samuelson's injuries were de minimus, noting that the medical evidence demonstrated that Samuelson sustained injuries to this shoulder serious enough to warrant surgery. The appellate court remanded the case for trial on Samuelson's excessive force claims.

Samuelson also alleged that the officers violated his constitutional rights in transporting him to the hospital, where a 72-hour hold was placed on him. The Eighth Circuit held, however, that a jury could not find the officers' actions were objectively unreasonable, since it was reasonable for the officers to assume that Samuelson was hallucinating due to the strong varnish odor to which he had been exposed. The appellate court noted that police officers are not only permitted but expected to exercise "community caretaking functions" that include seizing a citizen in order to ensure the safety of the citizen and others.

**Automatic Approval of Zoning Request:
Hans Hagen Homes v. City of Minnetrista
No. A05-1686 (Minn. App., May 16, 2006)**

Hagen Homes owned 220 acres of land within the city limits of Minnetrista. In May 2004 Hagen Homes submitted a rezoning application to the City, requesting that the City rezone the large parcel from rural agriculture to a residential PUD zone. Hagen Homes also that the City amend the City's comprehensive plan to adjust the metropolitan urban service area line so that public sewer and water could be provided to the parcel. Upon receiving the application from Hagen Homes, the City requested an extension of the 60-day statutory time limit to approve or deny the application. The parties agreed to a November 30, 2004, deadline.

On October 2, 2004, the Minnetrista City Council held a public hearing on the Hagen Homes application. The Council thereafter voted to deny the application, specifically finding that the proposal was inconsistent with the comprehensive plan and that further traffic studies were necessary. The Council did not adopt written findings until its October 18 meeting, when it passed a formal

resolution denying the application. Hagen Homes did not have a representative at this meeting, but the City posted the minutes of the meeting on its website before the November 30 deadline. Copies of the formal resolution denying the application were available at the city hall on October 20. The City did not provide Hagen Homes with a copy of the resolution until December 9, when Hagen Homes requested a copy from the City.

Hagen Homes filed a petition for mandamus, contending that it was entitled to approval of rezoning and comp plan amendment as a matter of law because the City did not, as required by Minn. Stat. sec. 15.99, provide it with a written statement of denial before the deadline. Hagen Homes did not argue that the City's denial was improper or arbitrary, but rather that it failed to provide it personally with notice of the denial. Hagen Homes admitted it had actual notice of the denial. The state district court granted summary judgment in favor of Hagen Homes and held that the application was automatically approved. The City appealed.

The Minnesota Court of Appeals affirmed. The court held that reading the subdivisions of section 15.99 together reveals a plain meaning that is evident in the interdependent functioning of the subdivisions. The plain meaning of the subdivisions is that a city must provide an applicant a written statement of reasons for denying an application within the statutory deadline or an authorized extension, and that failing to do so results in the automatic approval of the application. The appellate court stated that it agreed "that the penalty is harsh" and that it shared the observation "that a prejudice requirement would temper the risk of public injustice." But, the court noted, the statute is clear on its face.

Public Employment Liability:
Edith Hudson v. City of Minneapolis
No. 04-3313 (D. Minn., March 23, 2006)

Edith Hudson sued the City of Minneapolis and City police officials for the negligent hiring, retention, and supervision of a police officer whom she alleged took lewd photographs of her and sexually assaulted her while she was arrested for various offenses. Hudson also sued the City for the alleged sexual harassment committed by the police officer. The City police department had commenced an internal affairs investigation of the officer after receiving information that the officer was photographing street prostitutes. Surveillance of the on-duty activities of the officer was conducted, and Hudson was interviewed. Hudson told investigators that on three separate occasions the officer had taken sexually explicit photographs of her. Hudson stated to the City investigators that on one

occasion the officer sexually assaulted her. The sexual assault matter was referred to the sex crimes unit of the city police department, but the criminal investigation was ultimately discontinued. Hudson was arrested on weapons, narcotics, and auto theft charges, and she was ultimately charged federally for a weapons violation. After the police internal affairs investigation, the City of Minneapolis fired the police officer, who admitted taking the photographs of Hudson.

The City moved for summary judgment on Hudson's claims. The U.S. District Court (The Honorable Joan E. Ericksen) granted the motion in part. The Court first held that Hudson's Section 1983 claims failed as a matter of law because there was no pattern or practice of misconduct by Minneapolis police officers and because Hudson's 1983 claims were based on a respondeat superior theory not cognizable under Section 1983 caselaw. The Court then considered Hudson's state law claims of respondeat superior, holding that Hudson failed to present evidence demonstrating that sexual misconduct was a foreseeable risk of employing a police officer even though the officer's acts occurred within work-related limits of time and place.

The Court thereafter considered Hudson's negligent employment claims of hiring, retaining, and supervising the police officer. The Court noted that in the context of a negligence action, foreseeable means a level of probability that would lead a prudent employer to take effective precautions. The Court rejected the City's argument that the hiring, supervision, and retention of police officers are policy-level activities protected by statutory immunity. Although the Court found no immunity for the hiring of the officer, it held that there was no factual dispute for jury regarding Hudson's negligent hiring claim since the City's psychological evaluation of the officer indicated no sexual or pornographic obsession. The Court, however, denied summary judgment on the negligent retention and supervision claims. The Court noted that Hudson submitted evidence that the City defendants were aware of sexual misconduct by the officer in early August, prior to one of the officer's encounters with Hudson. Therefore, the Court held, a reasonable jury could conclude that the City defendants were negligent in the pace and adequacy of their investigation of the officer. The Court also concluded that a reasonable jury could conclude that the City defendants knew or should have known of the sexual harassment by the officer, and thus Hudson's sexual harassment claims under the Minnesota Human Rights Act were held over for trial.

Public Attorneys On The Move

Jodi Furness has joined the Minneapolis City Attorney's Office as an Assistant City Attorney. Furness is a 2003 graduate of the University of Hamline Law School and has been working for the American Prosecutors Research Institute.

If you have any news you would like to report, please send it to Kim Buechel Mesun at kim.mesun@mpls.k12.mn.us

In Memoriam: Jerilyn Kay "Jeri" Aune (1955-2006)

By: David Iverson and Steven Maston

Jerilyn Kay (Hanold) Aune died unexpectedly on April 28, 2006, at the age of 50 from complications arising from multiple sclerosis. Jeri represented the State of Minnesota for twenty years as an Assistant Attorney General. Throughout her life, Jeri was known for her intelligence, her athletic success, her writing ability, and her love of the music of John Lennon. She was characterized by her sense of humor and fun, her direct—"tell it like it is"—communications, her determination to live life to its fullest, and her ability to be a good friend.

Born and raised in Rochester, Minnesota, Jeri was a well-remembered graduate of Mayo High School and Gustavus Adolphus College. Jeri returned to Rochester to begin her professional life as a technical writer for IBM, but later moved to the Twin Cities to attend the University of Minnesota Law School. After graduating, she joined the Minnesota Attorney General's Office as an Assistant

Attorney General. Working first under Hubert H. "Skip" Humphrey and then Attorney General Mike Hatch, Jeri represented multiple state agencies, including the Department of Revenue, the Department of Natural Resources, and the Minnesota Indian Affairs Council. Of particular note was her representation of the State of Minnesota in complex litigation involving hunting and fishing rights of the Mille Lacs Band of Ojibwe under the Treaty of 1837. Jeri became known for her expertise in Indian law and later provided advice and made frequent presentations around the state on a variety of Indian law issues. Unfortunately for all of us, Jeri's failing health forced her to retire in early 2005.

Jeri is survived by her daughter Betsy Bayliss, age 17; parents, Richard & Jean; brother, Steve and his wife Cathy; and sister, Susan. Jeri left us much too soon and will be missed by her family, many friends, clients and colleagues.

News From The Bench

Governor Pawlenty appointed **Kerry W. Meyer**, **Jay M. Quam**, and **Susan M. Robiner** to three trial court bench vacancies in the Fourth Judicial District in Hennepin County. The vacancies were as a result of the retirement of the Honorable LaJune Thomas Lange on February 21, 2006, the resignation of the Honorable Katherian D. Roe on March 22, 2006, and the retirement of the Honorable Catherine L. Anderson on May 1, 2006.

Kerry Meyer was an Assistant Hennepin County Attorney in Minneapolis, a position she has held since 1992. She has been a prosecutor in the general violent crimes division

since 2004, and has previously worked in the property division from 2002 to 2004, the gangs division from 1998 to 2002, and the juvenile division from 1992 through 1997. She was also a law clerk in the Hennepin County Attorney's office in 1991. Meyer earned her juris doctorate degree *cum laude* from the University of Minnesota Law School in 1990, and her bachelor of arts degree *magna cum laude* from Alma College in Alma, Michigan in 1987. Meyer has taught continuing legal education classes on material witness statutes, civil and criminal contempt, and administrative subpoenas, and has taught at a training program for suburban police investigators on property

crimes and identity theft investigations and prosecutions. She has also served as a mock trial judge, Girl Scout Troop Leader, Cub Scout pack events volunteer, Sunday School Teacher with Calvin Presbyterian Church, and a Parent Teachers Organization volunteer and classroom and library volunteer for Orono Public Schools. Meyer, 40, lives in Orono with her husband and their two children.

Jay Quam is an attorney and shareholder in the litigation department at the Fredrikson and Byron law firm in Minneapolis. He had been a shareholder since 1995 and an associate attorney with the firm from 1988 to 1995. He had also been a Hennepin County Conciliation Court Judge as well as an adjunct professor of trial advocacy at St. Thomas University School of Law in Minneapolis since 2005. Quam earned his juris doctorate degree *cum laude* from the University of Minnesota Law School in 1988, and his bachelor of arts degree *summa cum laude* from Moorhead State University in 1984. Quam chaired Fredrikson and Byron's Professional Development Committee, teaches trial advocacy at the University of St. Thomas School of Law, and is an attorney coach for the Mounds View High School Mock Trial Team. He was a member of the Central Minnesota Legal Services Board, served on the Volunteer Lawyers Network Board of Directors and founded its summer associate program, and co-founded and is an advisor with the Educational and Representational Program for North Vista Education Center. Quam has also provided pro bono legal advice to clients of Catholic Charities/Branch III Homeless Shelter, and The City, Inc. He is a member of the American, Minnesota State, and Hennepin County Bar Associations. Quam, 43, lives in Eden Prairie with his wife, and their two children.

Susan Robiner was an attorney and shareholder with the law firm of Leonard, Street and Deinard in Minneapolis. She was a shareholder from 1993 to 2000 and again since 2001, and an associate attorney with the firm from 1985 to 1993. She was an attorney and partner with the Sprenger and Lang law firm in Minneapolis from 2000 to 2001. Robiner earned her juris doctorate degree from Georgetown University Law Center in Washington, DC in 1985, and her bachelor of arts degree from Carleton College in Northfield in 1981. Robiner is a member of the Minnesota Supreme Court Advisory Committee for the Rules of Civil Procedure; Hennepin County Bar Association, where she serves on the Speaker's Bureau; Minnesota State Bar Association, where she serves on the Labor and Employment Law Section; and American Bar Association, where she serves on the Intellectual Property, and Labor and Employment Law Sections. She is also an adjunct professor with the University of St. Thomas School of Law; is a member of Minnesota Women Lawyers, where she serves on the student and attorney mentoring committees; American Intellectual Property Law

Association; and Minnesota Justice Foundation. Robiner is also a parent volunteer at the Minneapolis Jewish Day School, a volunteer with the Patents' Committee and Overnight Homeless Shelter at Mount Zion Temple, and a children's ski instructor. Robiner, 47, lives in Minneapolis with her husband and their three children.

Governor Pawlenty appointed **Mark F. Hansen** and **Jay D. Carlson** to two trial court bench vacancies in the Seventh Judicial District. The first vacancy occurred with the death of the Honorable Thomas M. Stringer on January 19, 2006. The Minnesota Supreme Court certified the continuation of the chambers of this position for the city of Fergus Falls in Otter Tail County. Hansen is appointed to the Otter Tail County position. The second vacancy occurred with the retirement of the Honorable Timothy J. Baland on April 4, 2006. The Supreme Court certified the chambers of this position for the city of Long Prairie in Todd County. Carlson is appointed to the Todd County position.

Mark Hansen was an attorney and partner with the Wadena law firm of Hansen and Pederson, a position he has held since 1985. He is also a part-time assistant Wadena County Attorney; city attorney for Aldrich, Bertha, Sebeka, and Wadena; a prosecuting attorney for the cities of Menahga and Verndale; and township attorney for Blueberry Township and Deer Creek Township. Prior to forming Hansen and Pederson, Hansen was an associate attorney with the law firm of Kennedy and Nervig in Wadena from 1974 to 1985, and an Eighth Judicial District law clerk in Chippewa County from 1972 to 1974. Hansen earned his juris doctor degree from the University of Minnesota Law School in 1972, and his bachelor of arts degree *cum laude* from Macalester College in St. Paul in 1969. Hansen is a member of the Minnesota State Bar Association, where he currently chairs its Publications Committee. He is also a member and past president of the Seventh District Bar Association, and has served on the Seventh District Bar Ethics Committee. He is also a member of the American Bar Association, Minnesota Association of City Attorneys, Minnesota Trial Lawyers Association, and American Trial Lawyers Association. Hansen's community activities include serving on the New York Mills Regional Cultural Center Board of Directors, and the Wadena Lions Club, where he has served on its Board of Directors. He has also been president of the Wadena Chamber of Commerce, a member of the Wadena Library Board, Wadena/Deer Creek Dollars for Scholars, and held a number of volunteer positions with the First Congregational United Church of Christ in Wadena. Hansen, 59, resides in Ottertail with his wife. They have two adult children and one granddaughter.

Jay Carlson was an attorney in private practice with

offices in Detroit Lakes and Fargo, North Dakota. In his practice, he represented the townships of Lake Eunice, Audubon, and Burlington, and the Cormorant Lakes Watershed District. He has been a self-employed attorney since 1979, except between 2003 and 2005, when he was an attorney and shareholder with the law firm of Ohnstad and Twichell. Carlson earned his juris doctorate degree from Hamline University School of Law in St. Paul in 1979, and his bachelor of arts degree *cum laude* from St. John's University in Collegeville in 1976. Carlson is a member of the Minnesota State Bar Association, Becker County Bar Association, Minnesota Trial Lawyers Association, Big Cormorant Lake Association, Cormorant Lakes Watershed District Advisory Committee, St. Mary's of the Lake Church, and Cormorant Lions Club. Carlson, 52, lives in Big Cormorant Lake.

Governor Pawlenty appointed **Daniel C. Moreno, Ronald L. Abrams, and Gina M. Brandt** to three trial court bench vacancies in the Fourth Judicial District in Hennepin County. The vacancies were as a result of the resignation of the Honorable Lorie S. Gildea, the retirement of the Honorable Isabel Gomez, and the Supreme Court's conversion of a vacant Fourth District referee position into a new district court judgeship.

Daniel Moreno is an Assistant Fourth Judicial District Public Defender in Hennepin County, a position he has held since 1991. He was also a law clerk in the Hennepin County public defender's office from 1987 to 1990. Moreno earned his juris doctorate degree from the University of Minnesota Law School in 1990, and his bachelor of arts degree from the University of Wisconsin at Madison in 1986. Moreno is a founding member of the Minnesota Hispanic Bar Association, where he served on its Board of Directors; past chair of Centro Cultural Chicano; was a founding member of the Minneapolis Mayor's Latino Advisory Committee, where he chaired the Public Safety Committee; past board chair of the University of Minnesota President's Latino Advisory Committee; and a member of the Prostitution Intervention Project Task Force. He has also been a member of the Minnesota Association of Criminal Defense Attorneys, and the Minnesota Minority Lawyers Association. Moreno, 42, resides in Minneapolis with his wife and their two children.

Ron Abrams was a member of the Minnesota House of Representatives. He has been a state representative since 1989, has served as Speaker Pro Tempore since 1999, and chaired the House Tax Committee from 1999 through 2004. He was a Minnesota House of Representatives Committee Administrator from 1985 to 1986, an attorney and area manager with Group W. Cable Television in Minneapolis from 1980 through 1984, and an attorney with the law firm of Briggs and Morgan in St. Paul from 1977 to 1980. Abrams

earned his juris doctorate degree from Harvard Law School in Cambridge, Massachusetts in 1977, and his bachelor of arts degree *summa cum laude* from the University of Minnesota in 1974. Abrams is a member of the Tyrone Guthrie Theater Board of Directors, League of Women Voters, Citizens League, TwinWest Chamber of Commerce, and Greater Wayzata Area Chamber of Commerce, and has served on the Minnesota Orchestral Association Board of Directors, Minneapolis Art Institute Board of Trustees, and Minnesota Chapter American Jewish Committee Board of Directors. Abrams, 54, resides in Minnetonka with his wife and their two children.

Gina Brandt was an associate attorney with the Eagan law firm of Campbell Knutson, where she primarily handled the Plymouth city prosecution work. She has been an attorney with the firm since 1999. Brandt was an Assistant Carver County Attorney from 1996 to 1999, an Assistant Hutchinson City Attorney and Chief of Criminal Prosecution from 1995 to 1996, an associate attorney with the law firm of Arnold and McDowell in St. Louis Park and Hutchinson, as well as an Assistant Hutchinson City Attorney from 1993 to 1995, and a First Judicial District law clerk for Judge Philip Kanning in Carver County from 1991 to 1993. Brandt earned her juris doctorate degree from William Mitchell College of Law in St. Paul in 1991, and her bachelor of arts degree from the College of St. Benedict in St. Joseph in 1988. Brandt is a member of the Minnesota State Bar Association, where she serves on its Criminal Section; Eighth District Bar Association, where she is a past president; Dakota County Bar Association; Minnesota State DWI Task Force; National District Attorneys Association; Hennepin County Suburban Prosecutors Association; Carver County Justice Advisory Council; and Burnsville Domestic Abuse Response Team. She volunteers annually with Project Stand Down, is an alumni student mentor for the College of St. Benedict, and assists student attorneys from William Mitchell College of Law on court appearances and supervises them in trials. Brandt, 39, resides in St. Bonifacius with her husband and their two children.

One of the MSBA Professional Excellence Awards for 2006 was presented at the MSBA Convention in Brainerd to the Honorable **Kenneth Jorgensen** for his 20 years of dedicated service to the Minnesota attorney discipline system in the Office of Lawyers Professional Responsibility. Recipients of this award must have demonstrated substantial effort to advance the legal profession and the administration of justice. One nominator wrote about Judge Jorgensen: "Ken Jorgensen is one of the best lawyers and legal scholars I know. Without a doubt he knows more about issues of legal ethics and the law of lawyering than anyone else in the state."

Patrick J. Schiltz was sworn in as the 33rd person to serve on Minnesota's federal trial court bench on May 30, 2006. He will fill the vacancy created when Judge Richard H. Kyle took senior status last year. Formerly Judge Schiltz was a Professor at the University of St. Thomas School of Law. Judge Schiltz's public investiture ceremony will be held on September 22. Judge Schiltz graduated *magna cum laude* from Harvard Law School and served as an editor of its Law Review. He was a law clerk for U.S. Supreme Court Justice Antonin Scalia before joining the

firm of Faegre & Benson. In 1995, Judge Schiltz left private practice to become a member of the faculty at Notre Dame Law School, where he became a nationally recognized scholar on ethics in the legal profession and appellate procedure. He helped to found the University of St. Thomas Law School. Judge Schiltz is chambered in the temporary courthouse located at 180 E. 5th Street in St. Paul and will move to the Warren E. Burger Building in St. Paul after construction is complete.

Memories Of Justice George M. Scott

By: Greg Brooker, Assistant U.S. Attorney

George M. Scott – private practitioner, Hennepin County Attorney, gubernatorial candidate, and Justice of the Minnesota Supreme Court – died on May 24, 2006. What a life and what a man! I had the honor of clerking for Justice Scott toward the end of his career on the Minnesota Supreme Court. What follows is a short tribute to a man who helped shape the law of Minnesota for over fifty years.

George M. Scott began his career as a lawyer, establishing a law practice with his friend Douglas K. Amdahl. (The two friends would later serve together on the state supreme court.) Douglas Amdahl always said that George Scott was a great law partner because clients came easily to George and George's clients paid their bills! After a few years of private practice, George Scott threw his hat into the ring and became Hennepin County Attorney. What exciting years those were. George Scott was a Progressive and a fair-minded prosecutor. As Hennepin County Attorney, George Scott began to disclose exculpatory evidence to defendants long before the U.S. Supreme Court mandated it. He did so, he later told me, because it was the right thing to do. This says something about the man's integrity and his sense of justice. In his first year as county prosecutor, George Scott noticed large gifts being dropped off at the office around the holidays from defense firms and other interested parties. He immediately put a stop to it, he said, because it wasn't right.

George Scott moved the Hennepin County Attorney's Office out of the dark ages. He hired prosecutors based on merit, he modernized the case assignment process, and he worked closely with judges to improve the county's judicial system. He also was elected President of the National District Attorneys Association and helped improve local district attorney offices throughout the nation. He laughed when he told the story that every Friday during the 1960s when the Warren Court was

issuing its famous criminal law decisions, he and his prosecutors would listen to the radio and quickly change their practices based on that day's Court opinions. Things were moving quickly in the 1960s, and George Scott was moving right with them. He was continuously re-elected as county attorney, and he actually tried difficult criminal cases himself. When F. Lee Bailey came to Minneapolis to represent a defendant in a case, George Scott handled the trial himself. He loved the excitement of trial – and of politics. In 1960 he was a delegate to the Democratic National Convention in Los Angeles, the convention that nominated John F. Kennedy as the party's presidential candidate. And in 1970, when there was a wide-open race for governor, he ran for the DFL endorsement, losing at the end to Wendell Anderson.

In 1973, there were two openings on the Minnesota Supreme Court. Governor Anderson appointed his former challenger for the gubernatorial endorsement to one of the seats. For the next fourteen years, George Scott would write opinions for the court on all aspects of Minnesota law. The law was changing rapidly during those years – government liability, comparative fault, and state constitutional claims were coming to the court, and the docket was full. At the time, Minnesota was the most populous state in the country without an intermediate court of appeals. George Scott and his friend Douglas Amdahl would later be instrumental in getting the state constitution changed to create the Minnesota Court of Appeals. While on the state's highest court, Justice Scott — the former hard-charging prosecutor and President of the National District Attorneys Association — wasn't afraid to vote to reverse a criminal conviction. He also was instrumental in creating state rules of criminal procedure – a first among many states.

Toward the end of his career on the Minnesota Supreme Court, Justice Scott faced a legislative act that had

hollowed out the constitutional office of the state treasurer, leaving the duly elected treasurer with essentially no duties or budget. Writing for the court striking down the statute, Justice Scott focused on our great principle of separation of powers, noting:

“[T]here is little doubt that the Office of State Treasurer now stands as an empty shell. By statutorily abolishing all of the independent core functions of a state executive office, the legislature, in effect, abolishes that office, and the will of the drafters...is thereby thwarted. To allow the legislature to abolish all such functions of an executive office is to allow it to do violence to the title the drafters afforded the office and the core functions necessarily implied therefrom. The drafters did not ... give the legislature the option

of statutorily abolishing this state executive office. Such a remedy lies only with the people.”

State ex rel. Mattson v. Kiedrowski, 391 N.W.2d 777, 782-83 (Minn. 1986). Justice Scott had a great respect for our state constitution, at a time when most lawyers ignored that document and focused exclusively on the United States Constitution in challenges to government programs and policies.

A year after he wrote about the state constitution in *Kiedrowski*, Justice Scott retired, leaving the development of Minnesota law to younger lawyers and judges. George M. Scott’s legacy, however, lives on in those whom he mentored, trained, educated, and counseled.

News Of Interest

The MSBA’s Katrina relief campaign won the American Bar Association’s prestigious Harrison Tweed Award for 2006. The MSBA received this award for its three-pronged effort that raised over \$420,000 and three truckloads of furniture to provide relief to legal services communities and clients in areas of Alabama, Louisiana and Mississippi hit by Hurricane Katrina. The Harrison Tweed Award was

created in 1956 to recognize the extraordinary achievements of state and local bar associations that develop or significantly expand projects or programs to increase access to civil legal services for poor persons or criminal defense services for indigents. The MSBA Katrina relief effort was nominated for this award by Gulf Coast bar and legal services groups that benefited from the relief effort.

Favorite Recipes From Public Lawyers

The Not So Hotdish

1 #2 can baked beans (I prefer Bush’s)

Place beans in a microwave safe casserole or “dish”; heat and enjoy.

Serve with lime jello made with teeny tiny marshmallows and itty bitty mandarin orange sections.

Serves 2 usually.

David J. Kennedy
Kennedy & Graven
Sandstone City Attorney

Cornbread/Chili Hotdish

The problem is that I make this up as I go along, so nothing is written down. I am sure all the great chefs work that way. It is basically a corn bread/chili hotdish. It is filling

and takes a while to make. I am sure that it is bad for you, as are most things that taste good. Start with a good frying pan, large. Chop up one large onion, chop up or grate one large stick of pepperoni, or ½ lb. bacon. One or the other, not both. Cook the onion and the bacon/pepperoni until onion is tender. Add Worcestershire sauce to taste. Add 1 lb. lean ground beef, cook until well done. Add to a large pot. Add large can (1 lb) of tomatoes, preferably the kind with Italian seasonings. Add 2 (8 oz) cans of tomato paste. Add a large can of beans (don’t know what size, that is optional depending upon how many people you hope to feed or give heart burn). Add 1 ½ Tablespoons hot chili powder (2 or 3 if you are feeling brave). Add 1 Tablespoon minced garlic. Add 2 Tablespoons brown sugar. Add Tabasco sauce, depending on bravery. Add 1 Tablespoon garlic salt. Set to simmer 1 ½ hours. After 1 ½ hours, place the whole mess in a casserole. Mix up a package of cornbread mix. Add to top of chili. Bake according to directions. Eat. Can be topped with shredded cheddar cheese, more onions, green onions

or sour cream, or all of the above. I make no warranties of the fitness of this for human consumption. Black and green olives, chopped, are also good on top. Best served with beer in quantity.

Mark Hansen
Hansen & Pederson, P.A.
Wadena City Attorney

Thank you to Mankato City Attorney Eileen Wells for forwarding these recipes to the PLS News. According to Eileen these recipes were included in the Minnesota Hotdish Cookbook that was compiled for the 2003 IMLA Annual Conference in Minneapolis.

A First For Wisconsin: Government Lawyer Becomes State Bar President

For the first time in Wisconsin, government lawyer Steve Levine has become State Bar president. His swearing-in ceremony was held on May 4, 2006. Levine, who has served as assistant general counsel for the Public Service Commission (PSC) for over 30 years, also became the first bar president elected through the self-nomination process. "There were a number of issues that I felt were important and were not being raised or discussed," said Levine, "including issues such as a voluntary bar, representation of nonresidents on the Board of Governors, diploma privilege, and the conduct of the Board of Bar Examiners (BBE) regarding both bar admission and CLE compliance."

Levine planned to retire from his position with the PSC in 2006, allowing him time to focus his full attention on the State Bar Presidency. "If I was going to run, it seemed that the 2005 election would be the best time," he said. Using email and direct contact, Levine appealed to many attorneys who felt disaffected by the direction of the Bar.

Levine believes that his unexpected election represents a unique opportunity for those segments of the Bar that often haven't received adequate attention. "If there is any message [in his election], it is that disaffected segments of the bar, acting together, can make a difference. Many people phoned or emailed to say they usually didn't vote in bar elections, but they did so in 2005 because a candidate finally raised some issues for them to consider."

"I tried to tailor my campaign to raise issues for segments of the bar which might otherwise not receive attention from the Board of Governors - those segments include lawyers who favor a voluntary bar, nonresident lawyers, lawyers who attended law school out of state, government lawyers, and lawyers who have been experiencing problems with the BBE. Together, these segments led to winning numbers."

Levin's goals for his presidency include a bar-wide referendum next April on a voluntary bar. He also wants to encourage more government and nonresident lawyer

involvement in the bar. "Nonresident lawyers represent 23% of the Bar but they have only about 6% representation on the Board of Governors," he said. Diploma privilege admission is another issue Levine plans to tackle. "I would like to appoint a special committee to study whether or not there should be one method of bar admission for all new law school graduates - either diploma privilege or bar exam," he said. "I believe the current system is discriminatory."

The new bar president also wants to look at relations with the BBE and wants the establishment of a better working relationship between the BBE and its constituents, "so that both bar members and members-to-be are treated in a humane, cooperative manner by the BBE."

Levine sees the contribution of government lawyers as important to the Bar. "I want to increase both participation by government lawyers in the bar and bar programs and services for government lawyers," he said. To accomplish this goal, he plans to appoint a long-range planning/policy committee to develop ideas to increase that participation.

Closer to home, in recent memory in Minnesota, there does not appear to have been a bar president serving while being employed **solely** by the government. According to MSBA Executive Director Tim Groshens, it's a matter of definition. "I think Jon Duckstad (2002-03) considered himself a government lawyer. Sheryl Ramstad (1997-98) at various times in her career considered herself a government lawyer. I can't speak for any of the presidents prior to 1971, but between 1971 and 2006, I think the only two possible government lawyers/presidents are Jon and Sheryl."

Information for this article was obtained from an article written by James Godlewski, President, Wisconsin Bar Association Government Lawyer Division in the May 2006 edition of the State Bar of Wisconsin Government Lawyer News.

Job Opening

Job Classification: JUDICIAL RESEARCH ANALYST
 Job Class Option:
 Working Title:
 Salary Range: \$ 25.47-\$ 39.47 hourly, \$ 53,181-\$ 82,413 annually
 Location: Minneapolis
 Hiring Agency: Judicial Branch / Court System

Who May Apply: Open to all qualified job seekers
 Employment Conditions: Permanent, Full-time
 Posting Number: 06JUD000228
Closing Date: 09/29/2006
 Go to https://statejobs.doer.state.mn.us/JobPosting/View?_posting=06JUD000228 to see the full listing about this job.

Minnesota Department Of Administration Data Practices Opinions Index

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

Copies of these opinions can be requested by calling the Minnesota 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>.

No. of Opinion	Date of Opinion	Gov't Entity Involved	Topic	Opinion Requestor
06-012	04/07/06	Brunswick	Meetings held outside boundaries and notice; explanation for closed meeting.	Peterson
06-013	04/12/06	Department of Human Services (DHS)	Legally non-licensed childcare providers; receipt of CCAP funds.	Soma, DHS
06-014	04/28/06	Department of Corrections	Timeliness of response; MSOP data.	Danforth
06-015	05/04/06	Metropolitan Council	Copy of proposed contract; labor relations data; application for temporary classification; Bureau of Mediation Services data.	<u>Star Tribune/Borger</u>
06-016	05/17/06	Public Safety Officer Benefit Eligibility Panel (PSOBEP)	Applications and supporting documents for benefits; open meeting discussion of data; and record of meeting.	PSOBEP/Johnson, AAG
06-017	05/25/06	Spring Grove	Open Meeting Law and hiring of accountant.	<u>Spring Grove Herald/Anfinson</u>
06-018	06/06/06	Minneapolis Police Department	Investigation concerning arrest of X's minor child.	X/Hageman
06-019	06/09/06	Department of Labor and Industry	Wage data; Dept. of Revenue protection.	Charest
06-020	06/23/06	Minneapolis School Board	Notices for Board Meetings; closed meeting(s); summary of meeting(s).	<u>Star Tribune/Borger</u>
06-021	06/23/06	Independent School District 186	Letter referenced in Board minutes and in Superintendent file.	ISD 186/Rupp Sobieck

Upcoming CLE Seminars

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

CLEs are free unless otherwise noted.

Date	Seminar	Time	Place	Sponsor and Contact
9/14/2006	U.S. Supreme Court Decisions Update	Noon to 1:30 p.m.	Elmer L. Anderson Bldg. (DHS) 540 Cedar Street St. Paul	Attorney General's Office Marty Casserly 651-297-5919
9/19/2006	Legislation Concerning Veterans and the Military Since 9/11	11:00 a.m. to Noon	State Office Bldg., St. Paul - Rm. TBA	Revisor of Statutes Karen Lenertz 651-297-2838
9/27/2006	Rulemaking; 11 th Annual Seminar	8:30 a.m. to 12 p.m., Advanced Skills Training 1:00 p.m. to 3:00 p.m., Clinic for New Rule Writers	Minnesota Department of Health - Mississippi Room 1645 Energy Park Dr. St. Paul	Minnesota Interagency Rules Committee Patricia Winget 651-215-5808 or Eric Lipman 651-642-0255
9/29/2006	Civil Commitment 2006	8:30 a.m. to 4:30 p.m.	HCBA 600 Nicollet Mall, #390	Hennepin County Bar Association 612-752-6600 (fee)
10/10/2006	Government Data - Recent Developments	2:00 p.m. to 3:00 p.m.	Elmer L. Anderson Bldg. (DHS) 540 Cedar Street St. Paul	Attorney General's Office Marty Casserly 651-297-5919
10/24/2006	Family Law Update 2006: Child Support Reform	10:00 a.m. to Noon	State Office Bldg., St. Paul - Rm. TBA	Revisor of Statutes Karen Lenertz 651-297-2838
10/27/2006	New Technology to Improve Public Safety: The Legal Framework	Noon to 1:30 p.m.	TBD	PLS & Mpls. City Attys. Office Jay Heffern 612-673-3272
11/14/2006	Minnesota Supreme Court Roundup	Noon to 1:00 p.m.	State Office Bldg., St. Paul - Rm. TBA	Revisor of Statutes Karen Lenertz 651-297-2838

Upcoming CLE Seminars Continued

Date	Seminar	Time	Place	Sponsor and Contact
11/16/2006	Deposition and Trial Skills	1:00 p.m. to 4:45 p.m.	Elmer L. Anderson Bldg. (DHS) 540 Cedar Street St. Paul	Attorney General's Office Marty Casserly 651-297-5919
11/28/2006	Journey to Safety – Stage presentation based on MN advocates for Human Rights report	10:00 a.m. to Noon	700 State Office Bldg., St. Paul - Rm. TBA	Revisor of Statutes Karen Lenertz 651-297-2838
12/6/2006	Aftermath of White I and White II: Maintaining Fairness and Impartiality in the Courts	1:30 p.m. to 3:30 p.m.	TBD	PLS & Mpls. City Attys. Office Jay Heffern 612-673-3272
12/11/2006	New Forensic Technology in Criminal Apprehension	1:30 p.m. to 2:30 p.m.	Elmer L. Anderson Bldg. (DHS) 540 Cedar Street St. Paul	Revisor of Statutes Karen Lenertz 612-297-2838
<i>To include a notice of an upcoming CLE in the next issue, contact Mary Miller 651/284-5306</i>				

Summary Of Credits For PLS Sponsored CLEs In 2005-06

Section	Meeting/Course Title	Date	Credits
Public Law (co-sponsored with Mpls. City Attorney's Office)	Strategies to Address Livability Crimes	10/14/05	3.0
Public Law (co-sponsored with Mpls. City Attorney's Office)	Police Pursuit Issues	11/29/05	1.5
Public Law	Overview & Issues of Affordable Housing	05/19/06	3.0
Public Law (co-sponsored with Criminal Law Section)	Lost in Translation: The Use of Interpreters in Minnesota Courts	06/22/06	1.5 EOB
EOB = Elimination of Bias		Total 05-06	7.5 Standard 1.5 EOB