

# Public Law News

*A Publication of the Minnesota State Bar Association Public Law Section*

Volume XVI, Issue 3, Spring 2007

**OUR SIXTEENTH YEAR!**

## Public Law Section

### Executive Council

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Louis Thayer, *Co-Chair*, 651/296-2384  
Hon. Tom Kalitowski, *Secretary*, 651/297-3530  
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### Newsletter Committee

Kim Buechel Mesun, *Chair*, 612/668-0482  
Terry L. Adkins  
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### Other PLS Committees

Awards: Blair Buccicone, 651/215-0600;  
Barry Greller, 651/296-0983  
Community/Public Service: Nancy McLean, 612/348-6755  
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Todd Shuffelman, 763/241-2565  
Local Government: Eileen Wells, 507/387-8603

### Other PLS Leads

CLE Coordinator: Mary Miller, 651/284-5306  
Membership Liaison: James Alexander, 612/664-5619  
Public Lawyer Delegate to MSBA Assembly:  
Jay Heffern, 612/673-3272  
Pro Bono Policy Task Force Co-Chairs:  
Nancy McLean, 612/348-6755;  
Cliff Greene, 612/373-0830

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Visit the PLS web site:

<http://www2.mnbar.org/sections/public-law/index.htm>

**MSBA**

**www.mnbar.org**



## Public Law Section Annual Meeting & CLE

### **2. 5 hours of Standard CLE credits, including 1.5 Elimination of Bias credits, applied for**

#### **When**

Friday, May 18, 2007  
8:30 am - 1:30 pm

**Where** Midland Hills Country Club  
2001 Fulham Street  
Saint Paul, Minnesota  
[Click here for directions](#)

#### **Cost**

**\$40** Public Law Section members  
**\$50** Non-Section members  
**\$20** Law Students  
**\$25** Annual Meeting & Luncheon Only

**Register Now**

**OR** send [registration form](#) with payment to:  
MSBA  
Attn: Kim Basting  
600 Nicollet Mall #380  
Minneapolis, MN 55402  
Fax: 612-333-4927

**RSVP by Tuesday, May 15, 2007.**

In December of 2004, Minnesota Advocates for Human Rights released a report concerning the government response to battered refugee and immigrant women in the Minneapolis/St. Paul metropolitan area. Although domestic violence is a serious problem for women of all backgrounds, refugee and immigrant women are particularly vulnerable to certain forms of abuse and face unique problems in gaining protection from violence. The government's compliance with its obligations under international human rights laws to protect refugee and immigrant women will be considered in connection with the judicial and social services system. Basic immigration law as it affects these women will be addressed. Finally, obstacles in other laws and policies and in their implementation will be identified. These issues will be illuminated by a stirring performance by Pangea World Theater, and a distinguished panel of public law professionals will discuss these challenges and their experiences with Minnesota's battered immigrant population.

#### **Schedule**

8:30 to 9:00 a.m. - Registration and Continental Breakfast

9:00 to 9:50 a.m. - ***Pangea World Theater presentation***

10:00 to 11:45 a.m. - ***Perspectives of Public Law Professionals***

#### **Moderated by**

***Mary Ellingen***, Minnesota Advocates for Human Rights

#### **Panel members**

***Honorable Diane Alshouse***, Ramsey County District Court Judge  
***Luz Maria Frias***, Director of External Affairs, City of Saint Paul  
***Yamy Vang***, Saint Paul Attorney's Office, Civil Division  
***Mercy Das-Sulc***, Civil Rights & EEO, MN Dept. of Human Services  
***Lolita Ulloa***, Hennepin County Attorney's Office  
***Susan Koberstein***, Immigration Coordinator for the Minnesota Legal Services Coalition

12:00 to 1:30 p.m. Annual Meeting, Luncheon  
and Annual Public Law Awards Presentation

## Section Executive Council Elections

The Executive Council of the Public Law Section is elected at the section's annual meeting. The council consists of two co-chairs, a secretary, a treasurer and eight council members. The co-chairs, secretary and treasurer each serve one-year terms. The council members each serve two-year terms. The council meets once a month over the noon hour, usually on the third Tuesday of the month.

This year's elections will take place at the annual meeting on May 18, 2007. It will be held in conjunction with the section sponsored CLE.

Nominations are solicited for the two co-chairs, secretary, treasurer and council member positions. Officers and council members must be public lawyers and current members of the MSBA Public Law Section. A public lawyer is defined as a licensed attorney who works for a governmental entity (including titles such as judge, hearing officer, administrative law judge, legal assistant, legal analyst, legal advisor, staff attorney, law clerk, etc.) or

provides legal services (services that can only be provided by a licensed attorney) to a governmental entity where the legal services provided amount to at least 50 percent of the attorney's legal practice. Diversity of gender, race, geography and type of public employment shall be considered in electing Officers and Section Council members.

If you are interested in serving on the council or nominating someone else, please contact the Nominating Committee Chair Jay Heffern ([jay.heffern@ci.minneapolis.mn.us](mailto:jay.heffern@ci.minneapolis.mn.us) or 651-556-4085) or Kim Buechel Mesun ([kim.mesun@mpls.k12.mn.us](mailto:kim.mesun@mpls.k12.mn.us) or 612-668-0482).

Another way to participate in section activities is to serve on a section committee. Current committees are Awards, Community Service, Data Practices, Local Government, Membership and Newsletter. To find out more about committee membership, contact any current Executive Council member. (see front cover).

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## Office Profile: Minnesota Department Of Human Services Appeals And Regulations Division

*By: Louis Thayer, Assistant Chief Human Services Judge*

This article gives an overview of the Appeals and Regulations Division and short biographies of new attorneys in the division. Staffed by 42 employees, including 26 attorneys, the Appeals and Regulations Division assures the efficient and effective delivery of specific legal services. In addition, the division is responsible for the development of legal and compliance policies and the provision of advice on ethics questions. It consists of four areas: administrative law, contract management, fair hearings, and compliance functions.

### **Appeals and Regulations Division Director: Virginia Rae Bly**

The Director is responsible for the overall management of the Appeals and Regulations Division, including fair hearings, legal compliance, contract management and administrative law functions, so that state and federal laws, rules and regulations are observed, and programs are implemented in an integrated way throughout the state.

The Director also provides support for the development of the department's legal and compliance functions; provides delegation oversight for senior management, reviews and manages the preparation of delegations by the Commissioner of Human Services, and coordinates the Department's requests for delegations from other State agencies and from the Attorney General's Office; provides advice to resolve conflicts of interest that arise internally

within the Department, as well as conflicts of interest that arise because of our external business relationships; and makes recommendations to Senior Management on future strategies for assuring compliance.

**Nikki Thompson** is an attorney who was recently hired to conduct a special project to identify existing departmental compliance policies and procedures; develop a conceptual architecture for compliance policies and procedures; perform a gap analysis; and guide the development of policies and procedures to eliminate gaps.

Ms. Thompson graduated from the University of Minnesota with a journalism degree and worked as a television news reporter for five years before attending Hamline University School of Law. After graduation from law school she worked at the American Academy of Neurology drafting and negotiating contracts, as well as ensuring the association's compliance with HIPAA regulations. She later worked at FindLaw, a Thomson West Company as an attorney editor, reviewing contracts and creating marketing strategies for law firms. She became the Legal and Compliance Policy Coordinator in December 2006.

## **Administrative Law**

### **Manager: Diane Krueger**

Administrative Law encompasses a variety of services with a legal focus, including: 1) rulemaking; 2) provider appeals; 3) legal research and analysis; and 4) legal publication.

Rulemaking is a support service provided for the Department's business operations. This function includes tracking legislation, and representing the agency at legislative hearings on the Minnesota Administrative Procedures Act; providing technical assistance to business engaged in rulemaking, providing policy research, analysis and development to support rulemaking activities; and providing a legal review to assure compliance with the technical requirements of the Minnesota Administrative Procedures Act.

Provider appeals are appeals by Medical Assistance (MA) and General Assistance Medical Care (GAMC) providers, with primary activities in the area of long-term care rate appeals. Rate appeals are now resolved by departmental determinations in combination with contested case hearings at the Office of Administrative Hearing. Hospital medical necessity appeals are resolved by departmental orders based on case review.

Legal research and analysis is provided as a support service for both senior management and business operations. Engaging attorneys with broad knowledge of the Department's business assures consistent interpretation of Department policies, and enables the Department to analyze and respond quickly to proposed changes.

Legal drafting and editing is provided as a centralized support service for the Department's business operations. This function provides drafting assistance and legal review of legislation, rules and bulletins. This function also serves to review and manage the distribution of bulletins to assure that our county partners are clear and consistent, and that the messages are delivered efficiently and effectively.

**Beth Scheffler** is a new attorney who joined the Administrative Law function in December 2006. As the administrative law advisor, she provides legal support and advice to the Administrative Law section of the Appeals and Regulations Division. Her responsibilities include addressing certain categories of provider appeals (long term care rate appeals and medical necessity appeals) by analyzing the legal and factual issues, drafting appeal resolution documents (determinations, orders and settlements) and managing any resulting litigation. She will also provide legal support on the implementation of statutory changes to long term care reimbursement methodology- including contract development and negotiation with long term care providers. Finally, she will provide a leadership role in the evaluation and development of agency rules.

After working for a few years as a human resources professional, Beth obtained a law degree from the University of Minnesota in 1990. She spent one year as a judicial law clerk with the Minnesota Court of Appeals and three years with a large Minneapolis law firm (Popham, Haik, Schnobrich and Kaufman). In 1994, she joined the Minnesota Office of the Attorney General, where she practiced law for twelve years, primarily in the area of public construction contract litigation. She joined the Department of Human Services as an administrative law

advisor in December 2006. Beth enjoys spending time with her family, including her three-year-old son, and riding her horse hunter-jumper style.

## **Contract Management**

### **Supervisor: Jay Brunner**

Description of function: Contract Management and Legal Compliance includes: 1) legal review of contracts and technical assistance; 2) accounting activities and 3) process review and communications with division liaisons; 4) Training for internal and external staff on contracting procedures, drafting and implementation. Assist in the implementation of data sharing agreements consistent with the Minnesota Data Practices Act, HIPAA and other state and federal regulations.

Legal review of contracts and technical assistance is provided to assure that the Department's contracts meet all state contracting requirements, and to communicate those legal requirements to the staff in the business operations who are engaged in contracting activities.

Accounting activities are provided to business divisions who do not have staff trained to enter contracts into the Minnesota Accounting and Procurement System (MAPS). MAPS activities include the establishment of contract encumbering orders, as well as the establishment and management of Master contracts and Annual Plan expenditures. This function is also responsible for the production of various reports on contracting activities.

Process review and communications with contract liaisons is an ongoing function that examines the contracting process, identifies ways to streamline the process, and communicates process changes to business division liaisons.

Conduct training for DHS staff and managers on issues related to State and Federal contracting in the areas of grants and professional/technical services contracts. This includes the preparation of requests for proposals, contracts, grants and amendments.

## **New Attorneys in Contracts and Compliance**

### **Uchenna Nwaneri - Contracts Attorney**

In July 2006, the contract management and legal compliance area welcomed Uchenna Nwaneri. She provides legal support and advice within the Contracts section of the Appeals and Regulations division. Her responsibilities include reviewing DHS contracts and advising business operations and program staff on contractual issues. She will also provide legal support and training for DHS staff on issues related to the grants and professional/technical service contracting procedures, drafting and implementation. She also advises agency staff on data practices laws.

Uchenna became an Attorney in Nigeria in 1991 and practiced in various law firms and institutions in the areas of civil litigation, criminal defense and transactional practice involving commercial transactions, drafting, reviewing contracts among others. After immigrating to the United States, she attended William Mitchell College of Law. While in Law School she interned with Hon. Judge Asphaug and clerked in the law firm of Reinhardt &

Anderson. Upon graduation, she engaged in private practice and practiced in the areas of Immigration and Personal Injury.

#### **Wendy Savakes - Contracts Attorney**

In February 2007, the contract management and legal compliance area welcomed Wendy Savakes to its ranks. As one of the contract attorneys, she provides legal support and advice within the Contracts section of the Appeals and Regulations division. Her responsibilities include reviewing DHS contracts and advising business operations and program staff on contractual issues. She will also provide legal support and training for DHS staff on issues related to the grants and professional/technical service contracting procedures, drafting and implementation. Finally, she will assist in the implementation of data sharing agreements consistent with the Minnesota Data Practices Act, HIPAA and other State and Federal Regulations.

After completing joint degrees in Business Administration and Speech Communication and Theatre, Wendy obtained a law degree from Pepperdine University in 1996. She has practiced law for 10 years in the areas of litigation, business, and media law. In 2004, she completed a Master's degree in Public Policy at the Humphrey Institute at the University of Minnesota. She currently teaches as an adjunct professor at Hamline University School of Law and at the University of Phoenix in their Criminal Justice and M.B.A. programs. She joined the Department of Human Services as a contracts attorney in February 2007. Wendy enjoys spending time with her twelve-year-old son, jewelry making and dance.

#### **Fair Hearings**

**Kenneth Mentz, Chief Human Services Judge**  
**Inta Sellars, Assistant Chief Human Services Judge**  
**Louis Thayer, Assistant Chief Human Services Judge**

Administrative fair hearings are appeals by applicants or recipients of government benefit services whose benefits have been denied, reduced or terminated. Administrative fair hearings also include administrative disqualification appeals, appeals of maltreatment determinations and disqualifications from work in licensed health and human services facilities. In past few years, the DHS Appeals and Regulations Division has experienced a large increase in the number and variety of matters brought before it, due in part to changes in the Minnesota Care program, overpayments in health care programs, administrative fraud disqualification hearings for violations in the MFIP and Food Support programs, and the latest addition—review of findings of maltreatment by nursing assistants and other health, or social services providers under the Vulnerable Adults Act. Human services judges currently conduct hearings and prepare recommended orders in about 6500 cases per year.

In 2006, in order to keep up with the growing number of cases, the department created two new positions for assistant chief judges and hired several additional human services judges. The function now consists of one chief human service judge, two assistant chief human services judges, and 16 human services judges. The chief human services judge and two assistant chief human services judges issue final orders under a delegation of authority from the Commissioner.

#### **New Attorneys in Fair Hearings area**

##### **Nanette Connor – Human Services Judge**

Nanette Connor graduated from the University of Minnesota and attended William Mitchell College of Law. After graduation from law school and admission to the bar, she pursued a career in public service including work as an unemployment compensation judge and four years as a contracts attorney prior to becoming a human services judge in June 2006.

##### **Philip Grove – Human Services Judge**

Phil Grove obtained a law degree from the University of Minnesota in 1989 after working for about ten years as a teacher and living skills counselor for deaf, deaf-blind, developmentally disabled and mentally ill children and adults. His past legal employment includes five years with the Legal Aid Society of Minneapolis, four years with the Minnesota Attorney General's Office, and most recently two years with the legal services program of the Minnesota Indian Women's Resource Center. He joined DHS as a human services judge in November 2006. He also helps with home schooling his two teenagers and is an avid vegetable gardener and baseball fan.

##### **Amy Lynne Hermanek – Human Services Judge**

Amy Hermanek is a graduate of the University of Minnesota Law School. After graduating, she was first employed as a law clerk in Hennepin County District Court. She then took a staff attorney position with Central Minnesota Legal Services (CMLS) working in family and public benefits law. In 2005, she became a supervising attorney with CMLS and oversaw the public benefits section of that office. She joined the Appeals Office in January 2007.

##### **Margaret Manderfeld – Human Services Judge**

Margaret Manderfeld joined the Department of Human Services as a human services judge in June 2006. Before that she worked for three years as an unemployment judge for the Department of Employment and Economic Development. She has worked in private practice primarily doing plaintiff's employment litigation. She also clerked for U.S. District Court Judge, Rodney S. Webb. Her pro bono work has included successfully representing several persons seeking political asylum. She has done human rights work in South Africa and Peru. She has taught human rights at various schools.

##### **Joseph Rubenstein – Human Services Judge**

Joseph Rubenstein became a human services judge in April 2006. From April, 1995 until April, 2006 he was the staff attorney for the Minnesota Department of Human Service's Special Recovery Unit. He managed the Department's Medical Assistance and Alternative Care lien programs and advised the Department, county social services agencies and county attorneys on probate, recovery, and real estate issues in the state's Medical Assistance and Alternative Care programs. He is an undergraduate of the University of Iowa and graduate of Drake University Law School in Des Moines, Iowa. Before joining the Department he was a partner in a law firm and a regional counsel for a title insurance company. He is a member of the bar in Iowa and Minnesota.

# 2007 Legislative Session Update

By: Michele L. Timmons, Revisor of Statutes

As of this writing, the Minnesota Legislators are off for the Easter/Passover break, and the State Office Building is temporarily a quiet place. So far, however, this has been one of the busiest sessions I can remember, and the action begins again on April 10<sup>th</sup>. This a budget-setting session, and major fiscal bills have already passed the Senate. The House has already passed bonding and transportation bills, with the remainder of the fiscal bills to be passed in mid to late April. The legislature is moving expeditiously on the fiscal bills to preserve time to deal with any vetoes before the May 21<sup>st</sup> end of the regular session.

## What has passed

In the meantime, sixteen chapters have been passed. Several of these may be of interest to public lawyers:

### *Great Lakes-St. Lawrence River Basin Water Resources Compact*

As other states agree to this compact, the governor of each state and an appointed alternate will form a council to deal with the uses and diversion of lake water. See, Chapter 2, H.F. 110.

### *Renewable Energy Standards*

This act sets a general standard for electric utilities of 25% renewable energy by the year 2025, with higher standards for an electric utility with a nuclear generating facility. See, Chapter 3, S.F. 4.

### *MICA renamed*

This act changes the name of the Metropolitan Intercounty Association to the Minnesota Inter-county Association. See, Chapter 6, S.F. 736.

### *Extracurricular activities after treatment*

This act relates to the Minnesota State High School League, and ensures that students are able to participate in league-sponsored activities after completing licensed treatment programs. See, Chapter 7, S.F. 1499.

## What may pass

There are several bills under consideration that may be of interest to public lawyers:

### *Statewide Smoking Ban*

Senate File No. 238 has been passed by the Senate, and referred to several committees in the House.

### *Uniform Environmental Covenants Act*

This bill would adopt uniform procedures for the creation and modification of environmental covenants for properties subject to an environmental response project. Both H.F. 1063 and S.F. 1051 received second readings in late March.

### *Collateral Sanctions, Sealing of Records, Offender Reentry*

In the criminal law area, topics dealing with various issues surrounding offender reentry continue to be discussed. The Senate omnibus public safety bill, for example, contains language proposing a study on automatically sealing some records, and establishing a collateral sanctions committee. See, S.F. 1992, Art. 2, Sec. 12-13. The House omnibus public safety bill focuses more directly on offender reentry, with proposals for a five-year demonstration project for high-risk adults, a mentoring grant for children of incarcerated parents, a reentry grant addressing domestic violence and intimate partner violence, a pilot project to provide employment for ex-offenders living in North Minneapolis, and the establishment of a legislative working group on offender reentry. See, H.F. 829, Art. 7. Since both the House and Senate have proposals in this general topic area, it is likely that one or more of these proposals will pass.



# MSBA Public Law Section Public Attorney Awards Ceremony

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 awards committee worked hard to increase the number and diversity of the people nominated. The process was very successful with the highest number of nominations ever from a wide diversity of public law backgrounds. The selection process was very challenging for the executive committee. The committee is in the process of contacting the recipients.

This year the awards ceremony will take place after the CLE at the Midland Hills Country Club in St. Paul, beginning at noon Friday, May 18, 2007. See page 1 for directions.

**Midland Hills Country Club  
2001 Fulham Street  
St. Paul, Minnesota**

Please plan on joining us for this ceremony to honor our outstanding colleagues.

The awards are:

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

This award is named for former Minnesota Supreme Court Justice Rosalie Wahl whose work as a Justice encompassed the attributes of the award. Justice Wahl is highly regarded, not only for her work as a judge, but also for her dedication to and tireless efforts on projects improving the justice system.

The PLS seeks to honor appellate, federal court, state district court or administrative law judges in Minnesota who not only have high ideals, personal character and judicial competence, but also have gone beyond the ordinary call of duty, participating in projects focused on improving the quality of justice or the justice system. Nominated judges must have been on the bench for at least five years.

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

This award is intended to recognize the work and dedication of an outstanding public attorney working in the State of Minnesota as a County/City Attorney and/or as a criminal prosecutor at the federal, state, or local level. The award is named in memory of the late Julius E. Gernes, former Winona County Attorney and chief prosecutor who was well known and highly regarded by county attorneys throughout Minnesota and whose professional achievements as a public attorney encompass the attributes of this award.

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

This award is intended to recognize the work and dedication of an outstanding public attorney working in the State of Minnesota as a public defender at the federal, state or local level. The award is named in memory of the late William E. McGee, former public defender, to recognize his contributions and commitment to the fair, nondiscriminatory administration of justice and representation of citizens of limited means. The award also recognizes his extraordinary leadership, initiative and innovation in the performance of his duties as Hennepin County's Chief Public Defender.

## **Public Attorney Awards of Excellence**

There are two Public Attorney Awards of Excellence. These awards are the primary method of recognizing the work and dedication of outstanding public sector attorneys. Awards are given annually with the goal of including award recipients from diverse areas of public practice. Recipients are selected from the following areas:

**Civil Law: Public Law Office Counsel:** This award is given to attorneys practicing civil law in the State of Minnesota in a public law office at the federal, state or local level;

**In-house Agency Counsel:** This award is given to public attorneys practicing in the State of Minnesota in a variety of public settings including lawyers with such titles as hearing officials, staff attorneys, legal analysts, law clerks, or holding nonlegal government leadership positions such as commissioners, managers and council members.

Persons nominated for the Julius E. Gernes, the William E. McGee or Public Attorney Awards of Excellence must have at least five years of experience as a public attorney. They must have engaged in activities that show dedication and commitment to public service and the public practice of law. Nominees may also distinguish themselves by making significant contributions that aid in the operation of government or the practice of law and/or by demonstrating extraordinary leadership, initiative or innovation in the performance of their duties.

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

This award is intended to recognize retired or retiring public attorneys who have had distinguished careers as public attorneys, have made many significant contributions to public service and are recognized as models of the dedication and commitment of public attorneys. This award may be given to more than one recipient per year.

### Pro Bono Attorney Award of Excellence

This award is intended to recognize an outstanding public attorney (or public law office) who has engaged in activities that show dedication and commitment to provide volunteer services to underserved communities. With the Pro Bono Attorney Award of Excellence, we seek to honor attorneys who exemplify the principles of professional conduct rule 6.1:

*Rule 6.1 of the Minnesota Rules of Professional Conduct provides in part that:*

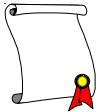
*Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:*

*(a) provide a substantial majority of the 50 hours of legal services without fee or expectation of fee . . . .*

*In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.*

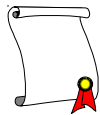
In addition, the Minnesota State Bar Association has adopted Professional Aspiration standards which encourage attorneys to provide at least fifty (50) hours of pro bono legal services per year. The American Bar Association has adopted a similar standard.

## MSBA Public Law Section 2007 Award Recipients



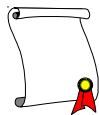
### **DOUGLAS K. AMDAHL PUBLIC ATTORNEY CAREER ACHIEVEMENT AWARD**

1. **Karel Lee Moersfelder**  
Assistant Hennepin County Attorney (ret.)
2. **Quy T. Dam**  
State Planning Director for New Americans, Department of Human Services
3. **Michael R. Dean**  
Assistant St. Louis County Attorney (ret.)



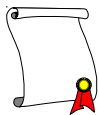
### **ROSALIE E. WAHL JUDICIAL AWARD OF EXCELLENCE**

**Honorable John P. Smith**  
Judge of District Court, Ninth Judicial District, Cass County



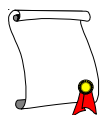
### **THE JULIUS E. GERNES PROSECUTOR AWARD OF EXCELLENCE** (Formerly the Julius E. Gernes Public Attorney Award of Excellence)

**Susan E. Gaertner**  
Ramsey County Attorney



**THE WILLIAM E. MCGEE  
PUBLIC DEFENDER AWARD OF EXCELLENCE**  
(Formerly the Public Attorney Award of Excellence: Public Defender)

**Noreen C. Phillips**  
Assistant Public Defender, Public Defenders Office, Second Judicial District



**THE PUBLIC ATTORNEY AWARD OF EXCELLENCE:  
GOVERNMENT AGENCY**  
(Formerly the Public Attorney Award of Excellence: In-House Agency Counsel)

**Allen E. Giles**  
General Counsel, Special School District No. 1, Minneapolis Public Schools



**THE PUBLIC ATTORNEY AWARD OF EXCELLENCE: PUBLIC LAW OFFICE**  
(Formerly the Public Attorney Award of Excellence:  
Public Law Office - Civil Law)

**Kenneth E. Raschke, Jr.**  
Assistant Attorney General, State of Minnesota



**PRO BONO ATTORNEY  
AWARD OF EXCELLENCE**

**Patrick R. Burns**  
First Assistant Director, Office of Lawyers Professional Responsibility

## MSBA Public Law Section Preview Of Its Annual Meeting And CLE

*By: Louis Thayer, Human Services Judge and Mary Ellingen, Staff Attorney, Minnesota Advocates for Human Rights*

The MSBA Public Law Section is proud to sponsor a presentation at its annual meeting that focuses on the obstacles faced by battered refugee and immigrant women in the Minneapolis/St. Paul metropolitan area when negotiating legal, medical and government systems. The presentation will be highlighted by a performance by Pangea World Theater entitled "Journey to Safety." The annual meeting and CLE will take place on **Friday, May 18, 2007** at Midland Hills Country Club in St. Paul. We encourage you to complete the registration on page one, and be a part of this exciting CLE. This article is a companion piece to the annual meeting.

In December of 2004, Minnesota Advocates for Human Rights released a report concerning the government response to battered refugee and immigrant women in the Minneapolis/St. Paul metropolitan area. Although domestic violence is a serious problem for women of all backgrounds, refugee and immigrant women are particularly vulnerable to certain forms of abuse and face unique problems in gaining protection from violence.

The report examines the government's compliance with its obligations under international human rights law to protect refugee and immigrant women, in connection with the judicial and social services system.

These issues will be illuminated by an artistic portrayal by Pangea World Theater of a series of vignettes, created in the voice of immigrant and refugee women. Finally, a distinguished panel of public law professionals will discuss these challenges and their experiences with Minnesota's battered immigrant population.

### **The Government Response to Domestic Violence Against Refugee and Immigrant Women in the Minneapolis/St. Paul Metropolitan Area: A Human Rights Report**

Domestic violence is a violation of the fundamental, universal human right to security of person and freedom from violence.

Governments are obligated both to protect individuals from violence, including through prosecution, and to provide effective assistance and remedies to victims when these rights are violated.

Twin Cities' advocates for battered refugee and immigrant women expressed a strong interest in documenting the experiences immigrant women have had in accessing legal, medical and other services to gain protection from domestic abuse. The report examined the need for services that address the unique concerns of battered refugee and immigrant women and identified ways to more effectively provide support and assistance.

Minnesota Advocates for Human Rights (MAHR) applied the methodology it has used to document domestic violence in other countries as a human rights violation to investigate and report on the government's compliance with its obligation to address the specific concerns and needs of refugee and immigrant victims of domestic violence. Research and documentation are important first steps in working to eliminate violence and to ensure that victims are provided with access to necessary services. The goal of this fact-finding project was to gather the information necessary to objectively evaluate the government's compliance with its international obligations to protect refugee and immigrant women from violence. With the help of a number of volunteer attorneys, the Women's Program of MAHR collected information about these issues by conducting over 150 interviews with prosecutors, police, doctors, nurses, hospital administrators, lawyers, judges, probation officers, government agencies, federal immigration authorities, shelter advocates, and community organizations.

The project's Steering Committee, composed of community members and domestic violence advocates, guided the report drafting process and provided feedback on the report. In collaboration with local advocates, MAHR has utilized the report as an advocacy tool to raise awareness of the problems facing and needs of refugee and immigrant victims of violence in the Twin Cities area.

### **Pangea World Theater**

Pangea World Theater is committed to international works, styles and traditions that illuminate the human condition, end divisiveness and celebrate differences. They strive to bring communities across the world together through theater productions, workshops and speakers. They view the stage as a powerful international forum and a podium for discussion. Throughout their work, they employ a cross-ethnic vision of tolerance and human rights through excellence in the arts.

## **Distinguished Panelists for MSBA Public Law Section CLE**

### **Biographical Information about the Panelists**

#### **Honorable Diane Alshouse, District Court Judge, 2<sup>nd</sup> Judicial District**

The Honorable Diane R. Alshouse graduated from Luther College and then earned her JD from Hamline University of Law in 1984. She started with the Ramsey County Public Defenders Office in 1985 as an Assistant Public Defender. During the next 20 years she worked in misdemeanors, felonies and juvenile court. She also spent one year as an Assistant Hennepin County Attorney in the juvenile division from 1996-97 on an exchange program. From 1997 on, Judge Alshouse worked as a Managing Attorney in the Ramsey County Public Defenders Office, supervising three teams of attorneys and hiring, training and supervising numerous law clerks and investigators.

Judge Alshouse has been an active member of the MSBA and Ramsey County Bar. She served on the Ramsey County Bar Ethics Committee for four years and has been a co-chair for the last two years of the MSBA's Public Law Section, and served on the Executive Council, for five years. She also has participated in the Ramsey County Families First picnic held every July as well as the RCBA Judges' Dinner.

She has been a community volunteer with various organizations, including Shoreview Women of Today and the White Bear Area Choral Association. She also has visited nursing homes, Regions Hospital and Untied Hospital as a member of a dog-therapy team.

#### **Mercy Das-Sulc, Office of Equal Opportunity & Civil Rights Minnesota Department of Human Services**

Mercy Das-Sulc works as an Affirmative Action Officer at the MN Department of Human Services Office for Equal Opportunity, Affirmative Action and Civil Rights. She has been a social justice advocate since she was a teenager. In India she organized marginalized rural communities for social, political and economic rights. In the US, she worked at the International Women's Watch Action Watch and was a recipient of the Cram Dalton Fellowship and graduated with a Public Policy degree from the Humphrey Institute. She has previously been employed by the University, Public Housing Agency and School district. She focuses her volunteer work on affordable housing, assisting victims of domestic violence, and issues faced by immigrant communities.

#### **Luz Maria Frias, Director of External Affairs, St. Paul Mayor's Office**

Luz Maria Frias earned her Master's and Juris Doctor degrees from the University of Iowa in 1988. Ms. Frias served as a Magistrate in the Second and Fourth Judicial Districts in Minnesota for six years. Ms. Frias also served as a Hearing Examiner for the Shakopee Mdewakanton Sioux Community and Chief Legal Officer of Centro Legal. Ms. Frias currently serves as External Affairs Director for Saint Paul Mayor Christopher B. Coleman.

She is an experienced mediator and frequent lecturer on the issues of diversity within the courts; diversity issues in the mediation process; cross-cultural negotiation issues and the use of interpreters within the legal system.

Ms. Frias is actively involved in the community currently as a Trustee for the Blue Cross Blue Shield of Minnesota Foundation, Board member of the Council on Crime and Justice, President-elect of Minnesota Women Lawyers, and Board Member for Saint Paul Sister City Manzanillo. She is a former Trustee of The Saint Paul Foundation, and a past member of the Minnesota Supreme Court's Blue Ribbon Commission on Legal Services. She served as the first female President, and a charter member, of the Minnesota Hispanic Bar Association.

### **Susan Koberstein, Esq., Immigration Program Coordinator, MLSC**

Susan Koberstein is the Immigration Coordinator for the Minnesota Legal Services Coalition, located in St. Paul, MN. In her role as Coordinator, she works with legal service providers to develop a statewide approach to the delivery of immigration services, and to enhance the capacity, expertise, and client outreach of immigration providers. Prior to joining the Coalition, she practiced for eleven years with the law firm of Centro Legal, Inc., where she supervised the immigration practice unit. Before switching to immigration law, Ms. Koberstein practiced in the areas of housing, employment, consumer, and government benefits law at Centro Legal. A 1995 graduate of the Hamline University School of Law, she received her Bachelor of Arts degree from the University of Wisconsin-Madison in Political Science, Spanish, and Latin-American Studies. For four years, Ms. Koberstein was an Adjunct Professor of Immigration at Hamline University School of Law. She is a member of the American Immigration Lawyer's Association (AILA), where she serves as the local chapter's non-profit liaison.

### **Lolita Ulloa, Hennepin County Attorney's Office**

Lolita Ulloa is originally from Ecuador and grew up in Massachusetts. She attended Suffolk University Law School. She worked at Legal Aid in Boston as a public service attorney. She has lived in Minnesota since 1992 and worked at Southern Minnesota Regional Legal Services in St. Paul, practicing family law. She worked at Centro Legal heading their domestic violence unit. She came to the Hennepin County Attorney's Office in 1994 as the first Director of the Domestic Abuse Service Center. As of January 2001, she is now the Managing Attorney for the Victim Services Division, which incorporates Victim/Witness and the Domestic Abuse Service Center of the Hennepin County Attorney's Office.

### **Yamy Vang, St. Paul City Attorney's Office**

Yamy Vang started her public service career with the St. Paul City Attorney's Office Trial Unit in 2004 after working in private practice. In 2005, she joined the Community Prosecution Unit where she could integrate her love of the law and community empowerment. Her commitment to improving the quality of life in communities impacted by crimes and nuisance activities has resulted in better communication and relationship between public citizens and the City Attorney's Office. Ms. Vang helped

define the role of the Community Prosecution Unit in making the unit more interactive and responsive to community concerns. The Unit has since been recognized as an effective medium for resolving and addressing community concerns.

In addition, she is involved in providing outreach to the growing immigrant community, particularly new Hmong and Somali immigrants, educating them about a variety of issues ranging from public safety to the criminal justice system. With her Hmong background and understanding of the needs of the immigrant community, she has been able to serve as a conduit for the City Attorney's Office and Ramsey County Judges in assuring that these immigrants have a meaningful voice within our community-at-large and criminal justice process. She's also actively involved in working with St. Paul youths and getting them interested in the criminal justice process.

In 2005, Ms. Vang used her connection with area residents, community organizations, area businesses, law enforcement agencies and other governmental agencies to obtain funding for the Somali restorative justice project in St. Paul.

She is a 1992 graduate of Brown University and a 1999 graduate of Albany Law School. Prior to her career in law, she was actively involved in the folk arts, namely the Rhode Island State Council on the Arts and War Textile Exhibit and with the Rhode Island Health Department in addressing minority health issues and making health care accessible to the underserved population in Providence, Rhode Island.

# MSBA 2007 Convention June 27 - 29 Saint Paul RiverCentre



Artwork courtesy of Leo Stans

*The Public Law Section presents:*

## **Technology, Privacy & Crime CLE**

Thursday, June 28, 3:45 p.m. - 5:15 p.m.

Public safety is on everyone's mind. The news media is filled with stories about crime. Learn from four seasoned front-line prosecutors about the new technology which is available to fight crime. This session will discuss the legal framework for using the Shotspotter, Photo Cop and security camera technology and the public's right to privacy.

Speakers: Jay M. Heffern, Minneapolis City Attorney and Assistant Minneapolis City Attorneys Chris Dixon, Mary Ellen Heng, and Lois Conroy.

**To register for the 2007 MSBA convention:  
[www2.mnbar.org/convention](http://www2.mnbar.org/convention)**

# You are invited to the Public Law Section Member Recruitment Reception!

**Thursday, June 28  
5:15-6:15 p.m.  
Xcel Center, St. Paul  
Part of the MSBA Convention**

*Free food and beverages.  
Come check out the PLS!*



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## Community Service Announcements

### Habitat for Humanity Fun/Work Day – April 27!

The public law section is participating in a Habitat for Humanity project on April 27. We work from 9-4. Please let Nancy McLean know if you'd like information. ([nancy.mclean@co.hennepin.mn.us](mailto:nancy.mclean@co.hennepin.mn.us) or 612-348-6755).

### Loaves and Fishes

The Public Law Section and friends made tater tot hot dish at Holy Rosary Church in Minneapolis on April 4, 2007. The next Loaves and Fishes event is scheduled for June 6, 2007 at 2:45. We will see you there!

**Dear Sponsor,**

Thanks a lot  
for always been there  
& you're a life saver.

Family ID# 1456

Hargree

**Adopt A Family  
Thank You Note**

## Race Sets Vigorous Pace for LRAP

On April 15, the University of Minnesota Law School's annual Race for Justice, a 5K Fun Run and Walk benefiting the Loan Repayment Assistance Program of Minnesota (LRAP), brought members of the Law School and local legal communities, as well as members of the general public, to historic riverfront Minneapolis for an event of unprecedented success. On a picture-perfect spring day, the scenic race route looped participants around Nicollet Island, across the Mississippi on the Hennepin Avenue bridge, back over the Stone Arch Bridge, and down the stretch on St. Anthony Main.

Three of the Public Law Section Executive Council members weathered this 5 kilometer fun run. The Section Council voted to support the cause at \$250. Your runners included Jim Alexander, Louis Thayer and Mary Miller. Five runners constituted the DREAM TEAM.

Race results are posted on the 2007 Race for Justice page ([http://www.law.umn.edu/current/raceforjustice\\_2007.html](http://www.law.umn.edu/current/raceforjustice_2007.html)).

In its fifth year, the race shattered records across the board. The combined efforts yielded an estimated \$19,500 in proceeds for LRAP. By subsidizing education loan payments, LRAP helps dedicated graduates of the University of Minnesota and other local law schools provide much-needed representation to low-income litigants. More information on LRAP is available at <http://www.lrapmn.org>, and donations are still being accepted at <http://www.active.com/donate/raceforjustice2007>.



As in past years, all race participants and volunteers received coveted Race for Justice T-shirts and race packets.

### Mission of LRAP

LRAP is a nonprofit organization with a mission to ensure that low-income and disadvantaged populations have access to competent counsel. LRAP works to achieve this mission by helping new attorneys who would like to enter into public interest law scale the barrier posed by high education debt and low salaries. In addition, LRAP works to enhance the quality of legal services delivered to these populations by permitting recipients to renew their assistance for up to fifteen years.

### History of LRAP

LRAP was formed in 1991 through the joint efforts of students at Minnesota's then three law schools, the Minnesota Justice Foundation and the Minnesota State Bar Association. Current support from these bodies, as well as district bar associations, firms, and individuals allows LRAP to make assistance available

# Expanding The Role Of Prosecution In Saint Paul And Minneapolis

By: *John Choi, St. Paul City Attorney's Office and Jay Heffern, Minneapolis City Attorney*

Both the Cities of Saint Paul and Minneapolis have initiated community prosecution or community attorney programs. Generally, the focus of these efforts is to connect with the community on solutions that improve public safety, quality of life and crime prevention. In many ways, community prosecution is about moving beyond the courtroom and into the neighborhoods and police stations.

“Our Community Attorney Program in the City of Minneapolis has generated immense support from the public and the public officials elected to represent the City, said Minneapolis City Attorney Jay Heffern. “The program has delivered results and Minneapolis is safer because the community is an integral part of the City’s strategy to address livability crime in our neighborhoods,” he added.

Saint Paul City Attorney John Choi agrees with that sentiment and stated that “our community prosecution program has become well established as necessary and an important part of what we do as prosecutors in the City Attorney’s Office.” “It is my vision to see that some aspect of community prosecution becomes a significant part of our organizational culture in both our Civil and Criminal divisions,” he added.

## **The Community Prosecution Program in St. Paul**

In Saint Paul, Community Prosecutors have been instrumental in developing a Police Homeless Outreach Program (PHOP), which brings mental health professionals, police, and prosecutors together to address chronic offenders who are homeless in the downtown area.

Saint Paul has also been very aggressive in dealing with problem properties in the City. Community prosecutors have been instrumental in developing civil public nuisance actions (Minn. Stat. § 617.80, et seq.) and other law enforcement strategies with neighborhood organizations, Police and other City departments. The results have proven beneficial for neighborhoods struggling with the negative impacts of nuisance behavior such as drug dealing, prostitution, gunfire and loud music.

Community prosecutors have also focused on working with Saint Paul Police to improve police and community relations and reduce racial disparities in the criminal justice system. One such example, is the City Attorney’s effort to develop a restorative justice program for first time offenders who were arrested and charged for Obstructing Legal Process. The voluntary participants would include the police, the accused defendant, a community member, and a trained restorative justice mediator and facilitator. The goal of the program would be to get the defendant to understand why their behavior resulted in an arrest and the difficult challenges that are faced by the police every day. At the same time, it is an

opportunity for the police to understand what may have caused the defendant’s behavior and an opportunity for the police to consider whether alternative actions could have resulted in a de-escalation of the encounter.

## **The Community Attorney Program in Minneapolis**

The Minneapolis City Attorney’s Office recognized that livability crimes disrupt our neighborhoods, demoralize residents, and hurt businesses. The failure to aggressively attack these crimes threatens the quality of life in our neighborhoods and in the City. Therefore, in 2002, the Minneapolis City Attorney’s Office created a Community Attorney Program. The central idea behind this program is to have neighborhood organizations and residents work closely with the police and prosecutors so that the City’s public safety strategies can be more effective in attacking misdemeanor crime — the so-called livability crimes. Livability crimes, such as street prostitution, public urination, consuming in public and code violations related to “problem properties” are priorities for the Community Attorneys. Working with the community and the police, a “Top 10” list of offenders is actively maintained and regularly updated

A criminal prosecutor is assigned to each of the five Minneapolis police precincts and housed in the police precincts. Physically locating the prosecutors in the neighborhoods is critical to the success of this program. This allows the prosecutors to interact more frequently and more easily with both the community and the police. In addition to prosecutors, paralegal also have been assigned to the police precincts. This not only increases the City’s capacity to address problems but also allows the Community Attorneys to prosecute the most troublesome cases.

In addition to prosecution, the Community Attorneys serve as a prosecutorial resource to the community. They participate in neighborhood meetings on public safety, work with the community to develop innovative strategies to reduce and prevent crime in the neighborhoods, and assist individuals and businesses in preparing community impact statements so that the court can better understand the impact of these quality-of-life crimes. The Community Attorneys also are a valuable resource for the police. They train precinct personnel on criminal law and procedure and work with the police officers so that the appropriate charges are filed.

## **Conclusion**

The St. Paul and Minneapolis programs underscore the importance of listening to community concerns about public safety and involving the community in designing effective public safety strategies. Crime affects all of us and all of us need to be part of the solution.

# Eyes On The Courts

By: Greg Brooker, Assistant U.S. Attorney, Kim Buechel Mesun, General Counsel's Office, Minneapolis School District, Mary Miller, Compensation Attorney Principal, Minnesota Department of Labor and Industry and Terry Adkins, Rochester City Attorney

## Police Liability:

### **Sanders v. City of Minneapolis**

474 F.3d 523 (8th Cir. 2007)

Alfred Sanders suffered from a severe bipolar disorder. Sanders' friends contacted the Minneapolis police department in an attempt to have Sanders committed to a crisis center, but the police were unable to locate him. The following day, a security guard for Augsburg College noticed a vehicle driving on the sidewalk of a street near the college. The car, which turned out to be driven by Sanders, was followed by the college security guard as it erratically entered a parking area in an alley. Minneapolis police were called to the scene. Two of the Minneapolis officers had responded to the crisis call the day before involving Sanders and radioed to the other Minneapolis officers that this call may involve a crisis candidate. At the scene, the college security guard approached Sanders' car and told him to put his hands where she could see them. Sanders did not respond to this demand and put his car in reverse and backed into the security officer's car. Minneapolis police officers on the scene believed that the security officer would be trapped or hit by Sanders' car. Sanders then put the vehicle in drive and accelerated down the alley toward two Minneapolis police officers who were walking in the alley. One of the Minneapolis officers was a few feet directly in front of Sanders' vehicle and he fired two shots through the windshield. The college security guard believed Sanders had hit the Minneapolis officer and she proceeded to fire her weapon at Sanders. Sanders' car continued down the alley toward another Minneapolis police officer, who was able to jump out of its path, before the car collided with a parked squad car. Each of the officers fired at Sanders' car as it passed them and continued down the alley. Sanders was shot 14 times and was pronounced dead at the scene.

Sanders' wife commenced suit in federal district court against each of the individual officers, their employing agencies, and Augsburg College. In addition to Section 1983 claims, the plaintiff alleged violations of the Americans with Disabilities Act (ADA). The District Court (Hon. Ann D. Montgomery) granted summary judgment in the defendants' favor. The plaintiff appealed to the Eighth Circuit.

The appellate court affirmed, holding that the Section 1983 claims were properly dismissed because "given the quickly evolving scenario, the officers' actions in shooting [Sanders] in an attempt to stop him from injuring the officers in his path were objectively reasonable and did not violate [Sanders'] Fourth Amendment right to be free from unreasonable seizures." The court noted that the fact that Sanders may have been experiencing a bipolar episode did not change the fact that he posed a deadly threat against police officers, noting that knowledge of a person's disability simply cannot foreclose officers from protecting themselves.

The appellate court also held that the ADA claims were without merit. The plaintiff had argued that if the city had properly trained its officers in how to approach individuals with mental illnesses, the situation would not have escalated to the point of needing to use deadly force. The court, however, held that "it was not the city's failure to train its officers, but [Sanders'] apparent attempt to run over the officers that precipitated the shooting." As a disabled person, Sanders was not denied the benefits and protection of the city's programs and services under the ADA, the court held, and it explicitly declined to extend the ADA to encompass failure-to-train liability.

## Special Education, Section 504, Section 1983, Attorney's Fees:

### **M.P. v. I.S. D. No. 721**

Civil No. 01-771 (JNE/JJG), Mar. 16, 2007

This case could be dubbed the case that "kept on coming back." Originally started as a request for an Individuals with Disabilities Education Act (IDEA) special education due process hearing in November 2000 based on claimed statements made by a school paraprofessional, the case was appealed to the federal district court by M.P. on claims of violations of IDEA, Section 504 of the Rehabilitation Act, the Minnesota Human Rights Act (MHRA), Section 1983, the Minnesota Government Data Practices Act (MGDPA), and the Family Educational Rights and Privacy Act (FERPA). On May 14, 2002, the federal district court granted the school district's motion for summary judgment on all claims determining specifically that M.P. (1) failed to exhaust his administrative remedies on his IDEA claim by enrolling in another school district prior to initiating his administrative proceedings; and (2) failed to present any evidence of deliberate indifference by the school district that was needed to go forward on his Section 504 claim. 200 F. Supp. 2d 1036 (D. Minn. 2002) (M.P. I).

M.P. appealed the IDEA, Section 504 and Section 1983 claims to the 8<sup>th</sup> Circuit. The 8<sup>th</sup> Circuit upheld the district court on the IDEA and Section 1983 claims but remanded the case to the district court on the Section 504 claim to determine whether the school district had acted with bad faith or with gross misjudgment when it failed to take appropriate action to protect M.P.'s academic and safety interests after the disclosure of his disability by a school paraprofessional. 326 F. 3d 975 (8<sup>th</sup> Cir. 2003). (M.P. II).

On remand the school district moved to dismiss the remaining Section 504 claim based on lack of subject matter jurisdiction. It also moved in the alternative for summary judgment. The federal district court granted the school district's motion to dismiss because M.P. had failed to exhaust his administrative remedies. The district court's decision was again appealed to the 8<sup>th</sup> Circuit and that court reversed the district court and once again remanded the case to the district court. 439 F. 3d 865 (8<sup>th</sup>

Cir. 2006). (M.P. III). The 8<sup>th</sup> Circuit stated that “Rather than conduct an inquiry into M.P.’s claim as this court had ordered, the district court granted the School District’s motion to dismiss because M.P. failed to exhaust his administrative remedies, once again prolonging what we believe is M.P.’s entitlement to present his Section 504 claims before the court.” 439 F. 3d 865, 867. The 8<sup>th</sup> Circuit instructed the district court to “consider whether the School District acted in bad faith or with gross misjudgment when it failed to take appropriate action to protect M.P.’s academic and safety interests after his disability was disclosed to the student body.”

A jury trial was held and the jury awarded M.P. \$84,675 in damages on the Section 504 claim. The plaintiff then moved the federal district court for attorney fees and costs in the amount of \$310,584.48. In the latest decision involving this case, the federal district court reduced the attorney fees and costs amount to \$147,141.60. Civil No. 01-771 (D. Minn. 3/16/07), Joan Ericksen, U.S. District Judge. The court concluded that \$220 per hour and not \$250 per hour was the ordinary rate for similar work in the community. The court also excluded hours claimed that involved M.P.’s IDEA claim since M.P. did not prevail on that claim. Next, the court pointed out that in the original complaint the plaintiff had sought compensatory and punitive damages in an amount in excess of \$300,000. After M.P. II the compensatory damages claimed by the plaintiff increased to \$500,000. Because the jury ultimately awarded \$84,675 in damages, the court found this much smaller amount reflected the Plaintiff’s limited success on the Section 504 claim. Consequently, the court reduced the attorneys fee claim by an additional 20 percent. This resulted in an attorneys fees award of \$146,691.60. Finally, the court denied requested expenses for mediation and expert witness fees. The court allowed partial travel expenses for the second 8<sup>th</sup> Circuit appeal but reduced the hotel charge by approximately 50 percent. The result was an award of \$450 for expenses.

***Reider v. Anoka Hennepin School District #11***  
728 N.W. 2d 246  
(Minn., Filed March 8, 2007)

This workers compensation case involved an employee who was an ASL interpreter for the school district. On or about April 14, 2003 she experienced the gradual onset of pain in her neck, shoulders, arm and upper back. Her two treating doctors opined that there was causation between her activities as an interpreter and the condition. The independent medical examiner found no connection. Employee brought a Claim Petition for medical and chiropractic expenses. The school district moved for appointment of a neutral physician for examination under Minn. Stat. § 176.155, subd. 2. The issue they wanted an opinion on was whether the employee sustained a work injury and, if so, the nature and extent of the injury. The compensation judge issued an order denying the motion on the basis that the motion did not provide necessary documents to support it and the issues did not warrant the appointment. After hearing in the matter, the compensation judge issued a decision that the employee sustained a Gillette injury to parts of the spine, and that the employee incurred 12.5% permanent partial disability as a result.

The Workers’ Compensation Court of Appeals majority affirmed both those determinations and the denial of the request for neutral physician.

The Supreme Court, on appeal, reviewed the statute on appointment of a neutral physician and noted that the requirement was mandatory upon request. They reviewed the history of the statutory provision. They noted that there were no rules with respect to such examination and no list of neutral examining physicians. They concluded that the statute was clear and unambiguous that when a party makes a request for a neutral physician examination it is to be ordered by the judge. The judge does not have discretion under the statute. The Supreme Court recognized practical problems with respect to their decision, such as the lack of list of neutral physicians and rules. However, they reversed the denial of a neutral physician examination and remanded the case to the same compensation judge to receive the neutral physician report and make determinations.

Two justices dissented. They noted additional practical problems of no funding for appointments and delay created. They asserted that a better reading is that such appointment be up to a judges’ discretion. The chief justice took no part.

**Automatic Approval Statute:**  
***Hans Hagen Homes, Inc. v. City of Minnetrista***  
No. A05-1686 (Minn. March 15, 2007)

Minn. Stat. §15.99, subdivision 2(a) states that a governmental agency must approve or deny certain land use requests within 60 days of its receipt of such requests. The agency’s failure to do so results in the automatic approval of the request. Subdivision 2(c) states the agency must state the reasons for denial and provide a written statement to the applicant as to the reasons for the denial.

Does this law mean that an agency’s failure to provide a written statement to the applicant of its reasons for denial within the response deadline, as required by subdivision 2(c), results in the automatic approval of the request despite the fact that the agency acted within the response deadline in denying the request under subdivision 2(a)? Yes it does, according to a district court and the Court of Appeals. No it doesn’t, according to the Minnesota Supreme Court.

On May 18, 2004, Hans Hagen Homes, Inc. submitted a written application to the City of Minnetrista requesting the rezoning of 220 acres of land and an amendment to the City’s Comprehensive Plan. The parties agreed to an extension of the 60-day deadline to November 30, 2004. On October 4, 2004, the city council held a public hearing to discuss Hagen’s application. After listening to public comments, the city council voted to deny the application. On October 18, 2004, the city council approved the minutes of the October 4<sup>th</sup> meeting and adopted a resolution, which contained written reasons for denying Hagen’s application.

The minutes of the October 18<sup>th</sup> meeting were approved on November 3, 2004, and the minutes from both the October 4<sup>th</sup> and October 18<sup>th</sup> meetings were posted on the City’s website

before the November 30 response deadline. But the City did not directly deliver a written statement of the reasons for denial to Hagen until Hagen requested a copy of the resolution on December 9, 2004. Because the City failed to deliver a written statement of the reasons for denial to Hagen before the response deadline, Hagen contended its application was automatically approved.

Yet, the Supreme Court concluded that the subdivision 2(a) automatic approval penalty only applied to noncompliance with the requirement found in subdivision 2(a) (i.e., that the City make the decision before the response deadline). It did not apply to the provision added by subdivision 2(c) requiring the

City to provide a written statement of the reasons for the denial to the applicant. The Court found no ambiguity in the automatic approval provision, noted that the legislature failed to add any penalty provision for a violation of subdivision 2(c) when it amended and renumbered section 15.99 and found no support for the idea that a statute's failure to provide consequences for noncompliance with its requirements rendered it ineffective or superfluous.

As a result, the Court reversed the Court of Appeals and held that the City's failure to timely deliver a written statement as to the reasons for its denial of Hagen's request did not cause the City to suffer any penalty.

## Pro Bono Policy Revision Report - Recommendation

*Submitted By Nancy McLean for the Committee*

### REPORT AND RECOMMENDATION TO THE MINNESOTA STATE BAR ASSOCIATION

The MSBA Public Law Section, with the support of the Legal Assistance to the Disadvantaged Committee requests the MSBA Policy Committee endorse the revised MSBA Model Pro Bono Policy and Procedures for Government Attorneys.

#### RECOMMENDATION

RESOLVED that the Minnesota State Bar Association amend the Model Pro Bono Policy and Procedures for Government Attorneys.

#### REPORT

##### Introduction

In the spring of 2005, the MSBA Public Law Section appointed a Task Force to examine Pro Bono legal services provided by public lawyers and to develop a strategy to encourage increased participation.<sup>1</sup> The Public Law Section understands that public law offices are not private firms but rather are publicly funded and generally must answer to elected officials. However, public lawyers and public law offices are also an untapped source of legal talent that could contribute significantly to the effort to meet the legal needs of the underserved.

Historically, many public law offices have provided public education and outreach in the community. Government lawyers have spoken at community education forums, participated in CLE programs, taught in the colleges and law schools, mentored students, and written extensively on legal issues. However, they have not provided direct pro bono legal services to underserved individuals. The primary goal of the Task Force is to provide the means and the opportunity for every public lawyer to fulfill the professional responsibility to provide pro bono legal services.

Initially, several perceived barriers to pro bono work by public lawyers were raised and discussed. Perceived legal and ethical barriers, including concerns about conflict of interest, heavy caseloads, and the use of public funds, have discouraged many public lawyers and public law offices from establishing pro bono policies and supporting attorneys within the office who seek to fulfill their pro bono responsibilities. To address many of these concerns, the Task Force developed the revised Pro Bono policy which provides the flexibility to permit each office to work within its legal confines and create an environment encouraging pro bono work. The Model policy suggests that each office analyze its own legal and ethical issues and identify programs that will not conflict with the work of the office and further suggests that employees be granted flexibility in work hours and the ability to use limited office resources to participate in pro bono work. For example, a prosecutor in the Hennepin County Attorney's Office could avoid potential conflicts of interest by working on civil cases through Southern Minnesota Regional Legal Services. The policy anticipates that limited phone calls and internet research could be performed on office time at little or no cost to the tax payers.

When James Bailie was MSBA President he dedicated his term to increased pro bono work by all lawyers. This message did not reach the public sector, perhaps because very few public lawyers belong to MSBA. While the Task Force is not charged with increasing the public lawyer participation in MSBA, it is dedicated to increasing pro bono participation by public lawyers and public law offices. To achieve this goal, the Task Force recommends that the Chief Justice and the leadership of the Bench, the Attorney General, the United States Attorney, the County Attorneys, the City Attorneys, the Public Defenders, the Agency Heads, and other elected and appointed heads of public law offices take the challenge and create office policies and environments that fully support pro bono work by public lawyers. It is not only the professional responsibility of lawyers and judges

to do pro bono legal work but doing it can expand the knowledge and experience levels of all lawyers, and thus, facilitate staff professional development. Enacting office pro bono policies will demonstrate the commitment of elected and appointed office leaders to the concept that pro bono work benefits the office and the public at large. The lawyers will be fulfilling their professional responsibilities, the lawyers will be providing legal services to the underserved at little or no cost to the tax payers, and the lawyers will be enhancing their legal skills. Rather than a political liability, this pro bono legal work should be viewed as a valuable asset to clients, the office, the office leader, and the public at large.

### **The Need for Policy Revisions**

At the initial meetings, the Task Force examined existing policies for both content and practice.<sup>2</sup> Of those, the Minnesota Attorney General's Office and the Office of Lawyers Professional Responsibility provided model policies then in effect. Several public law offices had official policies that were either outdated or not in practice or both. Still others had no formal policies but encouraged Pro Bono legal services (e.g. University of Minnesota). In 1994, the MSBA approved a Model Pro Bono policy for government attorneys. The Legal Assistance to the Disadvantaged Committee (LAD) initiated the policy discussion and sought the approval of the MSBA Public Law Section and the Minnesota County Attorney's Association (MCAA) (approved with stated caveats). The policy was updated in 2000. It appears that the policy was neither widely publicized nor used as a model by most public law offices. For example, neither Hennepin nor Ramsey County Attorneys' Offices have policies in place nor programs to encourage Pro Bono work.

The MSBA Public Law Section began discussing the issue of Pro Bono work by government lawyers. Aaron Marcus, then a third year student at the University of Minnesota Law School and a member of the Public Law Section Executive Council, drafted a new Pro Bono policy for government lawyers. The policy was adopted by the Public Law Section but went no further.

In light of this history, the Task Force took on the issue of redrafting a Model Pro Bono Policy. Attached below is a redlined version of the Task Force Proposed Model Pro Bono Policy for Public Lawyers.<sup>3</sup> Prior to Task Force adoption, the draft was circulated for comment to the Minnesota County Attorney's Association (MCAA), the Legal Assistance to the Disadvantaged Committee (LAD), and several public law offices. Because the LAD committee was the original sponsor of the MSBA policy, Task Force members requested and obtained the support of the LAD committee for its revisions.

The Task Force recognizes that each public law office is different and the options outlined in the revised model policy will allow each office to make the necessary adjustments considering the nature of the practice and the size of the office. By implementing the model policy, each office will save the time and resources necessary to "reinvent the wheel" and broad implementation will create a group of pro bono coordinators who can share experiences and expertise.

The revisions are necessary to address problems with the old policy – the policy lacked flexibility, didn't address technology, didn't overcome identified obstacles, and wasn't adopted by the large public law offices. By adopting the revised policy, offices will be able to expand pro bono opportunities, tailor the approved programs to the unique constraints of a particular office, identify particular programs that meet the office goals and priorities, and minimize conflicts of interest. In the end, the revised policy will provide guidance on how to achieve pro bono success by overcoming perceived barriers.

### **Substantive Changes**

The Task Force's Model policy updates the work done by the LAD committee and the Public Law Section. It takes an active approach and assumes that some form of Pro Bono work is possible for every public lawyer and every public law office. While the Model Policy recognizes that every public law office is different, it provides a framework for individual offices to encourage and facilitate pro bono work.

- A. Generally Approved Activities: The policy recommends that some pro bono activities be generally approved. By this, the policy seeks to establish relationships with recognized pro bono providers and reduce the administrative burdens of managing an office pro bono program. In determining what would be a "generally approved" service, the agency will have an opportunity to examine the program's work and determine whether there is a potential for a conflict of interest, whether the work will match the interests and the experience level of the attorneys in the office, and in cases of direct legal services, insure that legal malpractice insurance coverage is provided.
- B. Pro Bono Coordinator: For efficiency and continuity, the policy recommends an attorney or attorneys act as pro bono coordinators. This will permit revisions to the agency's pro bono policy, approval of "generally approved" programs, review of requests to do pro bono with programs outside the "generally approved" category, review of cases where there have been changes in circumstances (e.g. development of a conflict of interest or the time commitment exceeds expectations and the work has the potential to interfere with the attorney's regular workload), and assistance for attorneys handling pro bono cases.
- C. Flexible Schedules: To the extent it does not conflict with the attorney's regular duties, approval of automatic flex time.
- D. Use of Office Resources: To the extent it would not conflict with office functions, approval for using computers, minimal supplies, and if there is minimal or no additional cost to the agency, electronic databases and other electronic research tools.
- E. Record Keeping: Attorneys should keep records of time spent on pro bono projects.
- F. Recognition: Offices should recognize those lawyers who perform pro bono legal services.

## The Next Steps

- A. Approval of the Model Policy: Seek the adoption of the Model Policy by elected/appointed officials heading public law offices, the Courts, MSBA leadership, and organizations comprised of public lawyers.
- B. Pilot Program: Develop an 18 month pilot program with three distinct pro bono opportunities for public lawyers and public law offices, monitor the pro bono hours, report the success to the Public Law Section
- C. Recognition for Pro Bono work: Recognize those public lawyers who have not only completed work on pro bono projects but also have worked to change office cultures to embrace pro bono work.

Respectfully Submitted

MSBA Public Law Section Pro Bono Task Force

## Footnotes:

<sup>1</sup> **Task Force Members** - Greg Brooker, United States Attorney's Office, Pat Burns, Office of Lawyers Professional Responsibility, Bill Donohue, University of Minnesota General Counsel's Office, Mary Ellison, William Mitchell Law Student, Carole Finneran, Ramsey County Public Defender's Office, Cliff Greene, GreeneEspel, Jay Heffern, Minneapolis City Attorney's Office, Bill Hefner, Environmental Law Group, Joan Humes, United Health Care formerly with the United States Attorney's Office, Tom Kalitowski, Minnesota Court of Appeals, John Kingrey, Minnesota County Attorney's Association, Ken Kohnstamm, Assistant Attorney General, Nancy McLean, Hennepin County Attorney's Office.

<sup>2</sup> MSBA Model Pro Bono Policy for Government Attorneys; the United States Department of Justice Pro Bono Policy; policies from other Federal Agencies; the Office of Lawyers Professional Responsibility Pro Bono Policy; the Minnesota Department of Human Services Pro Bono Policy; the American Bar Association; and many other sources, including significant research and drafting work done by Aaron Marcus while he was a student at the University of Minnesota Law School.

<sup>3</sup> Model Policy:

### **COMPARISON OF MSBA POLICY AND THE CURRENT PROPOSAL BY THE PUBLIC LAW SECTION**

#### **MSBA Model Pro Bono Policy and Procedures For Government Attorneys**

**Approved by the MSBA House of Delegates on January 29, 1994;  
updated August, 2000**

"Table of Contents" (deleted) and "Introduction Preamble" (deleted).

DRAFT (September, 2006)

### Model Pro Bono Policy

#### For Government/Public Attorneys and Agencies

Portions of this model draft were taken from the MSBA Model Pro Bono Policy for Government Attorneys, the United States Department of Justice Pro Bono Policy, policies from other Federal Agencies, the Office of Lawyers Professional Responsibility Pro Bono Policy, the Minnesota Department of Human Services Pro Bono Policy, the American Bar Association, and many other sources, including significant research and drafting work done by Aaron Marcus while he was a student at the University of Minnesota Law School.

## I. The Policy.

Recognizing the ethical obligation of every attorney to provide legal services to those of limited means and to undertake activities to improve the legal system, and recognizing the significant unmet need for civil legal services for low-income and disadvantaged persons in this state, it is the policy of this agency to encourage, facilitate, and support participation by agency attorneys in at least 50 hours of pro bono services per year.

### *Comment*

This section sets out a proposed statement of policy for an agency that desires to support participation by its attorneys in pro bono services. The scope of the policy covers all department employees and the spirit of the policy is designed to reflect on non-attorney employees as well. While recognizing that employment as a government attorney is already one of the highest forms of public service, the unmet public need for legal assistance triggers an additional obligation to perform volunteer work. Therefore, this agency strongly urges each attorney to set a personal goal of providing at least 50 hours of pro bono legal and volunteer services each year.

Rule 6.1 of the Minnesota Rules of Professional Conduct provides that:

*A lawyer should render public interest legal services. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.*

In 1990, the Minnesota State Bar Association adopted an aspirational standard for the provision of pro bono legal services of fifty hours per year with at least twenty-five hours devoted to direct legal services to low-income persons. The American Bar Association has adopted a similar standard. Pro bono work reflects favorably upon this agency's commitment to public service. Attorneys have unique skills and abilities which can be used to provide services for the disadvantaged, and to promote the public interest, in ways no other profession can. Volunteering for pro bono work also provides individual attorneys an opportunity to broaden their professional experience and skills, as well as the satisfaction of helping those in need.

## II. Pro Bono Services

### A. Definitions:

**Pro Bono Services** include both the pro bono representation of clients and non-litigation volunteer activities. As used in this policy, “pro bono services” means:

1. Providing legal services without remuneration to:
  - a. Persons of limited means; or
  - b. Charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and
2. Providing additional law-related services through:
  - a. The delivery of legal services without remuneration to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate; or
  - b. Participation in activities for improving the law, the legal system or the legal profession.

#### *Comment*

The definition of “pro bono services” used in this model policy recognizes the critical need for legal services for disadvantaged persons and persons of limited means. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule-making, and the provision of training or mentoring to those who represent persons of limited means. This definition of “pro bono services,” however, also includes a broad range of non-litigation activities. Government attorneys who are unable or find it difficult to provide direct representation to pro bono clients can, nevertheless, contribute by participating in non-litigation activities or by providing litigation and non-litigation services described in A(2). In some circumstances, there may be statutory and/or regulatory restrictions that prohibit or impede government and public sector lawyers and judges from performing certain pro bono services. Every effort should, nevertheless, be made to encourage and support government attorneys who wish to provide pro bono services.

### B. Types of Pro Bono Services:

Specifically, the following types of pro bono services are approved, if participation does not violate other terms of the policy. Attorneys who wish to pursue other services must obtain prior approval from **[their supervisor; the**

**office pro bono coordinator or committee; the division director etc.] [Examples of case types and activities an agency may designate/list as approved]:**

1. Legal Aid Clinics
2. Volunteer Lawyers Network panels

#### *Comment:*

The listed agencies, case types, and activities do not conflict with this agency’s needs and are designed to meet the interests of staff attorneys. They encompass all types of services that may be approved. They are broader than the list of “generally approved” services as defined in IIC. For additional opportunities, agencies should consult the MSBA’s Directory of Pro Bono Opportunities for Lawyers. The most recent edition can be found at [www.projusticemn.org](http://www.projusticemn.org).

### C: Generally Approved Services:

The designation of an activity or program as “generally approved” indicates that employees in the agency have permission to engage in these services, or seek referrals from these programs, without having to seek further permission from the approving entity as described in section IV. For use in this policy, generally approved services may include:

- a. Types of pro bono legal services that will not result in a conflict of interest with the duties of the attorney; and
- b. Types of pro bono legal services within the experience level of the agency’s attorneys.
- c. In the case of activities such as walk-in clinics, the general approval conferred by the approving entity [supervisor, pro bono coordinator, committee, or other designated officer] covers the employee’s participation in the activity as well as minimal follow-up activity such as providing information, making phone calls for the client, or making a referral for further assistance. In the case of referrals from legal services organizations, the general approval conferred by the approving entity permits the employee to seek cases from the programs; however, the attorney must adhere to the conflict rules described *infra*. The following is a complete list of generally approved services **(Each agency will choose its own programs- here are a few examples of activities/programs an agency may choose. It is recommended that the list be complete – but subject to revision.)** :

1. Legal Services Programs
2. Volunteer Lawyers Network
3. Minnesota Justice Foundation
4. State or Local Bar Association Committee work
5. Mentoring

*Comment*

By pre-approving services in particular areas of practice, through specific legal services organizations, and through other pro bono opportunities, the agency sets a clear policy; eliminates bureaucratic barriers for attorneys wishing to participate in pro bono projects; eases administrative responsibilities on pro bono coordinators; and refers attorneys to agencies that may be well suited to the attorneys' skills.

Distinguishing between non-representational and representational services is of key importance. General approval should cover those services not subject to the uncertainties of trial, the potential for a malpractice lawsuit, the burden of costly litigation, and those tending to be time sensitive. For example, receiving training or referrals from legal service organizations or assisting the organization in a non-representational matter may be generally approved. Research, advice, or other non-representational services can also be performed with a general approval.

**III. Implementation****A: Pro Bono Coordinator or Committee:**

The agency shall select an attorney or attorneys to act as either a pro-bono coordinator or a pro bono committee. The coordinator or committee shall act to establish and execute the pro bono policy.

*Comment*

It is recommended that an agency with over 10 attorneys establish, at minimum, a coordinator position. In a larger agency, there may be a greater need to implement the policy, revise the policy and coordinate pro bono activities. This need may be better served by a committee reflecting the different areas of the agency's practice.

**B: Duties of the Coordinator or Committee:**

The coordinator and/or the committee shall be responsible for:

1. Adopting and revising the agency's pro bono policy;
2. Disseminating the pro bono policy to agency attorneys;
3. Identifying, approving, and posting generally approved services;
4. Being available to assist or advise attorneys on pro bono opportunities; and
5. Either investigating and approving pro bono service requests or acting as advisor to approved entities when requested.

*Comment*

Adopting and revising the agency's policy is important as the initial draft may prove to be cumbersome or too limiting. A periodic review will enable the agency's attorneys to better adjust to the changing needs of the community and the legal profession. If a committee is created, this should be an expressed duty of the committee.

Identifying, approving, and posting generally approved services is better suited for a committee although the coordinator is capable of performing the task. If a committee is established, the final list should be compiled and approved by the entire committee.

Advising on pro bono matters should be the sole responsibility of the coordinator as communication to a single person will be easier to manage and create a greater base of knowledge in the coordinator.

Each agency has its own structure which may permit approval of representational services and activities that have not been generally approved by an approving authority, rather than the pro bono coordinator or the committee. Supervisors will traditionally have a much more intimate knowledge of the requesting attorney's duties at the agency, the time required to complete their duties, the flexibility of that attorney's schedule, and other factors that may affect the attorney's work at the agency and the representation of the client. However, an individual supervisor may not be in a position to make decisions or commitments that affect the office as a whole. The coordinator should seek to advise the supervisor of particular services that provide malpractice coverage and training. The coordinator should also encourage the supervisor to request advice regarding particular activities, legal service organizations, and other matters concerning the request.

If the agency is small and there are only one or two main supervisors, delegating the approval function to the coordinator may be more appropriate as the coordinator will know the attorneys making requests and most likely understand the needs of the agency. Further, the small number of requests will not overburden the coordinator.

**IV. Approval****A. Generally Approved Services:**

As defined in section II.C, generally approved services do not require the approval of the approving authority before an attorney may engage in the pro bono services. The generally approved services shall be listed in the pro bono policy. Generally approved services may be periodically added or removed by the coordinator or committee as is deemed necessary.

**B. Approval Required for All Services not on the Generally Approved List.**

Participation in pro bono services, if not listed under generally approved services, must be approved in advance by the approving authority. In representational services, the requesting attorney must also comply with section IV.D infra. When approving a request, the approving entity shall determine:

1. Whether the request falls within the kinds of pro bono services permitted by this policy.
2. Whether the matter appears likely to interfere with

the performance of the attorney's official duties and responsibilities (e.g., the matter or activity appears likely to require protracted absences during office hours; or use of an unreasonable amount of office supplies or services)

3. Whether participation would result in a conflict of interest under Minnesota Rules of Professional Conduct 1.7, 1.9, 1.11. Each agency must determine its own conflict of interest policies and standards.

### C. Changes in Circumstances after Approval

If, after commencing a pro bono service, the demands, time commitment, clients, or other obligations undergo a material change or become more complex than originally expected, the attorney must notify the approving authority of the changed circumstances. The approving authority may approve of the changed service after considering the factors listed in IV.B. If the changed circumstances fail to satisfy one or more of the factors in IV.B, withdrawal or termination shall be considered in accordance with Minnesota Rules of Professional Conduct 1.16.

#### *Comment*

If the agency develops the prior approved activity model, it is anticipated that prior approval will seldom be needed. In most instances, providing a substantial list of generally approved services will eliminate the need for case by case review except for unique requests by particular attorneys.

Under IV.B, the agency must consider the amount of time and resources the pro bono service will require of the attorney. Minnesota's moonlighting provision, Minn.Stat. §43A.38, subd. 4, prohibits public attorneys from using state resources for private purposes that are "not in the interest of the state." However, the agency head should establish a policy supporting pro bono services and advocating that pro bono work is "in the interest of the state".

### D. Representation of Pro Bono Clients.

1. Malpractice Coverage:

Before agreeing to meet with or accept a pro bono client, the attorney should determine whether the referring program or organization has a malpractice insurance policy which covers volunteer attorneys. This agency does not provide malpractice coverage for pro bono work.

#### *Comment*

Many of the referral programs (SMRLS, VLN) provide malpractice coverage for volunteer lawyers. It is recommended that any generally approved services be screened to determine if the organization provides malpractice coverage.

2. Accepting a Pro Bono Case:

- a. Each agency will establish its own conflicts checking procedure (See IV(D)3).
- b. The client will be notified that representation is subject to the conflicts check.
- c. The attorney will follow established agency procedures for opening a file and communicating with the client.
- d. The client should be informed how, when, and where to contact the attorney by telephone or letter.

#### *Comment*

Many referral programs and/or organizations have form retainer letters, suggested procedures for opening and closing files, and may provide other case management assistance.

3. Conflict of Interest. A conflict of interest exists where:
  - a. Acceptance of the case would result in simultaneous representation by the attorney of parties with adverse interests, or the attorney's obligations to the client would limit his or her ability to represent the agency. MRPC, Rule 1.10, 1.7, Rule 1.9.
  - b. Acceptance of the case would result in representation adverse to the interests of a former client. MRPC, Rule 1.9.
  - c. The representation of the client would involve the attorney in a matter in which the attorney participated personally and substantially as a public officer or employee unless, after consultation, the appropriate government agency or office consents. MRPC, Rule 1.11.
  - d. The attorney knows or has access to confidential government information which could be used to the disadvantage of the adverse party. MRPC, Rule 1.11.
  - e. The attorney is restricted from representation by MRPC, Rule 1.11 and the adjacent comment which place certain limits on the defense of criminal cases by city, municipal, or county attorneys.
  - f. Those matters in which representation or participation would clearly create the appearance of a conflict of interest.

#### *Comment*

One impediment to the participation of government attorneys in pro bono services is the perceived or actual potential for a conflict of interest with the attorney's official duties and the interests of the agency for which the attorney works. The potential for a conflict of interest, or the appearance of a conflict of interest, should not be viewed so broadly as to discourage pro bono service. Each agency should identify situations which are clear conflicts for that office. Agencies are encouraged to define conflicts of interests as narrowly as possible and to review matters on a case by case basis to determine whether or not an actual conflict of interest exists in a particular case. In certain instances, such as offices, agencies, or courts representing or serving a specific county or geographic area, the potential for a conflict may be avoided by providing pro bono services in neighboring counties.

#### 4. Case Administration.

An attorney participating in a pro bono service is personally responsible for his or her pro bono files. The attorney should open a file for each case, and implement a calendaring and/or tickler system to ensure that deadlines are met and significant dates are not missed. A closing letter should be sent to the pro bono client when the matter is completed or resolved.

#### *Comment*

A government agency is generally restricted from direct involvement in the supervision or administration of an attorney's pro bono files. Pro bono clients are, however, entitled to competent and effective representation. If guidance or assistance is needed, many referral programs or organizations can provide information on case management, and provide forms, training, and access to the expertise of their staffs.

#### 5. Identification with the Agency

Government attorneys who participate in pro bono activities or in providing pro bono services may not indicate or represent in any way that they are acting on behalf of the agency, or in their official capacity. Throughout the representation an attorney:

- a. Must make it clear to the client, any opposing parties, or others involved in a pro bono case or activity, that the attorney is acting in his or her individual capacity as a volunteer, and is not acting as a representative of, or on behalf of, the agency.
- b. Not use office letterhead, agency business cards, or otherwise identify him or herself as a government attorney in any communication, correspondence or pleading connected with pro bono activities. The agency address may be used, with the permission of the coordinator or supervisor, if the address does not include the agency name or indicate the nature of the office.
- c. Not use the general agency telephone number for pro bono activities. Phone calls may be received either on the attorney's personal line or through the referring program or organization. The attorney may not receive telephone calls from clients at the agency number if the call will or may go through a receptionist or switchboard which would identify the agency.
- d. Agency offices may not be used for meetings with clients or opposing counsel in a pro bono case if to do so would conflict with agency policy.

#### *Comment*

It is important that it is clear to the client, opposing parties, or others involved in a case or activity, that the attorney is acting in his or her individual capacity, and not on behalf of, or as a representative of, the government agency. Thus, the use of offices or stationary, or the receipt of telephone calls from clients where the call may be answered in a way that identifies the agency, is

generally restricted to prevent leaving the incorrect impression that the agency is representing a pro bono client or is in some way involved in a pro bono services.

Agencies are encouraged to be as flexible as possible, given the circumstances of the office. Attorneys generally should be permitted to receive calls from opposing attorneys or other non-clients on their personal lines. Generally approved services (identified agencies) should provide attorneys with meeting spaces and phone lines or other forms of support that the agency should not be providing. It is usually appropriate for an attorney representing a pro bono client to identify him or herself on pleadings and in letters as a volunteer attorney for the referral program or organization.

### V. Use of Agency Resources

#### 1. Hours of Work.

When performance of pro bono work is required during regular work hours, the attorney may request that the approving authority authorize a flexible work schedule to accommodate the time needed for pro bono work, or permit leave without pay or use of vacation time. [The standard (work week or pay period) consists of \_\_\_ hours. Attorneys who do pro bono work during office hours must account for \_\_\_ hours per week/pay period (the standard work week or pay period) in performing their official duties and responsibilities.] If not interfering with the attorney's work at the agency, the approving authority may approve an automatic flex schedule during the course of the pro bono service which allows for the attorney to fulfill the required agency hours at times not conflicting with the pro bono services.

#### *Comment*

One of the significant impediments to participation by government attorneys in pro bono services is the cost of participation and the necessary need to avoid expending public funds. The provisions in this section, therefore, recognize the concern that agencies not spend taxpayer dollars for matters outside the public service purposes and obligations of the agency. Agencies are strongly encouraged to adopt a policy allowing attorneys to take advantage of flexible work schedule arrangements, rather than requiring volunteer attorneys to use vacation time or unpaid leave when work on a pro bono matter or activity is required, by the nature of the activity, during regular work hours. Most governmental agencies permit supervisors to modify work hours and to approve a flexible work schedule at the request of the employee.

If a volunteer activity bears a reasonable relationship to the attorney's position or duties and responsibilities or will substantially contribute to advancing the attorney's skills needed in performing the attorney's job, supervisors are encouraged to include participation in such activities as part of the employee's assigned duties, e.g., participation on bar committees, or preparation of legal education materials.

## 2. Telephone Calls.

Local telephone calls may be made from the attorney's personal line. Long distance phone calls may not be charged to the agency. Arrangements for long distance calls should be made through the referring program or organization.

## C. Offices/Library.

Attorneys may use their personal offices to do pro bono projects. Such work should be done in a manner which does not interfere with the performance of the agency's or attorney's regular functions or duties and responsibilities.

## D. Clerical Support.

Typing, copying, collating, and other clerical support is permitted on a limited basis by clerical staff, with the approval of the clerical staff supervisor, to the extent allowable.

### *Comment*

Clerical supervisors should be encouraged to be flexible in scheduling to allow volunteer work by clerical staff during and after regular business hours. Agency tasks must be given priority, but the typing of short letters, pleadings or other documents and limited copying should be permitted, with the approval of the clerical staff supervisor. The pro bono coordinator or committee may want to consider whether a particular referring agency provides clerical support when deciding to add it to the "generally approved" services list.

## E. Supplies and Equipment.

1. Attorneys may use word processing and dictation equipment so long as such use does not interfere with the performance of the agency's or the attorney's regular functions or duties and responsibilities.
2. A limited amount of office supplies, photocopying, and fax use is available to attorneys doing pro bono work. Significant expenditures such as use of large amounts of paper, stamps, long-distance telephone calls, and so on, should be promptly reimbursed to the agency.

### *Comment*

Coordinators or committees are encouraged to consider the availability of supplies when generally approving a legal services program or activity. Many offer these benefits. Use of other resources such as the Minnesota Justice Foundation, which provides research assistance through law students, should also be encouraged.

Agencies are encouraged to be as flexible as possible in allowing the use of office supplies and equipment (e.g., paper; supplies such as paper clips, staples, pens, postage, photocopying, fax, etc.) to support the provision of pro bono services. The provision as written allows the use of a limited amount of office supplies, where the cost is minimal, and it is not cost effective to try to

document, calculate and attempt to recover the expense.

Where costs are significant and identifiable and the referring agency does not provide the needed support, the agency should accommodate the provision of pro bono services by allowing attorneys to use office equipment and supplies and then requiring prompt reimbursement of the expense to the agency.

## F. Use of Electronic Resources and Databases

The use of commercial and electronic databases or other resources may be used when to use them would result in minimal or no additional cost to the agency.

## 2. Recording and Recognition

### A. Recording of Pro Bono Services Rendered

After completion or termination of the pro bono service, the attorney shall submit a time statement to the coordinator or committee providing the name of the attorney, the commencement and completion dates, and total number of hours spent performing the pro bono service. The statement is not required to be detailed.

### *Comment*

Recording of pro bono services is an essential component of the policy. Knowing the total hours spent by attorneys will greatly assist the coordinator or the committee in adjusting the policy to suit the needs of the agency and the volunteer attorneys. For example, certain services may require only a day long commitment while others will be substantially longer. If many employees seem to be seeking out single day services, generally approving those services may enable attorneys to more easily participate on their own schedules. Recording will also enable service organizations to work with government agencies to better facilitate connecting attorneys with opportunities. Record keeping will also assist in those cases where attorneys' fees may be awarded.

### B. Recognition

The agency shall recognize attorneys completing the recommended 50 hours a year of pro bono service.

### *Comment*

Recognition not only shows the attorney that pro bono work is important to the agency, but it also encourages an ethic of volunteerism in the agency that may encourage other attorneys to participate.



## Public Law Section Committee Reports

### 2007 City Attorneys Educational Conference

By: Eileen Wells, Mankato City Attorney

The 2007 City Attorneys Educational Conference was held on Friday, February 9, and Saturday, February 10, 2007 at the Hotel Sofitel in Bloomington, Minnesota. 176 municipal attorneys from throughout the state participated in this annual event. David Ornstein, President, Minnesota Association of City Attorneys and Bloomington City Attorney, welcomed the group and kept the conference moving smoothly.

The conference was opened with a presentation on “Regulatory Takings and the National Response to *Kelo*” by Timothy Dowling from the Community Rights Counsel. His materials included a state-by-state summary of legislative changes made in response to the *Kelo* decision.

Presentations and discussions on nuisance abatement and non-conforming use issues completed the morning sessions.

At the annual business meeting conducted over lunch, William Briggs from Detroit Lakes was elected as President; Kori Land from West St. Paul was elected as 1<sup>st</sup> Vice President; and Mark Walbran from Owatonna was elected as 2<sup>nd</sup> Vice President; David Ornstein will remain on the Board of Directors as Immediate Past President.

Topics for afternoon sessions included: “Municipal WI-FI: a Legal Primer;” “Managing Environmental Liability in Real Estate

Transactions;” and updates on adult uses, criminal issues and employment law.

On Saturday morning, the conference was honored to have an opportunity to meet Attorney General, Lori Swanson. She provided a summary of her experience in the office so far and areas that she intends to focus on in the coming months.

The remainder of the morning was spent discussing common misconceptions in land-use law and suggestions for how to ethically respond in awkward situations.

The Minnesota Association of City Attorneys will meet for the 2007 Legislative Update on Thursday, June 21, 2007 at the Crowne Plaza Minneapolis North in Brooklyn Center. All public lawyers are welcome.

Public lawyers are also encouraged to attend events sponsored by International Municipal Lawyers Association. The Mid-Year meeting will be held in Washington DC, April 22-24, 2007 and the 72<sup>nd</sup> Annual Conference in Nashville, TN, October 28-31, 2007. Information about IMLA and these events can be obtained through the website at [www.imla.org](http://www.imla.org).

## Data Practices Committee Activity

By: *Todd Schoffelman, Assistant Sherburne County Attorney*

The Data Practices Committee meets on the first Monday of the month (except for the summer) at 3:00 pm at the Minnesota Department of Health, Snelling Office Park, 1645 Energy Park Drive, Saint Paul, MN 55108. The Committee consists of attorneys and representatives from all levels of government. It is a great opportunity to discuss Data Practice and Security issues.

The Data Practices Committee is co-sponsoring a three hour CLE with the Minnesota County Attorney Association on Friday October 5, 2007. The course will concentrate on civil law Data

Practices. It will take place at the Minnesota County Attorney Association at 100 Empire Drive, Suite 200 - St. Paul, MN 55103. The costs and exact time of the CLE will be announced at a later date.

Please contact Todd Schoffelman, Assistant Sherburne County Attorney, 13880 Highway 10, Elk River, MN (763) 241-2565 [todd.schoffelman@co.sherburne.mn.us](mailto:todd.schoffelman@co.sherburne.mn.us) if you have any questions about the committee or the meeting times

## Data Practices CLE

By: *Blair Buccicone, Assistant Public Defender, 2nd Judicial District - Ramsey County*

On Friday, March 2, 2007, the Public Law Section co-sponsored a CLE with the Public Defender's Office - Second Judicial District. The CLE, titled *The Data Practices Act: Why Should Criminal Lawyers Care?*, addressed the basics of The Data Practices Act -Minnesota statutes and terminology. The presentation

covered the application to everyday practice (what information you can get and what information is not available), as well as the proper way to request information, costs often associated with requests and what to generally expect when requesting information. Despite the snowstorm, the CLE was well attended.

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## Thank You Greg Brooker!

After many years of dedicated service Greg Brooker has decided to step down from the PLS Newsletter Committee. For many years Greg served as co-chair of the committee and also as Editor of at least one issue each year. His big claim to PLS fame is the big 32-page *Public Law News* 15<sup>th</sup> Anniversary Issue that he put together last year (Volume XV, Issue 2, Winter 2006). Many hours of dedicated effort went into putting that issue together. He also was the writer of the regular "Eyes on the Courts" article that appeared each issue. Greg has also served on the PLS Executive Council for many years and as Co-chair in 1998-1999 and 1999-2000.

We would like to say THANK YOU GREG!!!! And anytime you want to come back to work on the PLS News, you know you are more than welcome.

# Public Attorneys On The Move

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

**Trina Chernos** has joined the Minneapolis City Attorney's Office. She is a 1996 graduate of William Mitchell College of Law and most recently served as a Labor Relations Representative Principal for the Minnesota Dept. of Employee Relations.

**Amy Moore** has joined the Minneapolis Public Schools General Counsel's Office. She is a 2000 graduate of the University of Minnesota Law School and most recently was an associate attorney at the Rider Bennett law firm.

**Mike Vanselow** is leaving the Minnesota Attorney General's Office to go to Medtronic. Mike was with the AG's Office for 16 years.

## Appointments to the Judicial Selection Commission

In January 2007, Governor Pawlenty announced the reappointment of **Eric J. Magnuson** as Chair of the Commission on Judicial Selection. Eric Magnuson, of Inver Grove Heights, is an attorney and partner in the Minneapolis law firm of Rider Bennett. Magnuson has been chair of the commission since 2003.

The Governor also announced the appointment of 26 members to that Commission. Governor Pawlenty's appointees are:

**Richard Breen**, of Brainerd, is an attorney and partner in the Brainerd law firm of Breen and Person. Breen, who has been a member of the commission since 1999, is reappointed as a Ninth Judicial District attorney member.

**Leonardo Castro**, of White Bear Township, is the Fourth Judicial District Chief Public Defender in Hennepin County. Castro, who has been an at-large Governor-appointed attorney member of the commission since 2002, and was a Supreme Court-appointed Fifth Judicial District attorney member prior to that, is reappointed to another term.

**Marcus Christianson**, of Mankato, is an attorney with the Mankato law firm of Maschka, Riedy and Ries. Christianson, who has been a member of the commission since 2003, is reappointed as a Fifth Judicial District attorney member.

**Loyola Colebeck**, of Rochester, is a co-owner of a small business in Rochester and a community volunteer. Colebeck replaces Jean Michaels as an at-large non-attorney member on the commission.

**John Delmonico**, of Minneapolis, is president of the Police Officers Federation of Minneapolis. Delmonico, who has been a member of the commission since 2003, is reappointed as a Fourth Judicial District non-attorney member.

**Rene Diebold**, of Marshall, is an attorney in private practice in Marshall. Diebold, who has been a member of the commission since 2004, is reappointed as an at-large attorney member.

**Michael Dougherty**, of Burnsville, is an attorney with the Apple Valley law firm of Severson, Sheldon, Dougherty and Molenda. Dougherty, who has been a member of the commission since 2003, is reappointed as a First Judicial District attorney member.

**Brenda Elmer**, of Moorhead, is the northwest Minnesota representative to U.S. Senator Norm Coleman. Elmer replaces Dr. Paul Dovre as a Seventh Judicial District non-attorney member on the commission.

**Sonja Faust**, of Waconia, is a self-employed certified public accountant. Faust, who has been a member of the commission since 2003, is reappointed as a First Judicial District non-attorney member.

**Jill Frieders**, of Rochester, is an attorney and partner in the Rochester law firm of O'Brien and Wolf. Frieders, who has been a member of the commission since 2003, is reappointed as a Third Judicial District attorney member.

**Paul Gam**, of Arden Hills, is vice president of international development with St. Jude Medical, Inc., in St. Paul. Gam replaces Iris Cornelius as a Second Judicial District non-attorney member on the commission.

**Susan Kamrath**, of Canby, is the Canby CARES Coordinator for Independent School District 891. Kamrath, who has been a member of the commission since 2003, is reappointed as an Eighth Judicial District non-attorney member.

**Karen Klinzing**, of Woodbury, is an assistant commissioner with the Minnesota Department of Education and just concluded serving two-terms as a member of the Minnesota House of Representatives. Klinzing replaces Christine Rice as a Tenth Judicial District non-attorney member on the commission.

**Rita Hillmann Olson**, of New Prague, owns Lakeville Floral and K & R Contracting, Inc. Olson, who has been a member of the commission since 2003, is reappointed to a Third Judicial District non-attorney position.

**Richard Ostlund**, of Eden Prairie, is an attorney and partner in the Minneapolis law firm of Anthony, Ostlund and Baer. Ostlund, who has been a member of the commission since 2003, is reappointed as a Fourth Judicial District attorney member.

**Alberto Quintela**, of St. Paul, is an attorney in private practice, and a board member of Prevent Child Abuse-Minnesota, as well as the Northern Star Latino Boy Scouts Council. Quintela replaces Steven Kirsch as a Second Judicial District attorney member on the commission.

**Carrie Ruud**, of Breezy Point, is a real estate broker with Lakes and Leisure Realty, Inc., and just concluded serving one term as a Minnesota state Senator. Ruud replaces Mary Ellen Domeier as an at-large, non-attorney member on the commission.

**Melinda Sanders**, of St. Cloud, is an attorney and shareholder with the St. Cloud law firm of Quinlivan and Hughes. Sanders replaces Thomas Reif as a Seventh Judicial District attorney member on the commission.

**Lenor Scheffler**, of Eden Prairie, is an attorney with the Minneapolis law firm of Best and Flanagan and a former Chief Judge of the Upper Sioux Community Tribal Court. Scheffler, who has been a member of the commission since 2003, is reappointed as an at-large attorney member.

**Glen Schumann**, of Woodbury, is an attorney and shareholder with the Minneapolis law firm of Moss and Barnett. Schumann replaces James Weber as a Tenth Judicial District attorney member on the commission.

**Ronald Schutz**, of Medina, is an attorney and partner in the Minneapolis law firm of Robins, Kaplan, Miller and Ciresi. Schutz, who has been a member of the commission since 2003, is reappointed as an at-large attorney member.

**Larry Stauber**, of Duluth, is an attorney and partner with the Duluth law firm of Stauber and Lien. Stauber replaces Thomas Thibodeau as a Sixth Judicial District attorney member on the commission.

**Stephen Stennes**, of Montevideo, is an attorney with the law firm of Prindle, Maland, Sellner, Stennes and Knutsen in Montevideo. Stennes replaces L. Wayne Larson as an Eighth Judicial District attorney member of the commission.

**David Sturrock**, of Marshall, is a professor of political science at Southwest Minnesota State University in Marshall. Sturrock, who has been a member of the commission since 2003, is reappointed as a Fifth Judicial District non-attorney member.

**Daniel Urshan**, of Duluth, is a financial advisor with A Plus Financial Group, and the former mayor of Hermantown. Urshan replaces David Ellefson as a Sixth Judicial District non-attorney member on the commission.

**Victoria White**, of Walker, is the economic development director for the Leech Lake Band of Ojibwe in Cass Lake. White, who has been a member of the commission since 2003, is reappointed as a Ninth Judicial District non-attorney member.

The Minnesota Supreme Court also announced the appointments of 22 members to the Commission on Judicial Selection. The Minnesota Supreme Court appointments for 2007-2010 are:

**Marianne D. Short**, of Minneapolis, is appointed as an at-large attorney member. She is a managing partner of Dorsey & Whitney LLP, a trial attorney, and a former Minnesota appellate court judge.

**Karen Himle** is appointed to a second term as an at-large non-attorney member. Effective January 8, she will be Vice President for University Relations at the University of Minnesota.

**Leo Brisbois**, of Minneapolis, is appointed as an attorney member for the First Judicial District. He is an attorney with the law firm of Stich, Angell, Kreidler & Dodge, P.A.

**Judy Henderson** is appointed as a non-attorney member for the First Judicial District. She is an Advisory Council Member of the History Department at the University of Minnesota.

**Louise Bjorkman** is appointed as an attorney member for the Second Judicial District. She is a former Ramsey County District Court judge.

**Stacey Millet** is appointed as a non-attorney member for the Second Judicial District. She is a program manager for the Northwest Area Foundation.

**James Forsythe** is appointed as an attorney member for the Third Judicial District. He is an attorney with the firm of Streater & Murphy in Winona, Minnesota.

**Kathleen Feldbrugge** is appointed as a non-attorney member for the Third Judicial District. She is Executive Vice President of the Northfield Area Chamber of Commerce.

**Hildy Bowbeer** is appointed as an attorney member for the Fourth Judicial District. She is employed at the Office of Intellectual Property Counsel/3M Innovative Properties Company in St. Paul.

**David Adney** is appointed as a non-attorney member for the Fourth Judicial District. He is the principal of Minnetonka Senior High School, a position he has held since 2000.

**James Manahan** is appointed as an attorney member for the Fifth Judicial District. He founded Manahan Bluth & Kohlmeyer in 1972.

**Donna Holstine** is appointed as a non-attorney member for the Fifth Judicial District. She is retired and has served on the Minnesota Public Facilities Authority, the Minnesota Safety Council, and the Fairmont City Council. She also served as mayor of the City of Fairmont.

**H. Jeffrey Peterson** is appointed as an attorney member for the Sixth Judicial District. He is an attorney practicing in Virginia, Minnesota.

**Dr. Thomas D. Peacock** is appointed as a non-attorney member for the Sixth Judicial District. He is the Associate Dean of the University of Minnesota-Duluth.

**Richard L. Pemberton** is appointed as an attorney member for the Seventh Judicial District. He is a senior partner in the law firm of Pemberton, Sorlie, Rufer in Fergus Falls.

**MaryAnn Baenninger**, Ph.D., as a non-attorney member for the Seventh Judicial District. She is president of the College of Saint Benedict.

**Gregory L. Holmstrom** is appointed as an attorney member for the Eighth Judicial District. He is a partner in the firm of Holmstrom & Kvam in Granite Falls.

**Sandra K. Olson-Loy** is appointed as a non-attorney member for the Eighth Judicial District. She is Vice Chancellor for Student Affairs at the University of Minnesota-Morris.

**Roger C. Malm** is appointed as an attorney member for the Ninth Judicial District. In 1994, he was elected to serve and presently holds the office of Kittson County Attorney. In addition, he practices civil litigation, arbitration and mediation, estate planning, corporate, hospital, and general law.

**Susan Mills** is appointed as a non-attorney member for the Ninth Judicial District. She is Agency Executive Director of Tri-County Community Corrections.

**Joan Quade** is appointed to a second term as an attorney member for the Tenth Judicial District. She is a shareholder and Practice Group Manager of the law firm of Barna, Guzy & Steffen in Minneapolis.

**Jean S. Tews** is appointed to a second term and will serve as a non-attorney member for the Tenth Judicial District. She is a fundraising consultant.

The Commission on Judicial Selection solicits judicial candidates, evaluates applicants and recommends three to five finalists to the governor for district court and Workers' Compensation Court of Appeals vacancies that occur during the term of a judge. The commission consists of 49 members; 27 appointed by the Governor, and 22 by the Supreme Court.

*If you would like to include an announcement in the Public Attorneys on the Move section please email it to Kim Buechel Mesun at [kim.mesun@mpls.k12.mn.us](mailto:kim.mesun@mpls.k12.mn.us) or fax it to her at 612/668-0485.*

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## News From The Bench

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

Governor Pawlenty appointed **Eric Hylden** and **Sally L. Tarnowski** to two trial court bench vacancies in the Sixth Judicial District in the city of Duluth in St. Louis County. These vacancies occurred with the retirement of the Honorable David P. Sullivan on December 16, 2006, and the retirement of the Honorable John T. Oswald on December 31, 2006.

**Eric Hylden** was an attorney and shareholder with the law firm of Reyelts, Leighton, Bateman, and Hylden in Duluth, a position he held since 1992. He was an associate attorney with the firm from 1987 to 1992. Hylden earned his juris doctorate degree *cum laude* from the University of Minnesota Law School in 1987 and his bachelor of arts degree *magna cum laude* from the University of Minnesota – Duluth, in 1984. Hylden is a member of the Minnesota State Bar Association, where he served on the Civil Litigation Governing Council from 1999 to 2006. He is also a member and past president of the 11th District Bar Association, member of the American Bar Association, Wisconsin Bar Association, Minnesota Defense Lawyers Association, Civil Trial Counsel of Wisconsin, Defense Research Institute, and Volunteer Attorney Program, where he received the "Volunteer Attorney of the Year" award in 1992-93. He has also been named a "Super Lawyer" by Minnesota Law and Politics every year since 2000. Hylden is also active with the North Shore Tae Kwon Do, where he has been a martial arts instructor since 2001; and the National Wild Turkey Federation, where he served as local chapter president and teaches turkey hunter education classes. He was a member of the Duluth Parks and Recreation Board and earned his Eagle Scout Award from the Boy Scouts of America in 1978. Hylden, 46, lives in Duluth with his wife and their two children.

**Sally Tarnowski** was an attorney in private practice in Duluth, a position she held since 2003. Previously, she was a law clerk, associate attorney, and shareholder with the law firm of Johnson, Killen and Seiler in Duluth from 1986 to 2003. Tarnowski earned her juris doctorate degree from William Mitchell College of Law in 1986, and her bachelor of arts degree from the University of Minnesota – Duluth in 1982. Tarnowski is a member of the American Bar Association, Minnesota and Wisconsin State Bar Associations, serves on the board of the Volunteer Attorney Program, and is a mock trial judge for the Minnesota State Bar Association's Mock Trial Program. She is a past co-chair of the Congdon Park Parent-Teacher Association where she has also chaired various PTA committees, is a Sunday school teacher, and has served on Christian Education and finance committees at her church. She has also been a softball coach, and served on the board of directors of the Junior League of Duluth. Tarnowski, 47, lives in Duluth with her husband and their two children.

Governor Pawlenty appointed **Robert D. Tiffany** to a Ninth Judicial District trial court bench vacancy in the city of Park Rapids in Hubbard County. The opening occurred with the retirement of the Honorable Jay D. Mondry on November 1, 2006. Tiffany was an attorney and partner in the Park Rapids law firm of Wallace and Tiffany. He had been an attorney with the firm since 1996. Tiffany was the Redwood County Attorney from 1991 to 1996, and an associate attorney with the St. Paul law firm of Jardine, Logan and O'Brien from 1988 to 1991. Tiffany earned his juris doctorate degree from William Mitchell College of Law in 1987, and participated in the University of San Diego Institute on International and Comparative Law London program at King's College in London England while in law school. He earned his bachelor of arts degree from the University of Minnesota in 1982. Tiffany is a member of the

Minnesota State Bar Association and serves as a mock trial judge through its mock trial program. He is also a member of the Hubbard County Children's Justice Initiative Team, board member and chair of the Park Rapids Living at Home/Block Nurse Program, member and chair of the Hubbard County Developmental Achievement Center Board, and board member

and vice-chair of the Park Rapids Area Kinship. He is a past chair of the Park Rapids Chamber of Commerce, had been a volunteer with Park Rapids Fastbreak Basketball, and a den leader with Cub Scouts of America in Park Rapids. Tiffany, 48, lives in Park Rapids with his wife and their two sons.

## Minnesota Department Of Administration Data Practices Opinions Index

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

Copies of these opinions can be requested by calling the Minnesota Department of Administration at (612) 296-6733 or (800) 657-3721. The full text of the Data Practices Opinions are now available online at [www.ipad.state.mn.us](http://www.ipad.state.mn.us)

No. of Opinion	Date of Opinion	Gov't Entity Involved	Topic	Opinion Requestor
07-001	1/10/07	ISD #531	Hazing incident: nature of team involved, discipline of and number of students; Data that would lead to identity of student.	<u>Rochester Post-Bulletin</u> / Afinson
07-002	1/12/07	Silver Bay City	Cost of search, retrieve, and copy; several requests.	Mealey
07-003	1/19/07	Douglas County Sheriff's Office	Traffic accidents.	Ochsendorf
07-004	1/22/07	Minneapolis	Email, correspondence, and documents of council and mayor-redacted of personnel names; whether release of name results in release of private data.	Police Officers Federation of Minneapolis/Walther
07-005	1/26/07	Department of Labor and Industry	Data in Informix data base; request for access to data linking data on individuals to data not on individuals.	Department of Labor and Industry/Leppink
07-006	1/30/07	Middle Snake Tamarac Rivers Watershed District (MSTRWD)	Audio recordings or notes of MSTRW District meetings/business, made by individual Board Members.	MSTRWD/Hane
07-007	2/06/07	Red River Watershed Management Board	Timeliness of response; questions rather than data requests.	Stengrim
07-008	2/14/07	Middle Snake Tamarac Rivers Watershed District	Cost for retrieve and copy.	Stengrim
07-009	3/09/07	Independent School District 720	Tennesen warning to student when collecting private data; use of such data including disclosure to Minnesota State High School League.	Student X/Becker

# The Client Security Board: Why Do We Care?

By: Harriet Sims, Supervising Attorney, Appeals and Legal Services Division, Minnesota Department of Revenue

## **What is the Connection Between the Client Security Board and the Public Law Section?**

The members of the Client Security Board (CSB) are appointed to three year terms by the Minnesota Supreme Court. The Board consists of five attorney members and two public (non attorney) members. Three of the attorney members are nominated by the Minnesota State Bar Association (MSBA). Since 1993, based on a recommendation 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:

Michael T. Rengel – Chair (MSBA nominee)  
 Gary G. Fuchs  
 Robert T. Lund  
 Richard A. Nethercut (MSBA nominee)  
 Bonnie R. Russ (Public member)  
 Sally DeLaittre Sawyer (Public member)  
 Harriet J. Sims (MSBA nominee, PLS member)

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

Kim Mesun	1993-1999
Margaret Westin	1999-2005
Warren Sagstuen	2000
Harriet Sims	2005 to present

## **What are the Client Security Fund and the Client Security Board?**

The Client Security Fund was created nearly 20 years ago in response to a situation involving a lawyer in private practice who stole client funds. The Fund was established to reimburse clients who are the victims of unscrupulous lawyers. Clients often have no other recourse or have been only partially compensated. In 1987 all attorneys practicing in Minnesota were assessed \$100 to repay the over \$430,000 stolen by one attorney. The Fund remains solvent through a portion of attorney registration fees. The exact amount that goes to the CSB has varied over the years. Currently \$12 of every attorney's registration fee goes to the Client Security Fund. The Fund's current resources are slightly over 2.5 million dollars. During the year ended June 30, 2006 the Fund paid out \$220,223.03 in claims against 16 attorneys. Since its inception in 1987 through June 30, 2006 the Fund has paid \$5,561,912.83 in 437 claims against 123 attorneys. While this seems like a lot of money, it is important to note that over half of that amount related to eleven attorneys.

The Client Security Board (CSB) meets approximately 4 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. Therefore some attorneys have had multiple claims filed against them. Claims must relate in some way to theft or dishonest conduct by a Minnesota

licensed attorney which results in a loss to the client. The matter must 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 for reconsideration.

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 Should Public Attorneys Care About the Dishonest Conduct of Private Attorneys?**

The cynical answer is that part of our fees goes to fund payments to clients who have suffered losses due to the dishonest conduct of lawyers, a "follow the money" argument. Nearly twenty years ago when lawyers were assessed that first \$100, some public lawyers argued that because we do not have access to client funds we should not have to pay for thievery by lawyers in private practice. That argument did not prevail for good reasons. We are all attorneys, we all took the same oath, and we are bound by the same ethical principles as attorneys in private practice. There is a collective responsibility. The same duty to uphold the profession that comes with the privilege of practicing law falls equally on our shoulders regardless of whether we are personally in a position to stumble. It is also important that the legal profession in Minnesota remain as self-regulating as possible.

I consider membership on the CSB a way to give back to the profession by performing a public service. It is both a duty and a privilege. Serving on the CSB is also pretty interesting; one sees the seamy side of the profession. But it is also gratifying to know that lawyers in Minnesota can at least do something to clean up our own messes. The CSB rules state that the claim must arise "out of and during the course of a lawyer-client relationship of a matter in this state, or a fiduciary relationship between the lawyer and the claimant which arose out of a lawyer-client relationship in this state." CSB Rule 3.02.b. The Board has at times wrestled with whether the client's loss arose out of an attorney client relationship or whether acts committed in another state by an attorney licensed in Minnesota could form the basis of a claim, especially if the only relationship to Minnesota is the license. As law practices become more multijurisdictional this issue is bound to come up more and more.

Another issue that the CSB considers with some frequency is whether the loss is due to malpractice or a fee dispute. The

Fund does not compensate losses in those circumstances. In some cases clients file claims because they are not happy with the result. More troubling for the Board are situations where it is difficult to tell if the attorney's neglect of a case amounts to keeping a fee and then doing very little which is of value for the client. Is the neglect so egregious as to be considered theft of the client's money or simply a fee dispute? Or is it a case of malpractice to be dealt with in another arena? These and other interesting issues are part of the work of the CSB.

This past June I had the opportunity to attend the 22nd ABA National Forum on Client Protection in Vancouver B.C., Canada on behalf of the CSB. This gave me a chance to see how other states and provinces struggle with similar issues. I was glad to

see that Minnesota stacks up quite well against the other jurisdictions. Some states have smaller or larger funds, higher or lower caps or have different funding mechanisms but we all deal with the same issues.

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>.

**Editors' note:** What are your thoughts or opinions on this or other topics? Send them to Public Law News in care of Kim Buechel Mesun ([kmesun@mpls.k12.mn.us](mailto:kmesun@mpls.k12.mn.us)).

## Upcoming CLE Seminars

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

DATE	SEMINAR	TIME	PLACE	SPONSOR & CONTACT
5/10/07	Interpreting & Signing	10 a.m. to Noon	Elmer L. Anderson Bldg, 540 Cedar Street, St. Paul	Attorney General's Office Marty Casserly 651/297-5919
5/16/07	Monthly Luncheon – Judge Patrick Schiltz	Noon to 1 p.m.	Minneapolis Club, Mpls.	Federal Bar Association <ckrenos@merchantgould.com>
5/18/07	“Journey to Safety” Stage Presentation and Panel;	8:30 a.m. to 11:45 a.m.	Midland Hills Country Club	MSBA Public Law Section Louis Thayer 651/431-3618
	Annual Award & Meeting	Noon		
5/23/07	New Child Support Law	Noon to 1:30 p.m.	N109 First National Bank Bldg., 332 Minnesota St., St. Paul	Ramsey County Bar Association 651/222-0846
5/24/07	Annual Minnesota Tax Update	Noon to 1:30 p.m.	N109 First National Bank Bldg., 332 Minnesota St., St. Paul	Ramsey County Bar Association 651/222-0846
5/31/07	Depression and Legal Profession	1:15 p.m. to 4:15 p.m.	HCBA Office 600 Nicollet Mall, Mpls	HCBA 612/752-6600
6/6/07	Law & Literature (EOB)	3:00 to 5:00 p.m.	Ramsey County Court House, Room 40	Ramsey County Bar Association 651/222-0846
6/8/07	Anatomy of a Lawsuit	All Day	University of St. Thomas 2115 Summit Avenue	Attorney General's Office Marty Casserly 651/297-5919
6/20/07	Human Services Licensing Hearings	TBA	TBA	MSBA Administrative Law Section, Betsy Hayes 651/201-2407
6/21/07	Legislative Update	9:00 a.m. to 3:15 p.m.	Crown Plaza Mpls. No., Brooklyn Center	Minnesota Association of City Attorneys, Carol Schoeneck 651/222-7409, ext. 205
6/27/07	Law, Literature, and... Legal Ethics	8:30 a.m. to . 11:45 a.m.	HCBA Office, 600 Nicollet Mall, Mpls.	HCBA 612/752-6600
	Elimination of Bias	1:30 p.m. to 4:00 p.m.		
6/28/07	Technology, Privacy and Crime, MSBA Convention, Reception 5:15 to 6:30 p.m.	3:45 to 5:15 p.m.	MSBA Convention, River Centre, St. Paul	MSBA Public Law Section Jay Heffern 612/673-3272

To include a notice of an upcoming CLE in the next issue, contact Mary Miller (651) 284-5306.

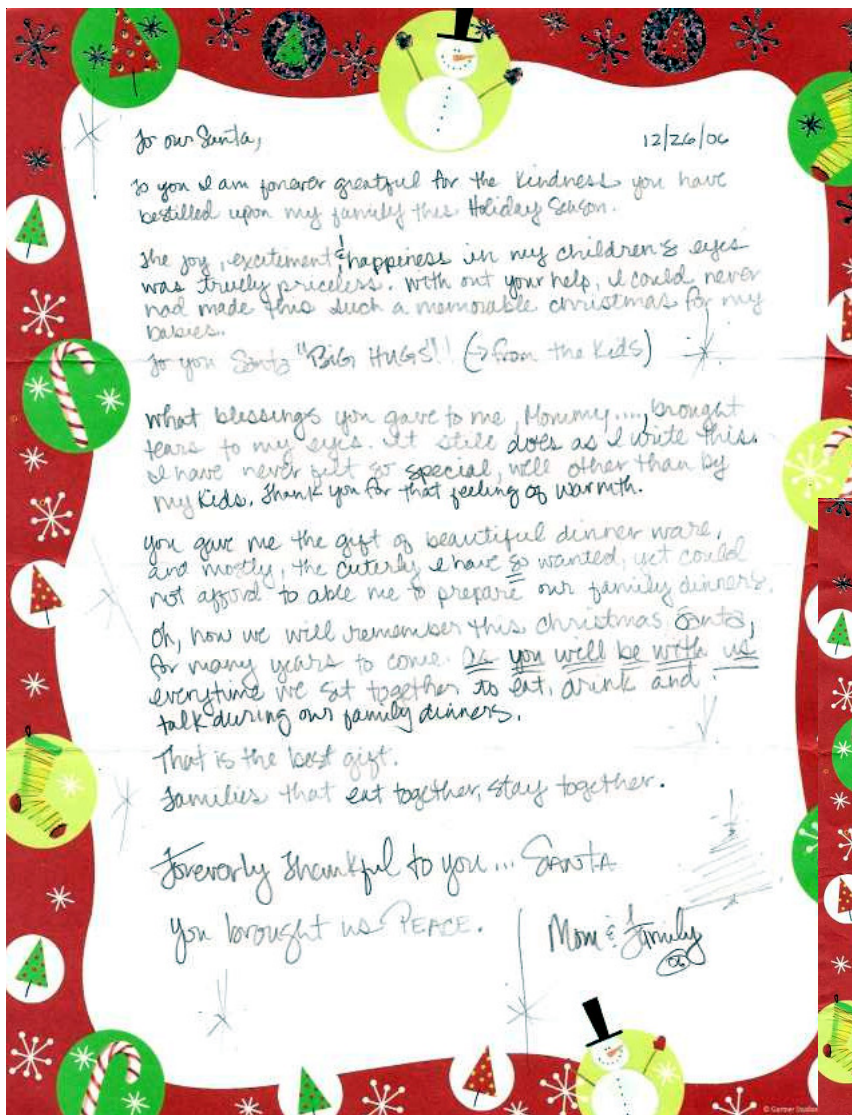
# Adopt A Family

By: Nancy McLean, Assistant Hennepin County Attorney

The Public Law Section “adopted” 18 families this year. This effort was made possible by the generous contributions of public lawyers, their families, and their friends. Again this year, we worked with Cornerstone (an agency serving domestic violence victims and their families) and Lutheran Social Services/Catholic Charities “Adopt a Family” program. Volunteers helped in many ways including shopping for an entire family; joining friends and families and adopting a whole family; at the Hennepin County Attorney’s Office, family lists are posted and individuals buy a gift for a family member; generous financial contributions (the money is used to balance the families so that everyone gets a gift and also to purchase food gifts certificates for holiday meals

- any remaining cash or late donations are sent directly to the agencies); and helping with shopping, wrapping and delivery of the gifts.

The lawyers and judges who make up the Public Law Section are committed to community service projects. We have sponsored Adopt a Family for the last eight years, Loaves & Fishes for the last six years, Habitat for Humanity for the last 16 years, and many other service projects including a clothing drive for a shelter in Duluth. This dedication reflects one of the key values of the Public Law Section and its continuing commitment to the community.



## Thank You Notes



*corner*STONE

1000 East 80th Street  
Bloomington, MN 55420  
Business 952.884.0376  
Fax 952.884.2135  
[www.cornerstonemn.org](http://www.cornerstonemn.org)

January 10, 2007

Hennepin County Attorney's Office  
Attn: Nancy McLean  
C-2200 Government Center  
Minneapolis, MN 55487

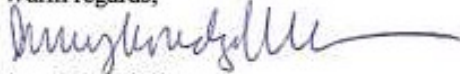
Dear Nancy,

On behalf of the staff and clients of Cornerstone Advocacy Service, I am writing to express our heartfelt thanks for your participation in the 2006 Adopt-a-Family program. We were deeply moved by your generosity, as were the families who benefited directly from your holiday donation. It was obvious that a lot of thought and effort went into the gifts. The families were awe-struck when they picked up her items. If not for you, Christmas would have been much more difficult for her family.

Our families are going through the difficult process of becoming self-sufficient. They have been working intensely with our staff all year long. The message you sent by your participation in Adopt-a-Family demonstrates to them that they are worthy of compassion and that they are not alone. These messages are crucial for people who have been told the opposite by their abusers time and time again.

Again, thank you for your support of the program and of the work Cornerstone does in the community to help families live violence-free lives. I hope all your shoppers enjoyed themselves. Perhaps we can work together again in the future. We certainly regret the issue of the missing gifts. We still can't figure out how this could have happened. Please know that we were able to replace everything. Enclosed are personal thank you notes from the families.

Warm regards,



Amy Kondziolka  
Community Program Manager  
952-884-0376

This letter will serve as your receipt. As required by the Internal Revenue Service, we are informing you that Cornerstone Advocacy Service is a 501 (c) (3) charity and that we have not provided you with any goods or services in exchange for your contribution.

*Rebuilding lives, restoring hope*