

# Public Law News

A Publication of the Minnesota State Bar Association Public Law Section

Volume XVIII, Issue 1, Fall 2008

“We’re 18 and legally adults!”

## Public Law Section

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Visit the PLS Website: <http://www2.mnbar.org/sections/public-law/index.asp>

**MSBA**



[www.mnbar.org](http://www.mnbar.org)

## Mark your calendar for an upcoming PLS-sponsored CLE

The Public Law Section is again co-sponsoring a Data Practices CLE with the Minnesota County Attorney Association (MCAA). The Public Law Section is co-sponsoring up to three hours of the CLE. The current details of the CLE are:

### *It's A Crime Data Practices Isn't More Civil*

October 3, 2008 from 9:30 a.m. to 3:45 p.m.

Location: Hilton Garden Inn, Maple Grove

#### Description:

Criminal topics will be covered in the morning session and civil topics in the afternoon session.

Subjects to be covered by the class include:

1. Keeping law enforcement data classification straight.
2. Drafts of documents – Does the Data Practices Act apply as the ink flows from the scrivener's pen?
3. Responding to subpoenas for not public data.
4. What court services' data should be retained?
5. Do the Data Practices Act & Open Meeting Law work together?

Anyone interested in the CLE may contact Stacey Sundstrom, MCAA Education Director, at (651) 641-1600 or log on to the MCAA web site at: <http://www.mcaa-mn.org/> to register for the CLE.

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## Tasty Late Summer Recipes

By Eileen Wells, Mankato City Attorney

### Cilantro Lime Rice

- 1 ½ Tbsp olive oil
- 1 c long grain white rice
- 2 c chicken broth
- ¼ tsp salt
- Grated rind and juice of 1 medium lime
- ½ c chopped cilantro



Heat oil in a saucepan over medium heat; add rice, stirring to coat. Add broth and salt; increase heat and bring to a boil. Stir once. Reduce heat to medium low; cover and cook 20 minutes. Remove from heat and let stand 10 minutes. Fluff rice with a fork and stir in lime rind, juice and cilantro. Serves 4.

## Public Law Section 2008 Awards of Excellence

On May 16, 2008, 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



**Lane Ayres**

*Award presentation and comments below by Patty Moses.*

I am pleased and honored to introduce Lane Ayres, recipient of the 2008 Douglas Amdahl Public Attorney Career Achievement Award. I'm happy to say that I have known Lane since the early 80's, as opposing counsel, friend and later as a trusted colleague. Lane retired in January of this year after 34 years of public service, first in the Hennepin County Public Defender's Office for 22 years - and then in the Hennepin County Attorney's Office - 12 years.

As an Assistant Public Defender, Lane skillfully represented both juvenile and adult clients, but found his career passion in juvenile justice. He argued persuasively numerous times, for the court to give his client one more chance, and was creative in proposing dispositions for tough-to-deal-with kids. He represented some of the most serious juvenile offenders in Hennepin County, including the 12-year-old charged in the Thanksgiving 1982 Northwestern Bank fire in Minneapolis. In that case, he obtained an order suppressing the juvenile's confession, effectively ending the prosecution.

In 1995, Lane became a Senior Assistant Hennepin County Attorney in the Juvenile Prosecution Division and ultimately focused on juveniles who exhibit high risk behavior but are not deeply involved in the system. He developed and supervised the Hennepin County Attorney's Office truancy program which in 2006 was honored by the ABA as one of seven model programs nationwide. He supervised the delinquency

diversion program. Working with the county social services and community health departments, he creatively addressed tobacco, alcohol and other drug involvement by youth. He supervised the delinquency diversion program. Working with the county social services and community health departments, he creatively addressed tobacco, alcohol and other drug involvement by youth. He developed a system for streamlining the review and charging of misdemeanor offenses for which the Hennepin County Attorney's Office won a NACO award (8,000 misdemeanors were referred for prosecution in 2007). He spearheaded the county attorney's safe school initiative - his efforts surrounding school climate were recognized by the National District Attorneys Association and he presented several national trainings on the topic.

Lane was an integral member of many initiatives that involved multiple county departments as well as the City of Minneapolis, various police departments and school districts. He is widely known and respected by people in many county and city departments with whom he worked as well as the bench, law enforcement, schools and many community agencies. He is a creative leader and his good humor and enthusiasm never wavered - he was emailing ideas on various initiatives until virtually the last ten minutes on his last day in the office.

Lane is just getting adjusted to retirement. He and his wife, Marion, are veteran travelers, just back from India. His passion for kids will be transferred to a program called "Books for Africa," which enhances educational opportunities for African children.

Over his 34-year career as a public lawyer, Lane Ayres has consistently exemplified dedication to public service and the welfare of the community. His service and leadership has contributed greatly to the justice system and particularly to the treatment of high risk and delinquent youth. It is my pleasure to present this award.



**Honorable  
Allen Oleisky**

*Award presentation and comments below by the  
Honorable Daniel Mabley*

In 1972 Governor Wendell Anderson appointed Allen Oleisky to the Hennepin County bench. Thirty-six years later in March, 2008, Judge Oleisky retired as the longest serving judge in the State of Minnesota. The intervening years were served with distinction and honor. As he retired, he was one of the most respected and admired judges to have ever served on the Minnesota Judiciary.

Judge Oleisky will be missed for his many qualities. But two in particular come to mind.

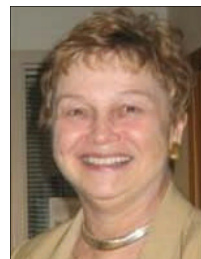
First, he treated everyone with respect, dignity, and civility. No criminal defendant's crime was so horrible that Judge Oleisky could not address him courteously and by name. No unprepared attorney's frivolous and baseless argument would prevent Judge Oleisky from listening intently and respectfully so the attorney would not be unnecessarily embarrassed in front of his client. In an adversary system, Judge Oleisky had no adversaries. Lawyers who wholeheartedly disagreed with his rulings accepted them because of the grace, professionalism, and thoughtfulness with which he delivered them. Judge Oleisky always believed that it was not only possible but imperative that lawyers and judges disagree without being disagreeable. As a result, lawyers enjoyed appearing before Judge Oleisky. He mentored these traits well as evidenced by his two children, Jill and Robert – both lawyers - who exhibit these same qualities in their legal practice. Judge Oleisky was and continues to be a member of the Douglas Amdahl Inn of Court, an organization that stands for and promotes the ideals of professionalism and civility in the judiciary and practicing bar. Judge Oleisky has modeled these ideals for his entire career.

Second, Judge Oleisky will always be remembered for the sheer joy with which he approached his career as judge. It was apparent to anyone that observed him that he loved to come to work, he sought out

cases and additional work, he enjoyed the human interaction attendant to his judicial duties, and that he clearly did not want to retire. In fact, he never really left the bench after his retirement since he immediately volunteered to assist the court as a retired judge. Undoubtedly, Judge Oleisky's joyful approach to work directly stems from how well he was generally treated by the lawyers who appeared before him. This good treatment was not accidental. It was because of how well he treated them.

In recognition of his long years of distinguished service and his contribution to the legal profession, Judge Oleisky has been honored with numerous awards, including the 2007 Sidney Burrows Lifetime Achievement Award from the Cardozo Society of the Minneapolis Jewish Federation, the 2007 Golden Gavel Award from the Minnesota District Judges' Association for outstanding service and commitment to improvement of the Judicial System; and the 2008 Minnesota State Bar Association Civil Litigation award. These prestigious awards exemplify the high esteem in which Judge Oleisky is held by his peers, the legal profession and his community. Each and every day of his judicial career he demonstrated his patience, civility, work ethic, knowledge, and fairness. He set the standard for judicial performance for an entire generation of judges.

I congratulate Judge Allen Oleisky for this lifetime achievement award from the Public Law Section and wish him well in his retirement.



**Jeanne Schleh**

*Award presentation by John Choi. Unfortunately, Ms. Schleh was unable to attend the awards ceremony. Comments below are from the nomination letter of Assistant Ramsey County Attorney Jill Fedje.*

I would like to nominate my friend and colleague Jeanne Schleh for the Douglas K. Amdahl Public Attorney Career Achievement Award.

Jeanne's contributions to the public practice of law are many. She worked as an Assistant Ramsey County Attorney since 1977. In that capacity, she has aggressively prosecuted rapists and child abusers. She has drafted legislation protecting women and children from sexual predators and domestic assaults. In addition, she has lobbied the Minnesota Legislature for laws creating greater rights for victims, tougher penalties for repeat sex offenders, and more "child friendly" courtroom/evidentiary procedures. More recently, she has worked as an appellate lawyer in the Ramsey County Attorney's Office where her expertise in child abuse and sexual assault cases were frequently put to good use.

Jeanne has been a tireless advocate for women and children throughout her career. Just weeks before her retirement, she completed the *Manual for Prosecution of Child Abuse*, 5<sup>th</sup> ed. or, as we in the Ramsey County Attorneys' Office affectionately refer to it, "the Jeanne Schleh Bible." It is truly a wonderful resource for all attorneys who prosecute child physical and sexual abuse cases. Her manual addresses most issues a prosecutor faces when trying a child abuse case. It covers everything from jury selection, pretrial motions the State should consider and even common defense motions and tactics.

While Jeanne has always been a zealous prosecutor, she was always keenly aware that the duty of a prosecutor was to "do justice." She was never one to compromise her ethical principles to gain a conviction. Preserving and protecting a defendant's Constitutional rights were always important to Jeanne.

Finally, Jeanne served as a mentor to so many younger attorneys in the Ramsey County Attorney's Office. Her door was always open for those with questions. She was a fabulous resource for how to charge and prosecute child abuse, sexual assault and domestic abuse cases. Her passion for those issues never waned as she approached retirement age. Many of her colleagues would comment that she still "has the fire in the belly" despite having worked in this area for decades. She inspired us with her love of the law and her deep commitment to protecting women and children. She undoubtedly deserves public recognition for her impressive career.

## Julius E. Gernes Prosecutor Award of Excellence



**Jeffrey R. Edblad**

*Award presentation and comments below by Todd Schoffelman.*

It is my pleasure to present Isanti County Attorney Jeffrey Edblad as the recipient of the 2008 Julius E. Gernes Prosecutor Award of Excellence. This award recognizes the importance of the prosecutor in the area of public law and specifically the contributions of an individual prosecutor, who has shown particular strengths and dedication to the public. Jeff Edblad epitomizes the role of the public prosecutor.

Jeff has spent the vast majority of his legal career in service of public law. After a brief time with the Tenth District Public Defenders Office, Jeff became an Assistant Chisago County Attorney. Jeff was elected Isanti County Attorney in 1994. He was reelected in 1998, 2002, and 2006.

Isanti is a fast growing County. In Jeff's time as County Attorney, Isanti has experienced well over a 20 percent increase in population and is projected to grow by another almost 40 percent by 2015. This growth brings great opportunity, but also challenges. The County Board and citizens look to the County Attorney for answers to questions ranging from zoning to public safety. Jeff provides legal services and advice on all of these issues. He also runs a seven attorney law office.

On top of all of these duties as County Attorney, Jeff is a full-time prosecutor. The size of his office does not give him the option of delegating his prosecutorial duties, nor would he ever want to give up his time as a prosecutor. This is fortunate for the citizens of Isanti County, as they are the recipient of Jeff's dedication and hard work.

However, Jeff's public dedication as a prosecutor goes well beyond the courtroom. He is an active

member of the Minnesota County Attorneys Association, where he serves as a Board member on the Peace Officer Training Committee. This training assures that Law Enforcement effectively protects the citizens of Minnesota.

He has served as an instructor at the National District Attorney Association's National Advocacy Center in South Carolina. This prestigious trial school teaches trial skills and tactics to prosecutors from the entire nation.

Jeff has written articles relating to police officer vehicle pursuits and use of force. He has also lectured on issues relating to domestic abuse and sexual assault.

Jeff has been an adjunct professor at the Cambridge Campus of Anoka-Ramsey Community College.

He currently serves as Chair of the Minnesota Sentencing Guidelines Commission, where he has been instrumental in addressing the myriad of changes in felony sentencing, whether statutory or judicially created. His Chairmanship has even led to international interest, as Jeff was interviewed by the BBC about the Minnesota Sentencing Guidelines. This led to the interesting headline in the Isanti County News of "Guidelines Issue Brings BBC to Cambridge."

I quote from the Guidelines web page as it does a very good job of explaining the importance of Jeff's role and his passion for public service:

The Sentencing Guidelines Commission embodies the goals of the criminal justice system as determined by the citizens of our state through their elected representatives. This system promotes uniform and proportional sentences for convicted felons and helps to ensure that sentencing decisions are not influenced by factors such as race, gender, or the exercise of constitutional rights by the defendant. The guidelines serve as a model for the criminal justice system as a whole to aspire to, as well as provide a standard to measure how well the system is working.

Jeff was nominated by Rice County Attorney Paul Beaumaster. Paul has known Jeff for over twenty years. Paul worked for Jeff at the Isanti County Attorney's Office. A sign of a good leader is the success of his associates. Paul's success is a great compliment to Jeff.

## William E. McGee Public Defender Award of Excellence



**F. Richard Gallo, Jr.**

*Award presentation and comments below by the Honorable Eric Lipman.*

For the attorneys of the state's public defenders service, the most-beloved character in all of literature is Atticus Finch, from Harper Lee's novel *To Kill a Mockingbird*.

In an important point in that story, Atticus sends his children to read to an ill neighbor, Mrs. DuBose. And while the children were left to wonder at the reasons for such a chore, after the old lady died, Atticus explained that he had sent the children to the DuBose home so that they could see genuine bravery up close.

Atticus explained: "I wanted you to see something about her – I wanted you to see what *real* courage is; instead of getting the idea that courage is a man with a gun in his hand. [Courage is when you are afraid that] you're licked before you begin, but you begin anyway and you see it through no matter what. You rarely win, but sometimes you do. And Mrs. Dubose won; all ninety-eight pounds of her. She was the bravest person I ever knew."

Here today, is one of the bravest people that I know; this year's McGee Award winner. And like Atticus, the Bar Association hopes that all of you will take a close look.

I am certain that in his work on behalf of convicted sex offenders, there are many, many days that our honoree, F. Richard Gallo, Jr., feels as if he is beaten even before he begins – but begin he does; and, as Atticus would have guessed, sometimes *he wins*.

Rick, because of your bravery, integrity and energy in the service of very difficult clients, Judges of the OAH Administrative Law Section, and the lawyers you litigate against, jointly nominated you for this award.

### Public Attorney Award of Excellence – Government Agency/In-house Agency Counsel



**Virginia Rae Bly**

*Award presentation by Anne Barry. Comments below by Louis Thayer adapted from the letters of those who nominated her for the award.*

On May 16, 2008, the MSBA Public Law Section recognized Virginia Rae Bly (“Rae”) with its Public Attorney Award of Excellence for an attorney working in a Government Agency. Rae was nominated by a large number of colleagues and co-workers from the Minnesota Department of Human Services (DHS) and the Minnesota Attorney General’s Office.

Rae has been employed by the DHS since 1984. For the last 18 years, she has served as the Director of the Appeals and Regulations Division. In this capacity, she oversees a broad range of legal services provided within DHS, including the conduct of administrative fair hearings to address approximately 6,500 appeals filed annually by recipients and applicants of programs administered by DHS; legal advice and contract management services related to all DHS grants and contracts; the development of administrative rules; and the formal delegations of authority executed by the Commissioner of DHS. Rae has also shown exceptional leadership at DHS in creating and applying a vision of government that operates with integrity, balance and fairness. Rae advances this vision through her efforts to recruit, develop, and retain new leaders in the public sector.

Most recently, Rae has exemplified the qualities of excellence in establishing the DHS Compliance Office. The creation of this office reflects Rae’s belief that government is responsible to do the right thing and to do it well. On the forefront of compliance activities within state government, Rae recently trained and tested for certification as a Compliance and Ethics Professional, through the international Society of Corporate Compliance and Ethics. She is one of only a few government employees nationwide who has sought this credential.

### Public Attorney Award of Excellence - Public Law Office



**Jay M. Heffern**

*Award presentation and comments below by Dana Banwer.*

Jay Heffern has spent his entire 33-year legal career in public service, most recently as Minneapolis’ city attorney for 11 years from 1997 through February of this year. Since Jay also served in the military, he has spent his entire adult life in public service. It is therefore very appropriate that Jay is receiving this award – the 2008 Public Law Section Public Attorney Award of Excellence – Public Law Office award today.

I first met Jay when he became Minneapolis City Attorney in 1997, and I’ve worked closely with Jay as his criminal deputy for the past 5 ½ years and as an employee in the City Attorney’s Office for 5 ½ years prior to that. Jay is an expert in municipal law issues, he has a great legal mind, and a mind like a steel trap.

Some of Jay’s many accomplishments as City Attorney include:

He was instrumental in negotiating a consent decree that requires the Metropolitan Airports Commission to provide over \$125 million in noise mitigation for homes and apartment buildings impacted by airport noise. He designed a litigation plan and strategy that allowed the Minneapolis Fire Department to hire firefighters, saving the City significant overtime dollars and ending the three-decades-old federal supervision of the department.

He developed a comprehensive approach to municipal code violations by focusing the City Attorney’s Office resources on properties with significant compliance problems, designing a fire code enforcement strategy, utilizing the State’s Tenant Remedies Act to address critical housing violations and adopting a system to adjudicate administratively municipal code violations. In this effort, Jay was honored by ACORN for the housing initiative.

He significantly increased the conviction rate for perpetrators of domestic abuse crimes.

He created a special prosecution team to relentlessly pursue chronic offenders, resulting in more meaningful sentences for chronic offenders.

He established a highly regarded and well-received community attorney program in each of the five Minneapolis precincts, by placing an experienced prosecutor and a paralegal in each precinct so that community concerns about livability crime could be addressed more effectively.

He partnered with restorative justice programs to couple prosecution of misdemeanor crime with a community-based sentencing option that holds offenders accountable and addresses the harm inflicted on the community.

He installed a state-of-the-art case management system so that cases could be more effectively managed.

Prior to joining the City Attorney's Office, Jay served as General Counsel of the Metropolitan Council from 1985 to 1997, as Deputy Executive Director and Assistant Executive Director of the Minnesota Pollution Control Agency from 1977 to 1985, and as Special Assistant Attorney General from 1975 to 1977. Jay received his undergraduate and law degrees from the University of Minnesota. He served on the Executive Council of the Public Law Section from 2003 to 2007, and he has been named as a Minnesota "Super Lawyer" eight times by *Minnesota Law & Politics*.

Finally, Jay has been a great friend and a remarkable mentor to me, and it is my great honor and privilege to present Jay with the 2008 Public Law Section Public Attorney Award of Excellence – Public Law Office.

### **Rosalie E. Wahl Judicial Award of Excellence**



**Chief Justice  
Russell A. Anderson**

*Award presentation by Justice Paul Anderson. Comments below from the nomination letter of Justice Alan Page.*

It is my privilege to nominate Minnesota Chief Justice Russell A. Anderson for the 2008 MSBA Rosalie E. Wahl Judicial Award of Excellence. The award criteria call for nominations of individuals who have worked at "improving the quality of justice or the justice system." Russ Anderson has been a leader in the Judicial Branch for more than 25 years, at both the district and appellate levels, and during that time he has been a champion for efforts to ensure equal access to justice across our state, regardless of a person's racial or ethnic background, economic circumstances, or political persuasion.

I first met Russ Anderson more than ten years ago when he served on the Supreme Court task force charged with implementing a wide range of recommendations adopted by the court following an historic study and report on race bias in the state's justice system. At the time, Russ had been elected by the judges in his district to serve as Chief Judge of the Ninth Judicial District, a large, mostly rural district in the northwest corner of the state.

I saw first-hand in those years Russ's strong commitment to the principle of equal access to justice for all. The committee focused its early work on creating a system of tracking and reporting on race data in court proceedings. Not everyone saw this initiative as a good thing. Some worried that it might produce results that would embarrass justice system agencies, or undermine public confidence in the state's justice system. But Russ stood strong with those who argued that only by studying what was actually happening in our courts would we be able to fashion new strategies to ensure that bias was not determining the outcome of individual cases.

Later, as a colleague on the Minnesota Supreme Court, Russ would bring that same commitment to fairness for all to his deliberations in the cases before us. Under his leadership as Chief Justice, the Judicial Branch has greatly expanded services to individuals who cannot afford a private attorney, through the expansion of legal services and the creation of self-help centers in many of our courts and on our official Judicial Branch web site ([www.mncourts.gov](http://www.mncourts.gov)).

Russ has made many other contributions to the improvement in our justice system during his long and distinguished tenure as a district court judge and Supreme Court Associate Justice and Chief Justice, including his participation in a decade-long effort to

reform child protection laws and court practices. But I would argue that what he will be remembered for ultimately is his commitment to preserving a fair and impartial judiciary in Minnesota. When two federal court decisions struck down our canons of ethics prohibiting judicial candidates in Minnesota from seeking and accepting political party endorsements, from speaking out on issues of controversy likely to come before the courts, and from personally soliciting campaign contributions, Russ called our state's attention to what happened in other states when partisan politics, special interest campaigns, and big-money elections infected the process of selecting judges. From the day Governor Tim Pawlenty announced his appointment as Chief Justice, he spoke clearly and forcefully about the threat to a fair and impartial court system, and to the public's confidence that matters decided in Minnesota's courts would be decided on the facts of the case, the law, and the principles embodied in our state and federal constitutions.

His advocacy was not without criticism. Some thought the state court system's chief executive should stick to administrative matters. But Russ disagreed, and spoke forcefully, countless times in his two years as Chief Justice, about the necessity of ensuring that the poisonous judicial election climate that now infects so many states does not now spread to Minnesota.

He encouraged the creation of a commission of respected citizens – and – insisted that it not be dominated by judges – to study what has happened in other states and make recommendations for changing the process for selecting and retaining judges in Minnesota. When that commission, led by former Governor Al Quie, put its recommendations in front of the Legislature Chief Justice Anderson testified to a joint House and Senate committee about the necessity for changing the way we select judges in Minnesota, and the wisdom of the commission's recommendations.

His leadership on this issue has been courageous, and crucial, to getting it the attention it deserves if Minnesota is to avoid the fate of so many other states and preserve the public's confidence in a fair and impartial court system.

## Pro Bono Attorney Award of Excellence



**Kathie L. Battle-Sayles**

*Award presentation and comments below by Nancy McLean.*

It is my great pleasure to introduce Kathie Battle-Sayles, this year's recipient of the Public Law Pro Bono Award.

We are recognizing Kathie for her history of public service and for the fact that she welcomed the public lawyers into her network and helped us to reach our pro bono goals.

Kathie is a 1991 graduate of Hamline University and a 1999 graduate of the University of Minnesota Law School. From 2000-2006, she managed her own consulting firm with many public clients. From 2003-2006, Kathie worked for the Minnesota Secretary of State as an election law administrator. Since 2006, she has been at Southern Minnesota Regional Legal Services (SMRLS) as an attorney, a recruitment coordinator, and most recently as the head of the Campaign for Legal Aid. As recruitment coordinator, she finds volunteers, manages case referrals, and assists the volunteers with resources and advice.

In her current position, Kathie also coordinates private fundraising for SMRLS including the development of private funds from attorneys, firms and corporations; local, state, and federal grant writing; strategic planning; project management; and the oversight of annual Legal Aid fundraisers.

Last year, Kathie created the first Southern Minnesota Regional Legal Services Senior Fair. She invited health care providers, social service agencies, and lawyers to spend the day with seniors from Ramsey and Dakota counties at the St. Paul RiverCentre. Members of the Public Lawyers Section joined Kathie's effort by providing information and presentations on identity theft and by addressing issues of and answering questions for groups of senior citizens.

Kathie has devoted her legal career to public service and to helping others fulfill their pro bono responsibilities. I am pleased to present her with this award and thank her for all she has done.



Patty Moses and Lane Ayers



Honorable Daniel Mabley and  
Honorable Allen Oleisky



John Jung-Hoon Choi commenting on  
award recipient Jeanne Schleh



F. Richard Gallo, Jr. and  
Honorable Eric Lipman



Jeffrey Edblad and Todd Schoffelman



Dana Banwer and Jay Heffern



Virginia Rae Bly and Anne Barry



Justice Paul Anderson presenting  
the Rosalie E. Wahl award to  
Chief Justice Russell Anderson



Kathleen Battle-Sayles and  
Nancy McLean

**Public Law Section Annual Meeting**  
**Friday, May 16, 2008**  
**Midland Hills Country Club, St. Paul**

**Election of Officers and Council Members for 2008-09**

The candidates proposed by the Nominations Committee and elected at the annual meeting are:

**Co-chairs** (one-year term):

**Barry Greller,**  
Assistant Attorney General, Minnesota  
Attorney General's Office

**Mary Miller,**  
Compensation Attorney Principal, Minnesota  
Department of Labor & Industry

**Secretary** (one-year term):

**James Alexander,**  
Assistant U.S. Attorney, U. S. Attorney's  
Office

**Treasurer** (one-year term):

**Kim Buechel Mesun,**  
Assistant District General Counsel,  
Minneapolis School District General  
Counsel's Office

**Council Members** (two-year term):

**Dana Banwer,**  
Deputy City Attorney, Minneapolis City  
Attorney's Office

**John Choi,**

St. Paul City Attorney

**Todd Schoffelman,**

Assistant County Attorney, Sherburne County  
Attorney's Office

**Inta Sellars,**

Assistant Chief Human Services Judge,  
Minnesota Department of Human Services

The remaining Council Members (will serve  
the second year of their two-year terms):

**Honorable Diane Alshouse**  
(Second Judicial District)

**Greg Brooker**

(Chief Deputy, Civil Division, U.S.  
Attorney's Office)

**Honorable Thomas Kalitowski**  
(Minnesota Court of Appeals)

**Nancy McLean**

(Assistant County Attorney, Hennepin County  
Attorney's Office)

Nominations from the floor were allowed. All Section members attending the annual meeting were eligible to vote.

## MSBA Public Law Section Annual Report for 2007-08

By: Barry R. Greller, Co-Chair of the Public Law Section  
Louis A. Thayer, Co-Chair 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 12 CLE credits:

<i>Section</i>	<i>Meeting/Course Title</i>	<i>Date</i>	<i>Credits</i>
Public Law Section	Minnesota Data Practices: The Good, the Bad, and the IPAD	6/16/08	1.5
Public Law Section	Annual Meeting & CLE Program "The First Amendment and National Security: A Case Study Involving the Republican National Convention"	05/16/08	2.5
Public Law (co-sponsored with Mpls City Attorney's Office)	The Realities of eGovernment	12/07/07	2.0 Standard .50 Ethics
Public Law	Youth Schools & the Court System	11/05/07	3.0 Standard 3.0 POST
Public Law (co-sponsored with MN County Attorney Association)	It's A Crime Data Practices Isn't More Civil	10/05/07	3.0
Public Law (co-sponsored with University of St. Thomas School of Law)	Collateral Consequences of Criminal Arrests Convictions	09/25/07	1.0
Public Law (co-sponsored with Mpls City Attorney's Office)	Technology, Privacy and Crime	6/28/07	1.5
	<b>Total</b>		<b>15</b>

**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.

**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, monetarily and by participating in the Race for Justice. The Section "adopted" twenty+ families for holiday gift giving last year.

**Section Committees:** Seven committees of the Section continued to perform the essential planning and implementation work that enables the Section to operate. The Committees include the Newsletter Committee, the Awards Committee, the Community / Public Service Committee, Data Practices Committee, the Local Government Committee, Membership Committee, and Pro Bono Legal Services Committee. The Committees 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 committees.

This past year the Section has placed specific emphasis on pro bono activities. The Pro Bono Legal Services Committee reviewed the Minnesota State Bar Association's pro bono policy and suggested changes to encourage greater involvement by attorneys in public law departments and government agencies, which the MSBA Assembly approved.

**Law Students:** The Public Law Section continued to work on its goal of developing relationships with law students and the local law schools. We added two law students to the executive council: Michael at Hamline University School of Law and Ellen at St. Thomas University School of Law. We continued to have two student representatives to the Council over the past year. 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. We also participated in a public sector recruitment event sponsored by the law schools.

**Diversity Efforts:** The Public Law Section has also been actively working towards the goal of eliminating bias and promoting diversity in the bar by participating in minority recruitment conferences at the four law schools and attending law student recruitment open houses.

#### **2008 Public Law Section Award Recipients**

Each year the Executive Council of the Public Law Section recognizes outstanding achievements of attorneys and judges engaged in public service and in the public practice of law. Through these awards,

we celebrate the commitment to public service and the public practice of law. This year the Public Law Section is proud to present another annual award for outstanding work by a public sector attorney in providing pro bono legal services. This year the awards committee worked hard to increase the number and diversity of the people nominated. The process was very successful with a high number of nominations from a wide diversity of public law backgrounds. The selection process was very challenging for the Executive Council.

The 2008 award recipients and former recipients are:

1. **Rosalie E. Wahl Judicial Award of Excellence**  
**Honorable Russell A. Anderson,**

Chief Justice, Minnesota Supreme Court

2. **Douglas K. Amdahl Public Attorney Career Achievement Award**

**Lane Ayres,**

Senior Assistant, Hennepin County Attorney,  
Juvenile Division (ret.)

**Honorable Allen Oleisky,**

Fourth Judicial District (ret.)

**Jeanne Schleh,**

Ramsey County Attorneys Office (ret.)

3. **Julius E. Gernes Prosecutor Award of Excellence**

**Jeffrey R. Edblad,**

Isanti County Attorney's Office

4. **William E. McGee Public Defender Award of Excellence**

**F. Richard Gallo, Jr.,**

Minnesota Public Defender's Office

5. **Public Attorney Awards of Excellence**

**Public Attorney Award of Excellence:**

**Public Law Office**

**Jay M. Heffern,**

former, Minneapolis City Attorney

**Public Attorney Award of Excellence:**

**Government Agency**

**Virginia Rae Bly,**

Minnesota Department of Human Services

6. **Pro Bono Attorney Award of Excellence**

**Kathie L. Battle-Sayles,**

Southern Minnesota Regional Legal Services

## 2008 Laws of Interest

*By Karen L. Lenertz, Assistant Deputy Revisor*

The legislature completed the 85th Legislative Session on Sunday, May 18, 2008. Among other bills, the House of Representatives and Senate tackled a budget balancing bill, tax bill, and bonding bill before each body adjourned sine die. Below are brief summaries of some laws of interest passed during the last legislative session.

### **Budget**

Chapter 363 balances the state budget with \$500 million from the state's \$653 million budget reserve and nearly \$360 million in cuts and non-tax revenue increases. Another approximately \$30 million comes from accounting shifts. The state's \$350 million cash flow account is preserved.

### **Municipal Boundary Adjustments**

Chapter 196 clarifies and makes permanent the powers and duties of the chief administrative law judge and the office of administrative hearings with regard to municipal boundary adjustments under Minnesota Statutes, chapter 414. Prior to this act, the statutes referred to the director of the Office of Strategic and Long Range Planning, which did not reflect the actual assignment of duties under executive orders of Governor Pawlenty. Section 21 of this chapter extends the municipal boundary adjustment advisory task force until they submit recommendations to the 2009 legislature.

### **Property Tax Abatement Authority**

Chapter 366, article 6, section 43, provides a new limit on the amount of property taxes that may be abated by a political subdivision under Minnesota Statutes, section 469.1813, subdivision 8. Instead of being based on ten percent of the current levy, the limit is the greater of ten percent of the net tax capacity of the political subdivision for the year to which the abatement applies or \$200,000. This provision is effective for abatement resolutions approved after May 30, 2008.

### **Conflict Of Interest; Local Economic Development Authorities**

Chapter 197 clarifies conflict of interest rules for

local economic development authorities and provides criminal penalties. Codified in section 469.098, the act applies to both commissioners and employees of an authority. It sets out when and how disclosures of interest are required. It provides misdemeanor penalties for certain acts relating to disclosure, influencing of employees, or participation with a personal financial interest. It also provides that former employees or commissioners may not act as an agent or authority for anyone other than the authority in connection with any decision made as a commissioner or employee for a period of one year.

Financial assistance to commissioners and employees from the authority is also limited. The county attorney has authority to enforce the provisions. The criminal penalties apply to crimes committed on or after June 1, 2008. The rest of the act is effective April 18, 2008.

### **Uniform Municipal Contracting Law**

Chapter 207 changes the contract threshold amounts subject to bidding requirements by political subdivisions (Minnesota Statutes, section 471.345.) Generally, sealed bids are required for contracts over \$100,000. Contracts over \$25,000 and up to \$100,000 may be made either by sealed bids or by direct negotiation. For contracts of \$25,000 or less, the contract may be made upon quotation or in the open market. Other requirements and best value alternative provisions continue to apply. Conforming changes are made to contracts for drainage systems under Minnesota Statutes, section 103E.705. This act is effective August 1, 2008.

**Bonding**

Chapter 365 authorizes a number of capital improvement projects. Most notably among these included \$70 million for the Central Corridor light rail line that will connect the downtowns of Minneapolis and St. Paul. The legislature also provides funding for the creation of Minnesota's first new major state park in 40 years, Lake Vermilion State Park in northern Minnesota and a nursing facility at the Minneapolis Veterans Home.

**Liquor**

Chapter 311 extends the state closing time for bars during the Republican National Convention, as part of this year's omnibus liquor bill. Any licensing organization fully or partially within the seven-county Twin Cities metropolitan area can issue special permits allowing establishments to serve alcohol until 4 a.m. from Aug. 31 to Sept. 5.

The bill also makes drinking legal by passengers in what is known as "Pedal Pubs." Under the new law, possession and consumption of alcohol is allowed in a vehicle that is operated for commercial purposes in a manner similar to a bicycle with five or more passengers who provide pedal power to the drive train of the vehicle.

Farm wineries in Minnesota are now permitted to manufacture and sell up to 5,000 gallons of distilled spirits per year.

**Gambling**

A new racing facility in Anoka County, Running Aces Harness Park, is permitted to televise races from other tracks. In Chapter 249, new law allows a race track in the Twin Cities seven-county metropolitan area to simulcast racing of all horse breeds, not just the breed racing at that track. It also requires a contribution to the purse set-aside account of other race tracks in Minnesota, and to the breeders' fund.

A new law in Chapter 260 permits charitable organizations to increase their allowable expenses by 5 percent from July 1, 2008, to June 30, 2009; an increase from 70 percent to 75 percent of gross profits from bingo, and from 60 percent to 65 percent of other forms of lawful gambling.

**Tax**

The omnibus tax bill had several notable provisions. Chapter 366 provides incentives for a Mall of America expansion project. The package increases local subsidies for the mall by reconfiguring and expanding the tax increment financing district in which it is located. In addition, the bill allows the City of Bloomington to levy certain taxes to help finance a new parking ramp at the mall.

The bill provides property and income tax benefits for veterans and military personnel. Military pay for training and drills will no longer be counted as taxable income. Active military members will be eligible for a tax credit of \$120 for each month served starting Jan 1, 2009. Disabled veterans or military personnel with at least 20 years of service making under \$37,500 are eligible for a credit up to \$750. It provides an annual market value exclusion up to \$300,000 on homestead property of a disabled veteran.

A provision modifies the definition of foreign operating corporations and foreign royalty income, increasing corporate tax revenues \$109 million for fiscal years 2008 and 2009. These changes limit the number of corporations that qualify as foreign operating corporations and also require that certain additions be made to Minnesota taxable income, including foreign royalty payments.

The homeowner property tax refund program was expanded by \$45.9 million in fiscal years 2010 and 2011. More homeowners will be eligible for the property tax refund and the maximum property tax refund is increased by more than 27.5 percent.

Oversight was tightened on businesses that receive tax breaks under the Job Opportunity Building Zone program, which is designed to help bring businesses to Greater Minnesota. Businesses participating in the JOBZ program will be required to annually certify with the Department of Revenue its continued compliance with program requirements and if a business is found to be in non-compliance, it may be subject to repayment of tax benefits received.

Levy limits are reinstated for three years starting with taxes payable 2009. Under the changes made in the 2008 session, cities with a population over 2,500 and all counties will not be able to raise tax levies by more than 3.9 percent a year for the next three years. The financial strain on local government imposed by the levy limits is offset by \$138.9 million in increased property tax aids for local governments in fiscal years 2010 and 2011.

### **Health Care**

Chapter 327 has significant health care reform legislation. These reforms, which include recommendations of the Governor's Transformation Task Force and the Legislature's Health Care Access Commission provides MinnesotaCare coverage for an estimated 8,700 additional people by 2011, expands MinnesotaCare eligibility for adults without children to 250 percent of federal poverty and parents with incomes up to \$57,500 annually, and reduces the MinnesotaCare sliding-fee premiums to increase affordability. The legislation also requires employers that have 11 or more full-time equivalent employees and do not offer group health insurance to establish and maintain a Section 125 Plan, which allows employees to purchase health insurance with pre-tax dollars. Employers have the opportunity to opt out of this requirement.

### **Insurance**

Chapter 228 includes a provision that requires an insurer to act in good faith in connection with an insured's claim under an insurance policy. An insurer is acting in good faith unless the insured can show the absence of a reasonable basis for denying benefits and that the insurer knew of the lack of a reasonable basis or acted in reckless disregard of the lack of a reasonable basis. An insurer violating this provision is liable to the insured for costs and damages caused by the violation. Noneconomic damages are not recoverable.

### **Survivors of I-35W Bridge Collapse**

After a number of hearings, a bill was passed to compensate the survivors of the August 2007 collapse of the I-35W bridge in Minneapolis. During the hearings, the legislature heard testimony from many of the victims and from national compensation experts. The final provisions of Chapter 288 lift the limit on the state's liability for a specific incident and raise to \$400,000 the limit on the state's liability per person. It also creates a streamlined process for survivors to use in making claims for compensation.

### **Utilities**

Chapter 253 requires a public utility, cooperative electrical association, or municipal utility that involuntarily disconnects a customer's gas or electric service that affects the primary heat source of the customer's residence to provide notice of the disconnection to the city of residence upon the written request of that city. The city must provide information on the disconnection to its police and fire departments. This utility data on disconnections is private data on individuals or nonpublic data. This act is effective August 1 2008.

The legislature reconvenes for the 2009 Legislative Session on Tuesday, January 6, 2009.

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### **One Year Later --**

We remember those who lost their lives and those who were injured in the I-35W bridge collapse on August 1, 2007.



## Recent CLE's sponsored by the Public Law Section

*The First Amendment and National Security: A Case Study Involving the Republican National Convention*  
By Greg Brooker

This 2.5 credit CLE was held as part of the PLS annual meeting on May 16, 2008. Attendees received a primer on First Amendment law and then delved into the intersection of free speech and public safety with a case study involving the Republican National Convention (RNC).

First up was Minneapolis Assistant City Attorney Lisa Needham, who discussed a comprehensive survey she had conducted of city ordinances from around the country that regulate protests. She highlighted example ordinances governing parades, public assemblies, and other types of political protests. Lisa then presented several Eighth Circuit cases involving different public assembly ordinances and the validity of certain time, place, and manner restrictions on speech.

Next up was Assistant U.S. Attorney Greg Brooker, who reviewed the case law from the 2000 and 2004 political party conventions. The placement of the protest area and parade routes at political conventions has resulted in several federal court decisions, including the 2000 decision of the U.S. District Court for the Central District of California, which moved the protest lines two weeks before the 2000 Democratic National Convention. Greg also talked about the federal statute creating National Significant Security Events (NSSEs), which allows the President to designate certain events as NSSEs, triggering federal help and assistance in the security planning of the events.

Kyle Loven, the Chief Division Counsel for the FBI Office in Minneapolis, next provided a history lesson of the actions of the FBI that resulted in more Congressional oversight of the FBI beginning in the late 1970s. The Attorney General Guidelines, which govern covert and other actions of the FBI with regard to protest groups and organizations, were also highlighted.

To cap off the CLE, St. Paul Assistant City Attorney John Kelly and St. Paul Assistant Chief

of Police Matthew Bostrom joined speakers Lisa Needham, Greg Brooker, and Kyle Loven to discuss hypothetical situations involving the upcoming Republican National Convention. What if the FBI wanted to investigate each and every group seeking a parade permit for the convention? Would that be proper? Because the City of Minneapolis does not have a protest ordinance, what proper tools does the City have to plan for protests? What are the sight and sound requirements for the placement of a public protest area established by the Secret Service for political events? These questions and many more were posed to the panelists at the CLE.



The panel discusses the upcoming RNC.



Lisa Needham presents the results of her ordinance survey.

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*MN Data Practices: The Good, the Bad, and the IPAD*  
By Kim Buechel Mesun

This 1.5 credit CLE was held as part of the MSBA Convention in Duluth on June 16, 2008. CLE speakers were Assistant St. Louis County Attorneys Dale Harris and Janilyn Murtha who led a guided tour through the intricacies of the Minnesota Government Data Practices Act providing helpful advice for those new to the area and those more seasoned. They covered key statutory provisions and appellate decisions, as well as Department of Administration Information Policy Analysis Division (IPAD) advisory opinions. They tied it all together by working through hypothetical situations with the approximately 30 people in the audience. Thank you to Dale and Janilyn for leading the journey through the good, the bad and the IPAD!

## Public Law Section Public Service Projects

### Diaper and Clothing Drive at the Convention By Nancy McLean

The Public Law Section sponsored another successful children's clothing and diaper drive at the annual MSBA Convention in June in Duluth. Convention attendees dropped off their donations at the registration desk (thanks Kim Basting for arranging this). PLS members collected cash, clothing, and diapers from all over the state for distribution to two Duluth programs, the Duluth Public School's Teen Parent Program and the Bethany Crisis Nursery.

Jim Miner, a prominent Duluth grocer, donated the diapers at cost. With his generous help, the Public Law Section donated \$250 worth of diapers to the Teen Parent Program. Thanks to Jim and also to Katie Cowles who arranged to pick up the diapers and deliver them to the Program. The remaining funds were contributed to the Teen Parent Incentive Program and will be used to buy small rewards for school successes.

Bethany Crisis Nursery assists families and children in need in the Duluth community. Clothing for all ages was collected and delivered to the shelter facility. Many thanks to everyone who contributed!

### Thank you letters received from the Diaper and Clothing Drive recipients:

Dear Nancy,

*The Minnesota State Bar Public Law Section relieved one struggle today in the life of a student in the Duluth Public Schools Teen Parent Program. On behalf of the Program, I sincerely thank you for the gifts including many bags of diapers and infant clothing. Needs for teen parents come in many shapes and sizes and these gifts will fill a necessity that is real in their daily lives.*

*The Teen Parent program is offered to Duluth area students with programming to encourage and motivate pregnant and parenting students to progress toward graduation and stay connected to academics while adding new responsibilities to their lives. With your gifts, we have added one more draw to encourage attendance and we know staying connected to school is vital to both parent and child. Thank you for your thoughtfulness, generosity, and your good will to the students and their children who will greatly benefit from your gift.*

Most sincerely,

Gail Taftey – Teen Parent Program

Dear friends,

*Many thanks to Nancy McLean for organizing this effort as well as delivering your kind donations for the families we serve.*

*We so appreciate the items you donated, including the diapers. Generally, 80 to 100 families visit our clothing room each month for help with clothing, diapers and referrals. I expect these numbers to increase as families continue to encounter rising costs of the essentials.*

Thank you for your support.

Lynn Shubitz, Program Manager  
Bethany Crisis Nursery



## Habitat for Humanity has a new program – *Brush with Kindness*

Ten dedicated lawyers, judges and friends braved high ladders to become house painters on May 22, 2008 and participate in Habitat for Humanity's new *Brush with Kindness* program. Through *Brush with Kindness*, needy families can have their home scrapped and painted by Habitat volunteers. PLS volunteers worked on painting a two-story home on Elliott Avenue South in Minneapolis.



Tom Kalitowski, Todd Schoffelman and Dan Mabley brave the heights to show off their painting prowess.



Barry Greller, Nancy McLean and Linda Jensen show their painting skills on the other side of the house.



Molly Watters (daughter of Nancy McLean) pitches in, putting up with all the boring lawyer talk.



PLS friend Amie Zweber helps out.



Brush with Kindness volunteers:  
(standing) Barry Greller; (front row) Tom Kalitowski and Todd Schoffelman; (back row) Dan Mabley, Nancy McLean, Margaret Westin, Amie Zweber, Molly Waters

Photos by Kim Buechel Mesun

## The Tater Tot Hot Dish Tradition Continues with Loaves & Fishes

PLS volunteers continued to cook up their much-touted tater tot hotdish meal for the 300-350 people served by Loaves and Fishes on June 4 and August 6 at Holy Rosary Church, one block west of Cedar Avenue in south Minneapolis. We are always looking for new helpers in the kitchen. We start preparing the meal at about 2:45 on the first Wednesday of the even months (February, April, June, August, October and December) and are usually finished by 5. If you can help out, put **October 1** on your calendar and contact Nancy McLean at [nancy.mclean@co.hennepin.mn.us](mailto:nancy.mclean@co.hennepin.mn.us).



The cooking crew on August 6  
Steve Fonts, Eileen Wells, Cassandra Ward Brown,  
John Kirwin, Arinda, Barry Greller, Nancy Gove,  
Quy Dam and her brother, Liz Cutter, Paul Casey  
and Nancy McLean



Steve using the "Tom Sawyer" routine to  
get his daughter to do his clean-up job.



Breaking in rookie Cassandra on  
the joys of scrubbing the pans.



I can't believe we were done in 45 minutes!

Photos by Kim Buechel Mesun

*This Section of the PLS News is added through an agreement between the Public Law Section and the Administrative Law Section.*

## Voting for President as if Administrative Law Depended Upon It?

by Honorable Eric L. Lipman,  
Office of the Administrative Hearings

Among the most compelling and interesting articles published this summer is an analysis from Thomas J. Miles, Assistant Professor at the University of Chicago Law School, and Cass R. Sunstein, Professor at the Harvard Law School. Their article is entitled “Depoliticizing Administrative Law.”

Following a review of administrative law cases that were handed down between 1990 and 2006, the professors assert that federal judges appointed by one political party are significantly more likely to invalidate the agency actions of administrations headed by a President of the other political party; and that this result is even more certain when the three-judge panel is comprised solely of judges appointed by the party opposite of the current administration. Miles and Sunstein conclude that when agencies under Democratic administrations face three-judge panels comprising only of circuit court judges appointed by earlier Republican Presidents, the likelihood that the agency action will be invalidated spikes upward. The phenomenon also works in reverse; as unified panels of appointees of Democratic Presidents are more likely to invalidate interpretations of law urged by agency officials in Republican administrations and to hold that these officials acted arbitrarily on questions of policy and fact.

The statistics assembled by Miles and Sunstein are compelling and raise important questions about the rule of law. As the authors summarize:

The most important point is that it remains true that notwithstanding the evident aspiration of both *Chevron* and *State Farm* [that federal courts defer to the specialized expertise of executive branch agencies], politicized voting patterns are unmistakable in the federal courts. Recall that in *Chevron* cases, a Democratic appointee on a unified

panel is 31.5 percent more likely to vote in favor of liberal agency decisions than conservative agency decisions—and that a Republican appointee on a unified panel is 40 percent more likely to vote in favor of conservative agency decisions than liberal agency decisions. The consequence is that important agency decisions are struck down, or validated, when a different result would obtain on a mixed panel. And if an NLRB order or EPA rule is invalidated by a D-D-D [unified Democratic panel] or R-R-R [unified Republican] panel, the invalidation will usually be final [because a grant of *certiorari* to the U.S. Supreme Court in such cases is so rare]. In a system committed to the rule of law, to impartial justice, and to similar treatment of the similarly situated, this is a serious problem.

Perhaps worse still, the work of Professors Miles and Sunstein comes against the backdrop of an analysis published in *The Weekly Standard* late last year which asserted that the next Administration will be able to appoint enough Judges to the U.S. Circuit Courts of Appeal to determine the partisan balance on as few as eight, but perhaps as many as twelve, of the thirteen federal judicial circuits. Thus, with the Miles-Sunstein study in hand, we can see how the prospect of strengthening or diluting the number of “unified panels” Republican or Democrat appointees has widespread significance. If appointment to, and partisan dominance of, appellate panels are strongly correlated to substantive results in administrative law matters, there is genuine cause for concern.

Indeed, Professors Miles and Sunstein argue that, if anything, their analysis understates the impact

last year which asserted that the next Administration will be able to appoint enough Judges to the U.S. Circuit Courts of Appeal to determine the partisan balance on as few as eight, but perhaps as many as twelve, of the thirteen federal judicial circuits. Thus, with the Miles-Sunstein study in hand, we can see how the prospect of strengthening or diluting the number of “unified panels” Republican or Democrat appointees has widespread significance. If appointment to, and partisan dominance of, appellate panels are strongly correlated to substantive results in administrative law matters, there is genuine cause for concern.

Indeed, Professors Miles and Sunstein argue that, if anything, their analysis understates the impact of polarized voting in administrative law cases. The professors assert that agency lawyers who litigate administrative law matters are already aware of this phenomenon and tend to settle cases when facing a unified panel of circuit court judges appointed by a politically opposite Administration. The authors claim:

When an agency must defend a liberal decision before a conservative court, it is more likely to settle, and conversely, when an agency must defend a conservative decision before a liberal court, it is more likely to settle. The observed court decisions are therefore drawn from cases in which settlement is less likely, and the set of observed decisions does not encompass these cases (we do not know exactly how many there are) in which the judicial outcome would likely be predictably ideological. Were we to observe a counterfactual world in which all cases proceeded to trial, the observed decisions would include a somewhat larger share of (and thus a high rate of) predictably ideological judicial decisions.

Because the critique that Professors Miles and Sunstein make of the federal judiciary is so detailed and substantive, the questions that they raise are worthy of both close review and further rounds of research. Among the concerns that I had while reading their analysis, was the team’s willingness

to “recode,” or to exclude entirely, cases which did not fit well into the categories they established at the outset of their study. I wanted to know more about the nature and number of the cases that did not fit into these larger frames; wondering whether the special handling of these outliers tended to exaggerate the impacts the team identified. Likewise, in a study where a key measurement is whether the agency’s action was later validated by the court, I wondered whether this frame operated as a proverbial “thumb upon the scale” – treating circuit panels of “big government progressives” more gingerly than it did “limited government conservatives.” Even in combination, however, these tiny methodological quibbles do not blunt the force of Miles and Sunstein’s claims or their important messages to the legal community.

The team concludes their article by suggesting a range of possible reforms to counteract partisan-polarized voting – urging measures such as updating case assignment rules and doctrinal changes in administrative law. In my own view, their first prescription is the best: More sunlight. Greater awareness of, and further research upon, the phenomena identified in this study could lead to the needed self-correction among judges. As Miles and Sunstein write: “Perhaps a little sunlight, with respect to voting patterns, might induce a degree of self-consciousness and self-scrutiny, thus reducing politicized voting. At the very least, the data suggest that judges on unified panels should be cautious about behaving in a way that fits with partisan predictions.”

Here in Minnesota, I will do my part. I am asking all administrative law practitioners to do two things before casting a ballot in the upcoming Presidential election: The first is to closely review the Miles-Sunstein article (which is accessible at this link: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1150404](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1150404)); and the second is to send a copy of the article to a Judge that they know and admire.

In that way, perhaps none of us will need to think of administrative law as we approach the voting booth this November.

*Eric L. Lipman is an Administrative Law Judge and the Secretary-Treasurer of the MSBA Section on Administrative Law.*

## The Client Security Board: One More Time

By Harriet Sims, Minnesota Department of Revenue and Member of the Client Security Board

Here I am again, starting my second and final term as a member of the Client Security Board (CSB). The last time I shared my thoughts about my work on the CSB I focused on the connection between the CSB and the Public Law Section, explained a bit about the work of the CSB and opined about why public attorneys should care about the dishonest conduct of private attorneys. This article is a short update about the work of the CSB and a bit more opining about how public attorneys add value to the process (hopefully, without sounding too self-important).

### ***Client Security Board fee suspended for one year!!***

If your attorney registration renewal is payable October 1, you may notice that the CSB fee is missing. Don't worry, the work of the Board will continue (the fee is only suspended for one year). Since its inception in 1987 through June 30, 2008 the Fund has paid \$5,866,235.08 in 448 claims against 126 attorneys. Due to assiduous management of the Fund's assets the Fund has grown. Even with these payouts the Fund projects that its fiscal year balances will be \$3.3 million at the end of fiscal years 2008 and 2009. The Supreme Court's recommended parameters for the Fund are between \$1.5 Million and \$2.5 Million. Therefore, the CSB recommended and the Supreme Court agreed that the \$12 fee collected from attorney licenses be suspended for one year. This will begin with attorneys whose licenses come due in October 1, 2008 and will continue through July 1, 2009.

### ***A bit of background about the Board***

The members of the CSB are appointed to three-year terms by the Minnesota Supreme Court. Each member may be reelected to one additional term. The Board consists of five attorney members and two public (non-attorney) members. Two attorney members are nominated by the Minnesota Supreme Court. The other three are nominated by the Minnesota State Bar Association (MSBA). Attorney representation on the CSB has typically included attorneys from large and smaller firms,

who practice in the metro area and in Greater Minnesota. Since 1993, based on one of the recommendations of an MSBA-appointed committee created to review Client Security Fund issues, one of the attorney members nominated by the MSBA has been a member of the Public Law Section (PLS).

The current Board members are:

Robert T. Lund – Chair (MSBA nominee)  
 Michael T. Rengel (Supreme Court nominee)  
 Richard A. Nethercut (MSBA nominee)  
 Bonnie R. Russ (Public member)  
 Sally DeLaittre Sawyer (Public member)  
 Kenneth D. Butler (Supreme Court nominee)  
 Harriet J. Sims (MSBA nominee, PLS member)

PLS members who have served on the CSB in the past are:

Kim Buechel Mesun	1993-1999
Chair	1998 & 1999
Margaret Westin	1999-2005
Chair	2004 & 2005
Warren Sagstuen	2000
Harriet Sims	2005 to present

Payments are made from the Client Security Fund, which was established to reimburse clients who are the victims of unscrupulous lawyers. Clients often have no other recourse or have been only partially compensated. Money initially comes to the Fund through attorney fees. The exact amount that goes to the CSB has varied over the years. The most recent fee amount was \$12 per attorney. The CSB also aggressively seeks reimbursement from the attorneys on whose behalf we have paid a claim. During the year ended June 30, 2008 the Fund paid out \$168,905.16 in claims against six attorneys.

The Client Security Board (CSB) meets approximately four times a year to review claims

filed by clients and determine which claims should be paid and the amount paid. There is a \$150,000 limit per claim but no limit per attorney. In contrast, some states have a per attorney limit on the amount of claims paid. Many states have lower per claim limits. Minnesota's limits are among the most generous. As of 2007, only New York and New Jersey with \$300,000 and \$400,000 respectively have higher per claim limits than Minnesota. Claims must relate in some way to theft or dishonest conduct by a Minnesota licensed attorney which results in a monetary loss to the client. Consequential damages are not reimbursable by the Fund. The matter must also arise out of the attorney-client or fiduciary relationship. Decisions of the CSB are discretionary and there is no appeal for denied claims, although claimants may ask the CSB for reconsideration. This gives the CSB a great deal of autonomy but also a responsibility to exercise its discretion in a fair and thoughtful manner.

The CSB uses the administrative services of the Office of Lawyers Professional Responsibility to receive, investigate and handle claims filed with the Client Security Fund. Martin A. Cole is Director. The Director is appointed by the Supreme Court and serves at its pleasure. Julie Bennett is the Assistant Director. The Minnesota Attorney General's Office provides legal services to the CSB in enforcing subrogation rights against attorneys on whose behalf the CSB has paid claims or against third parties. The Board is billed for direct costs of collection efforts and litigation expenses. Some claims against attorneys may also be referred to the Minnesota Department of Revenue's Collection Division which has the authority to collect non-tax debts for other agencies.

#### ***Why Do I Do This?***

It's a way to give back to the profession. Public lawyers have a long history of service. Is it a way to right wrongs and make the world cleaner and safer for clients? Well, we do our best. But seriously, one of the things that continues to impress me about the CSB is the fact that it is a living example of how the profession can effectively police itself. Some other professions do not have that luxury.

As public lawyers we do not handle client funds and some would argue that we should not concern ourselves with attempting to rectify a problem that we are not in a position to cause. Except that we are all members of the legal profession and equally charged with upholding the ethics of the profession. I am an attorney first and a public attorney second. When members of the public refer to the bad apples in our profession I have never heard them limit their comments to the private bar. Attorneys who steal their client's funds drag our names in the mud as much as they do the private bar so we have as much interest in cleaning up our image as the rest of the profession.

On a lighter note, there is also somewhat of a voyeuristic aspect to reading the allegations against fellow lawyers. Some of the factual backgrounds are almost as interesting as a racy novel. There have been more than one "makes you wonder" moment as well. More important is the hard work of sifting through the facts of each case to determine what really occurred, did this misconduct arise out of an attorney client relationship? Is this a fee dispute (which is not reimbursable), malpractice (also not within the purview of the CSB) or a true instance of a lawyer stealing his or her clients' funds. Sometimes it's a fine line and sometimes it is not.

*For more information about the Client Security Board, including a complete history of all claims paid, Client Security Board Rules, annual reports and other information, visit their website at: <http://www.courts.state.mn.us/csb/csb.html>.*



## Eyes on the Court

*Submitted by Todd Schoffelman, Assistant Sherburne County Attorney*

### **Data Practices**

*Int'l. Bhd. of Elec. Workers v. City of St. Cloud, 750 N.W. 2d 307 (Minn. Ct. App. 2008).*

This case was an appeal from summary judgment in a data practices request case regarding personnel data of Design Electric, a contractor for the City of St. Cloud. This was a prevailing wage contract and the City had the payroll records to confirm compliance with prevailing wages. International Brotherhood of Electrical Workers (IBEW) is a labor union and made the data request for the payroll records.

Initially, Design Electric claimed that the personnel records were covered by the trade secret exception to the Minnesota Government Data Practices Act, MN. Stat. 13.37 (1)(b). However, Design Electric dropped this claim and the case was litigated over the application of Minn. Stat. §§ 13.43(2) and 13.43(6).

The Court of Appeals determined that IBEW was a person for the purposes of requesting access to public data and that Minn. Stat. § 13.43(6) did not limit IBEW's access to public personnel data. The payroll records of Design Electric were public data pursuant to Minn. Stat. § 13.43(2) and IBEW was entitled to access to the data. The home addresses in the payroll records however, were not public data because they are not listed as public personnel data in Minn. Stat. § 13.43(2). The Court of Appeals upheld the nominal attorney award of \$500.00 to IBEW from the City.

*The following summaries were submitted by Kim Buechel Mesun, Assistant District General Counsel for the Minneapolis School District*

### **Administrative Law/Maltreatment**

*In re the Maltreatment Finding of Kay Marie Beckman and Maltreatment Finding and Order to*

*Forfeit a Fine for New Horizon Child Care Center, Inc., No. A07-173 (Minn. Ct. App. Apr. 29, 2008) (unpublished opinion).*

In this case the court of appeals reversed and remanded a decision of the Commissioner of Human Services which had found a day care center provider culpable of two instances of maltreatment of a minor. In making the maltreatment determination the Commissioner had decided not to follow the recommendation of the Administrative Law Judge who had heard the contested case hearing. The day care provider appealed the Commissioner's decision and the court in its decision stated:

Here, the commissioner modified or deleted several findings of the ALJ. While some of the modified findings include citations to the record, others do not. And none of the modifications or deletions is accompanied by an explanation either in the order or the accompanying memorandum. The commissioner is free to deviate from the findings and conclusions of the ALJ, but in order to survive the arbitrary-and-capricious standard the commissioner must explain his reasons for altering the ALJ's findings.

### **Administrative Law/Schools**

*In the Matter of the Expulsion of N.Y.B., from Anoka-Hennepin Independent School District No. 11, No. A07-1277 (Minn. Ct. App. June 10, 2008).*

This case involved the appeal of a student from the expulsion decision of the Anoka-Hennepin School Board. The student, a freshman at Coon Rapids High School, had been in a fight with another student and had been expelled for violating the district's physical-aggression policy. The student waived her right to an evidentiary hearing but read a prepared statement to the school board at the meeting where they were considering

whether or not the student should be expelled. The school board voted to expel the student. The student next exercised her right to appeal the school board's decision to the Commissioner of the Minnesota Department of Education.

The Commissioner determined that "expulsion is a reasonable disciplinary action for assaulting another student and insubordination toward School staff" but concluded that the school board's written explanation of why the student had been expelled was inadequate. The Commissioner stated that though the school board had listed the general offense of assault and insubordination and quoted the district's disciplinary policy, it "failed to include the 'controlling facts' relied on by the school board as required by Minn. Stat. § 121A.47, subd. 13 (2006). The Commissioner remanded the matter to the school board instructing it to amend its resolution to "provide a written decision that presents the controlling facts upon which [the expulsion decision] was made in sufficient detail to apprise' the parties and the commissioner of the basis and reason for expelling N.Y.B. for one calendar year."

The school board held an emergency meeting to comply with the Commissioner's instructions. The student subsequently appealed to the Minnesota Court of Appeals the post-remand resolution, which the Commissioner had affirmed.

The Court was critical of the record before it. The Court stated that because of the scarcity of evidence in the record "we are unable to determine whether the decision to expel N.Y.G. for one calendar year is the product of reasoned decision-making." The Court goes on to state:

We acknowledge that the phrase "sufficient detail" [in the Pupil Fair Dismissal Act] defies precise, technical definition. But the practical standard it describes is akin to a mathematics teacher's admonition to students to "show your work." Indeed, the PFDA required the school board to explain its decision for the same reason that a teacher requires students to record the steps taken to solve an equation. Without an explanation of the analysis performed, the school board's decision cannot be fairly evaluated.

The Court remanded the matter to the school board once again, this time to "explain why relator's conduct warranted an expulsion for one calendar year in sufficient detail to satisfy Minn. Stat. § 121A.47, subd. 13 (2006)." Because the student could not demonstrate prejudice however, the Court rejected her claim for relief on due process grounds.

#### **Individuals with Disabilities Education Act (IDEA)**

*P.K.W.G. v. Independent School District No. 11, Anoka-Hennepin School District*, Civil No. 07-4023 ADM/AJB (U.S. Dist. Ct.- MN June 11, 2008)

Parent requested a due process hearing alleging a denial of a free appropriate public education (FAPE) during the 2005-06 school year. The Administrative Law Judge (ALJ) concluded that the school district satisfied its procedural obligations under IDEA and found therefore, that the student was not entitled to compensatory education services for the 2005-06 school year. The parent appealed the ALJ's decision to the federal district court.

In the decision of the district court there is a discussion of the burden of persuasion. The federal district court recognized that the Eighth Circuit has determined that applying the reasoning of the U.S. Supreme Court in *Schaffer v. Weast*, 546 U.S. 49 (2005) places the burden of persuasion in a due process hearing under IDEA on the party seeking relief even in states with state statutes that purport to place the burden always on school districts. In the present case, the ALJ erred in placing the burden on the school district however, the court determined the error was harmless because the school district prevailed. The school district nonetheless wanted the federal district court to place the burden on the parent in doing its review of the record. The court stated "[g]iven the strength of the District's evidence, this Court finds the outcome of its analysis is the same regardless of the placement of the burden of persuasion." The court stated that like the ALJ it too concluded that the school district committed "neither a procedural nor a substantive violation of IDEA during the 2005-2006 school year." Therefore, the student was not entitled to compensatory educational services.

*If you would like to include the summary of an important case in your area of practice, send it to: [kim.mesun@mpls.k12.mn.us](mailto:kim.mesun@mpls.k12.mn.us).*

## Public Attorneys on the Move

**Cassandra Ward Brown** has joined the General Counsel's Office of Minneapolis Public Schools (MPS) as an Associate District General Counsel. Cassandra was formerly the Diversity and Equal Opportunity Director at MPS.

**James Burroughs II** has joined the Minneapolis Public Schools as the Diversity and Equal Opportunity Director. Before coming to MPS James was Senior Consultant for Fredrikson Human Resources Consulting Group.

**Cedrick Frazier** has joined the Minneapolis Public Schools as the Assistant Diversity and Equal Opportunity Director. A 2007 graduate of William Mitchell College of Law, before coming to MPS Cedrick was an Assistant Hennepin County Public Defender.

**David J. Kennedy** of Kennedy & Graven, Chartered in Minneapolis has retired after nearly 50 years of service as an attorney and adviser to local government bodies. A graduate of University of Notre Dame and the University of Minnesota Law School, Dave began his legal career in 1960 as a staff attorney for the League of Minnesota Cities. From 1967 to 1969, he served as Director of the Minnesota Office of Local and Urban Affairs, and from 1969 to 1972 as Assistant Senate Counsel for the Minnesota State Senate. Dave joined the firm of LeFevre, Lefler, Kennedy, O'Brien & Drawz in 1972 and later helped that firm's municipal law and public finance practices merge with Holmes & Graven. The firm changed its name to Kennedy & Graven in 1995. Dave Kennedy served as City Attorney for the City of Crystal from 1974 to 1998 and served as City Attorney for the City of Sandstone from 1993 to 2006. He also served as Municipal Bond Counsel to hundreds of Minnesota cities, counties and bonding authorities during his long career. Dave will be enjoying his retirement with his wife Mitzi, their children and grandchildren.

**Erika Sullivan** and **Frank Ling** have left the Minnesota Attorney General's Office to join United Healthcare and **David Schneider** has left to return to private

practice. All were with the Human Services Division, with Frank being the Manager of the Division.

**Corrie Oberg**, formerly of Stephenson, Sanford, and Thone, will be joining the Minnesota Attorney General's Office in the Human Services Division. Corrie is a 2005 graduate from the University of Minnesota Law School and clerked for the Honorable Marybeth Dorn in the Second Judicial District.

*If you have a move you would like included in Public Attorneys on the Move, send it to [kim.mesun@mpls.k12.mn.us](mailto:kim.mesun@mpls.k12.mn.us).*

## Announcements

### U.S. District Court, District of Minnesota Announces New Web Site Design

The United States District Court for the District of Minnesota has launched a new web site. The revised site provides visitors with dramatic improvements in navigation, uniformity, appearance, and accessibility. The web site address remains unchanged, [www.mnd.uscourts.gov](http://www.mnd.uscourts.gov).

Enhancements to the web site include:

- Improved Navigation - Web pages work in intuitive and consistent ways, making it easier for visitors to find what they are looking for and know where they are within the web site.
- Improved Look and Feel - Enhanced graphics and the new page layouts provide visitors with an improved user experience.
- New Features - New features on the web site include print-friendly versions of the web pages, news and announcements, drop-down boxes providing direct access to web pages, a site index, font scalability, and full-text searching.
- Improved Accessibility - The new web site is designed to improve accessibility. The web site is designed so that its content will be available to persons with disabilities who use assistive software to navigate the internet.

## Public Notice from the Minnesota Federal District Court

Effective May 12, 2008, all transcripts prepared by a court reporter for any court proceeding in the District of Minnesota may become electronically available on the Court's CM/ECF system and the judiciary's PACER system. The following is the Court's policy regarding the electronic availability of transcripts in this District:

All transcripts prepared by a court reporter for any proceeding in this District will be filed on CM/ECF. Attorneys of record or unrepresented parties will receive notice when a transcript has been filed on CM/ECF. For a period of 90-days after a transcript is filed, electronic access to the transcript will be restricted. During the 90-day restriction period, the transcript will be available at the public terminals in the Clerk's Office for inspection only, and available for internal use by the Court. In addition, during the 90-day restriction period, a case participant who purchases the transcript from the court reporter or transcriber may obtain remote electronic access to the transcript through the court's CM/ECF system. At all times a copy of the transcript may be obtained from the court reporter or transcriber at the rate established by the Judicial Conference. After the 90-day restriction period has ended, the transcript will be available from the court reporter or the contracting court reporter, or for inspection and copying in the Clerk's Office, or for downloading from the court's CM/ECF system through the judiciary's PACER system, unless otherwise ordered by the Court.

In order to protect the privacy of clients and witnesses in the proceedings, this policy also includes a procedure to redact personal data identifiers from the transcript. Attorneys have seven calendar days after the filing of the transcript to file a Notice of Intent to Request Redaction on CM/ECF. Attorneys then have 21 calendar days from the date the transcript was filed to file a Statement of Redaction, identifying the personal data identifiers to be redacted by the court reporter or transcriber. Only the personal data identifiers outlined in Fed. R. Civ. P. 5.2 and Fed. R. Crim. P. 49.1 may be redacted through his process.

The court reporter or transcriber has 31 calendar days from the date the transcript was filed to redact the transcript in accordance with the Statement of Redaction.

In conjunction with the implementation of this new policy, the District of Minnesota adopts the following amendments to the Court's Local Rules: the addition of LR 5.5, Redaction of Transcripts, and amendments to LR 80.1, Court Reporters' Transcripts. These amendments became effective on **May 12, 2008** pursuant to 28 U.S.C. § 2071(e).

The full text of LR 5.5 and LR 80.1 and the Court's Policy for Electronic Access to Transcripts of Court Proceedings in CM/ECF and PACER are available on the District Court's website at [www.mnd.uscourts.gov](http://www.mnd.uscourts.gov) or by visiting or calling the Office of the Clerk of Court in St. Paul, Minneapolis, Duluth or Fergus Falls.

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## News from the Bench

**U.S. Magistrate Judge Susan Richard Nelson** has been appointed to a second eight-year term of office. Her new term begins on June 1, 2008. The reappointment is based on the recommendation of the Merit Selection Panel chaired by Robert Weinstine, and also included members Linda Holstein, Joe Anthony, Diane Page, Linda Picone, Monte Mills, Deborah Ellingboe, Carolyn Wolski, and William Tipping. The panel reviewed Nelson's work, interviewed numerous lawyers and litigants, and received a significant number of public comments on her work as a judicial officer. After its thorough review, the Panel unanimously recommended to the court that she be reappointed.

On July 1, 2008, **U.S. District Judge Michael J. Davis** succeeded Chief Judge James M. Rosenbaum as Chief Judge of the U.S. District Court for the District of Minnesota. Under federal law, the judge who is most senior in service within a district is designated as the chief judge and serves as the court's chief judicial officer for a period of seven years.

Judge Davis was appointed to the federal court on

March 30, 1994. Judge Davis graduated from Macalester College and the University of Minnesota Law School. He has been an Adjunct Professor at the University of Minnesota Law School for the last 25 years. In 1999, Chief Justice Rehnquist appointed Judge Davis to the United States Foreign Intelligence Surveillance Court for a seven-year term. Judge Davis received an Honorary Doctor of Laws degree in 2001 from Macalester College. He was awarded the 2004 Judicial Professionalism Award by the Hennepin County Bar Association. Judge Davis served as President of the Minnesota Chapter of the Federal Bar Association during 2004-05. Judge Davis is a member of the Board of Directors of the Legal Rights Center, Incorporated and the Volunteer Lawyers Network. He is an Advisory Board member of the Jack Mason Law and Democracy Initiative, a project for Books for Africa, and is a member of the Sigma Pi Phi Omicron Boulé Fraternity.

Judge Davis' chambers and courtroom are located on the 15th floor of the U.S. Courthouse in Minneapolis.

Governor Pawlenty appointed **Louise Dovre Bjorkman, Michelle A. Larkin, and Lawrence "Larry" B. Stauber, Jr.** to the Minnesota Court of Appeals.

**Louise Dovre Bjorkman** is an attorney and partner in the St. Paul law firm of Larson King, a position she has held since 2005. Previously, she was a Second Judicial District trial court bench judge in Ramsey County from 1998 to 2005, and an attorney and partner with the law firm of Rider, Bennett, Egan and Arundel in Minneapolis from 1985 to 1998. Bjorkman earned her juris doctorate degree *cum laude* from the University of Minnesota Law School in 1985, and her bachelor of arts degree *magna cum laude* from Luther College in Decorah, Iowa in 1982.

Bjorkman is a member of the American Bar Association, where she currently chairs the Public Relations Committee of the Tort Trial and Insurance Practice Section, previously chaired its Appellate Advocacy Committee, and is an American Bar Foundation Fellow. She is also a member of the Minnesota State Bar Association, where she is a council member of the Appellate Practice Section

and a member of the Judiciary and Fair Response Committee. Bjorkman also serves on the International Association of Defense Counsel, Defense Research Institute, Minnesota Commission on Judicial Selection, Minnesota Women Lawyers Advisory Board, Minnesota Defense Lawyers Association, and the Academy of Court Appointed Masters. Bjorkman is a former vice president and a director of the Girl Scout Council of St. Croix Valley, a member of the Luther College Advisory Board, Council on Crime and Justice Board, Friends of the Roseville Oval Foundation Board, and sings in her church choir.

Bjorkman will fill an at-large vacancy on the Court of Appeals that will occur with the retirement of the Honorable Bruce D. Willis on September 5, 2008. Bjorkman, 48, lives in Roseville with her husband and daughter.

**Michelle A. Larkin** was a Tenth Judicial District trial court bench judge in Wright County, a position she had held since 2005. Prior to that, she was a senior attorney and trial team supervisor (2001-2005), attorney (1992-2001), and law clerk (1991-1992) in the Hennepin County Public Defender's office. She also worked for the Minnesota House of Representatives Judiciary Committee in the 1989 and 1990 legislative sessions. Larkin earned her juris doctorate degree *magna cum laude* from William Mitchell College of Law in 1992, and her bachelor of arts degree from the University of Minnesota in 1988.

Larkin chairs the Minnesota Supreme Court's Juvenile Delinquency Rules Committee, is the Wright County lead judge for the Children's Justice Initiative, has served on the Supreme Court's Task Force on Court Appointed Civil Counsel, Juvenile Justice Services Task Force, and the Advisory Committee on the Amendment of the Juvenile Protection Rules. She has served as a judge with the Minnesota State Bar Association Mock Trial Program, is a mentor with the University of St. Thomas Law Mentor Externship Program, is a member of the Wright County Sober School Advisory Committee, and has been a guest speaker at numerous professional conferences as well as at a variety of community and civic organizations.

Larkin fills an at-large vacancy on the Court of Appeals that occurred with the resignation of the Honorable Christopher J. Dietzen on February 19, 2008, when he was sworn-in as an Associate Justice of the Minnesota Supreme Court. Larkin, 41, lives in Big Lake with her husband and son.

**Lawrence “Larry” B. Stauber, Jr.** was a senior attorney and managing partner with the Duluth law firm of Stauber and Lien. He had been an attorney with the firm since 1982. Previously, he was a solo practitioner in Duluth from 1977 to 1982, and was also a part-time public defender in Duluth from 1978 to 2006. He also served as an infantry officer in the United States Army from 1971 to 1974. Stauber earned his juris doctorate degree from Chicago Kent College of Law in Chicago, Illinois in 1977, and his bachelor of arts as well as bachelor of science degrees from the University of Minnesota – Duluth in 1970.

Stauber is a member of the American Bar Association; Minnesota State Bar Association, where he is a member of the Real Estate, Wills and Trusts Committee; Duluth Bar Association, where he serves on the Judicial Administration Committee; Minnesota Trial Lawyers Association; Duluth Trial Lawyers Association; Commission on Judicial Selection; and the Minnesota Board of Professional Responsibility, where he served as a supervising attorney. He was also a volunteer attorney with the Duluth Volunteer Attorney Program, has served as a district court referee, a MnDOT condemnation commissioner, and a Guardian ad Litem.

Stauber’s community activities include serving on the Grand Lake Township Board, of which he is a past chairman; Greater Proctor Scholarship Foundation Board; National Eagle Scout Association, where he is a local Eagle Scout sponsor; and the Scottish Rite Foundation Board.

Stauber fills a vacancy on the Court of Appeals for a resident of the Eighth Congressional District that occurred with the retirement of the Honorable R. A. “Jim” Randall on April 4, 2008. Stauber, 61, lives in Duluth with his wife. They have two adult daughters.

Governor Pawlenty appointed **Nancy Bostrack** to

a Third Judicial District trial court bench vacancy in the City of Winona in Winona County. The vacancy occurred with the retirement of the Honorable Margaret Shaw Johnson on May 13, 2008.

Bostrack is an Assistant Winona County Attorney, a position she had held since 1992. She was also an adjunct professor at Winona State University from 1996 to 2003. Bostrack earned her juris doctorate degree from Hamline University School of Law in St. Paul in 1991, and her bachelor of business administration degree from the University of Wisconsin, Madison, in 1988.

Bostrack is a member of the Minnesota State and Winona County Bar Associations, Winona Family YMCA, volunteers with Bluffview Montessori School and is active with the Pleasant Valley Evangelical Free Church. She was a member of the Winona County Developmental Achievement Center Board, has been a speaker at a number of police and reserve officer training classes as well as Winona State University classes, and has received the “Outstanding Woman in Business” award in 2003 from Women in Business, as well as the greater recognition award in 2007 from Mothers Against Drunk Driving.

Bostrack lives in Winona with her husband and two children.

Governor Pawlenty appointed **Steven R. Schwab** to a Third Judicial District trial court bench vacancy in the City of Albert Lea in Freeborn County. The vacancy occurred with the retirement of the Honorable James E. Broberg on April 29, 2008.

Schwab was the Albert Lea City Attorney, a position he had held since 1989. He was a corporate attorney with Farm Credit Service of Mankato from 1986 through 1988, and an associate attorney as well as an Assistant Brown County Attorney with the Berens, Rodenberg and O’Connor Law Firm in New Ulm from 1982 to 1986. Schwab earned his juris doctorate degree from St. Louis University Law School in St. Louis, Missouri in 1982, and his bachelor of science degree from St. John’s University in Collegeville in 1979.

Schwab is a member and past president of the Freeborn County Bar Association, a member and past president of the Minnesota City Attorney's Association, and a member and former chair of the 10th District Ethics Committee. He is also a member and past president of the Albert Lea Rotary, a member and past president of the Albert Lea Exchange Club, a member of the Albert Lea Family Y Board of Directors, a board member of Group Support Services, and a mock trial coach for Albert Lea High School.

Schwab, 51, lives in Albert Lea with his three children.

Governor Pawlenty appointed **Gregory J. Anderson** to a Fifth Judicial District trial court bench vacancy certified by the Supreme Court for chambers in the City of St. James in Watonwan County. The vacancy occurred with the retirement of the Honorable David E. Christensen on March 4, 2008.

Anderson was an Assistant Fifth Judicial District Public Defender in Mankato, a position he had held since 1994. Previously, he was an Assistant Mankato City Attorney from 1989 to 1994, and a Fifth Judicial District law clerk in Mankato from 1987 to 1989. Anderson earned his juris doctorate degree from the University of Minnesota in 1987, and his bachelor of arts degree from the University of Minnesota College of Liberal Arts in 1984.

Anderson is a member of the Mankato Area Youth Symphony board, where he served as president in 2006; is an assistant scoutmaster and fund-raising chair of Boy Scout Troop 29; is a Sunday School teacher in Belgrade Avenue United Methodist Church; and serves on the Board of Ordained Ministries of the Minnesota Annual Conference of United Methodist Churches. He has also been a Cub Scout Pack 98 Den Leader and Pack Leader, and has been a youth soccer, basketball, t-ball, and baseball coach.

Anderson, 46, lives in North Mankato with his wife and three sons.

Governor Pawlenty appointed **Michelle A. Dietrich** to a Fifth Judicial District trial court bench vacancy certified by the Supreme Court for

chambers in Lincoln and Lyon Counties. The vacancy occurred with the retirement of the Honorable George I. Harrelson on June 2, 2008.

Dietrich was the Redwood County Attorney in Redwood Falls, a position she had held since 1997. She was an Assistant Redwood County Attorney from 1995 to 1997, and a Ninth Judicial District law clerk in Bemidji and Clearwater from 1994 to 1995. Dietrich earned her juris doctorate degree from Hamline University School of Law in St. Paul in 1994, and her bachelor of arts degree from Central University of Iowa in Pella in 1991.

Dietrich was a member of the Minnesota County Attorneys Association where she served on the Criminal Law and Indian Child Welfare Act Subcommittees and was on the Board of Directors; the National District Attorneys Association; American, Minnesota State, and Redwood County Bar Associations; and the Minnesota Family Support and Recovery Council. She has taught Peace Officers Standards and Training courses on a number of subjects, has been a mock trial judge, and serves on a number of Redwood County committees, including the Jail Committee, Law Library Committee, Sentenced to Service Committee, Child Protection Team, and Children's Justice Initiative.

Dietrich, 38, lives in Redwood Falls.

Governor Pawlenty appointed **Judge Vicki Landwehr** and **Judge Daniel Mabley**, and reappointed **Patrick Sexton** to the Board on Judicial Standards. All three are appointed to four-year terms that expire on January 2, 2012.

**Judge Vicki Landwehr**, of St. Cloud, is a Seventh Judicial District trial court judge in Stearns County. She has been a Seventh District judge since 1993, was assistant chief judge of the district from 1997 to 2000, and chief judge from 2000 to 2005. Landwehr has served on the Conference of Chief Judges, and the Supreme Court Judicial Evaluation Committee, and was named "Judge of the Year" in 2006 by the Minnesota Chapter of the American Board of Trial Advocates. She has also been a member of the John E. Simonett American Inn of Court where she was president in 2002,

Minnesota State Bar Association (MSBA), Stearns-Benton Bar Association, Seventh Judicial District Bar Ethics Committee, Minnesota Women Lawyers, Stearns County Family Violence Council, and co-chaired the MSBA's Pro Se Implementation Committee. Landwehr earned her juris doctorate degree *cum laude* from the University of Minnesota Law School and her bachelor of arts degree from State Cloud State University. Landwehr replaces the Honorable James Dehn as a trial court judge member of the board.

**Judge Daniel Mabley**, of St. Louis Park, is a Fourth Judicial District trial court judge in Hennepin County where he currently serves in the court's felony division and has previously served in the family, criminal, and civil divisions. He has been a Fourth District judge since 1992, and was chief judge of the district from 1996 to 2000. Mabley also served as an international judge in Kosovo from 2002 to 2003 through the United Nations International Judge program. He is a member of the Minnesota District Judges Association, Minnesota State Bar Association, Hennepin County Bar Association, and International Association of Arson

Investigators. Mabley earned his juris doctorate degree from the University of Minnesota Law School and his bachelor of arts degree from Carlton College in Northfield. Mabley replaces the Honorable E. Anne McKinsey as a trial court judge member of the board.

**Patrick Sexton**, of Minneapolis, is the director of legislative affairs with the Minnesota Department of Commerce. He has previously held public relations and communications positions with Himle Horner, Inc., West Group, Honeywell, Minnesota Department of Labor and Industry, and Governor Arne Carlson's office. He is a member of the Supreme Court's ad hoc Advisory Committee to Review the Judicial Code of Conduct, and has been a policy fellow with the Humphrey Institute Policy Forum, a member of the Minnesota State Board of Investment's Investment Advisory Council, and a mentor for the University of Minnesota School of Journalism. Sexton earned his bachelor of arts degree from the University of Wisconsin-Madison. Sexton, who has been a member of the Judicial Standards Board since 2004 and is currently chair of the board, is reappointed as a public member.

## Tasty Late Summer Recipe

By Eileen Wells, Mankato City Attorney

### Balela

*This Middle Eastern bean salad is best served at room temperature but keeps well in the refrigerator for easy snacking.*

- 1 (15 ounce) can garbanzo beans, rinsed and drained
- ½ (15 ounce) can black beans, rinsed and drained
- 2 tomatoes, seeded and chopped
- 2/3 c chopped onion
- ¼ tsp garlic powder
- 3 Tbsp extra virgin olive oil
- 2 Tbsp fresh lemon juice
- ½ c chopped parsley
- ½ tsp salt
- Coarsely ground black pepper



Combine all ingredients; mix well. Set stand 15 to 30 minutes before serving. Serves 4.

## 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 Department of Administration at 651/296-6733 or 800/657-3721.

The full text of the Data Practices Opinions are now available online at [www.ipad.state.mn.us](http://www.ipad.state.mn.us).

of Opinion	Date of Opinion	Gov't Entity Involved	Topic	Opinion Requester
08-002	3/18/08	St. Paul Public Housing Authority	Copy of complaint including dates and times and name of resident complainer; likelihood of identifying; benefit data.	X
08-003	4/01/08	Blue Earth County	Inspection of "all data relating to the complaint" about real property use; likelihood of identifying complainant.	Client/Grabitske
08-004	4/11/08	Duluth	Names of retirees and dependents receiving health care, the nature and value for each; pairing public data with private data.	Duluth News Tribune/Anfinson
08-005	4/16/08	Dept. of Public Safety	Employees' unauthorized use of data; names of employees with pending discipline.	Department of Public Safety/Newton
08-006	4/24/08	Stearns County Sheriff	Shooting response or incident data; arrest data; brief reconstruction; including witness and shooter names; active criminal investigation; 911 tape; medical examiner data; temporarily withholding.	St. Cloud Times/Anfinson
08-007	5/01/08	Rock Tenn Community Advisory Panel (RCAP) "operating under the auspices of the SPPA"	Open Meeting Law applicability	RCAP, Louder
08-008	5/01/08	Ind. School District 719	Former employee elected to School Board; personnel data.	ISD 719/Flynn and Early
08-009	5/16/08	Foundation for Mpls. Parks (contracted with author)	Copy of unpublished copy - righted manuscript of book in Requester's possession, now sought by a citizen; inspection v. copying.	Minneapolis Park and Recreation Board/Walther
08-010	5/16/08	Normandale Community College (part of MNSCU)	Grade distributions for all formal courses by professor; personnel data.	Pic-A-Prof, Mackin
08-011	5/29/08	Eagan Charter Commission	Official correspondence to Dakota County Court not retained by Commission; Official Records Act.	Bakken
08-012	5/30/08	Carver County	Cost justification of charge per plat map; actual reasonable cost; add-on fee.	Plat Systems Services/ Sobotka (Regional MLS)
08-013	6/17/08	Cass Lake Economic Development Authority	Minutes of meetings, annual reports, and notices of meetings; Official Records Act.	Cass Lake City, Uhrinak
08-014	6/26/08	School District #31	MN Dept. of Education determination on maltreatment, issued to SD #31 that was basis for final discipline of employee; changed classification; redacting.	Rupp and Ische

## Upcoming CLE Seminars

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

<b>DATE</b>	<b>SEMINAR</b>	<b>TIME</b>	<b>PLACE</b>	<b>SPONSOR AND CONTACT</b>
9/11/08	U. S. Supreme Court Update	Noon - 1:30 p.m.	Elmer Anderson Building	Attorney General Marty Casserly 651/297-5919
9/19/08	Election Law/ Presidential Election 2008	12:30 - 3:00 p.m.	First National Bank 332 Minnesota Street, St. Paul	Sharon Elmore Ramsey County Bar Association; 651/222-0846
9/26/08	Hot Topics in Jury Selection, Psychology and Technology	8:30 - 11:45 a.m.	HCBA Nicollet	Hennepin County Bar Association, Carol Berg 612/752-6679
10/1/08	The 13th Annual Rulemaking Seminar	7:45 a.m. - 3:00 p.m.	MN Dept. of Health 1645 Energy Park Dr. St. Paul, MN (Mississippi Room)	Interagency Rules Committee For more information contact Susan Barry at <a href="mailto:susan.barry@state.mn.us">susan.barry@state.mn.us</a> 651/556-4062
10/3/08	It's a Crime Data Practices Isn't More Civil	9:30 a.m. - 3:45 p.m.	Hilton Garden Inn Maple Grove	MSBA - Public Law Section & MN County Attorney's Association ( <i>see p. 2 of newsletter for more details</i> )
10/15/08	Kids in Trouble	3:00 - 5:00 p.m.	First National Bank 332 Minnesota Street, St. Paul	Sharon Elmore Ramsey County Bar Association; 651/222-0846
10/22/08	Enforcement of Judgments	8:30 - 11:45 a.m.	HCBA Nicollet	Hennepin County Bar Association
11/7/08	Ethics			Hennepin County Attorney's Office
11/19/08	Minnesota Constitution	3:00 - 5:00 p.m.	First National Bank 332 Minnesota Street, St. Paul	Sharon Elmore Ramsey County Bar Association; 651/222-0846
12/10/08	Supreme Court & Court of Appeals Update	3:00 - 5:00 p.m.	First National Bank 332 Minnesota Street, St. Paul	Sharon Elmore Ramsey County Bar Association; 651/222-0846
<b>To include a notice of an upcoming CLE in the next issue, contact Mary Miller (651) 284-5306.</b>				

The Minnesota Revisor's Office is pleased to announce our tenth series of educational seminars for the 2008 interim. Topics tentatively planned include, but are not limited to, media and the legislature, elimination of bias, the Second Amendment, health care reform, and the annual Minnesota Supreme Court Roundup. Admission is free and preregistration is not required unless noted. Continuing Legal Education credits will be applied for. If you would like to be added to the Revisor's Office email listserv to receive updates on dates and topics as they become available, please email Sheree Speer at [sheree.speer@revisor.leg.state.mn.us](mailto:sheree.speer@revisor.leg.state.mn.us).