

Public Law News

A Publication of the Minnesota State Bar Association Public Law Section

Volume XV, Issue 3, Spring/Summer 2006

CELEBRATING OUR 15TH YEAR AS AN MSBA SECTION!

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Visit the PLS web site:
<http://www2.mnbar.org/sections/public-law/index.htm>

Table of Contents

Public Law Section Annual Meeting & CLE Notice	1
Public Law Section Convention CLE Notice	2
Community Service Project	3
LRAP Thank You Letter	4
Educational Conference For City Attorneys <i>Terry Adkins</i>	4
Bylaw Changes For The Public Law Section <i>Harriet J. Sims</i>	5
News And Notes	6
Tips For Working With Interpreters At Public Assistance Fair Hearings <i>Louis Thayer</i>	6
2006 Legislative Actions Of Interest To Public Lawyers <i>Michelle Timmons</i>	8
MSBA General Assembly Meeting Summary <i>Dianne Ward</i>	9
Ways To Network With Public Lawyers <i>Kelly Keegan</i>	10
Honorable Louis Thayer Completes Faculty Development Workshop At The National Judicial College	11
White II - The Other Shoe Drops <i>Karen Cole</i>	11
Eyes On The Courts <i>Greg Brooker</i>	13
MSBA Public Law Section Public Attorney Awards Ceremony <i>Louis Thayer</i>	16
Data Practices Opinions Index <i>Mary Miller</i>	19
News From The Bench <i>Kim Buechel Mesun</i>	20
Public Attorneys On The Move <i>Kim Buechel Mesun</i>	21
Upcoming CLEs of Interest To Public Lawyers <i>Mary Miller</i>	22
Memorium: Philip Olfelt (1929-2006) <i>James Schloessler</i>	23

MSBA

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Meeting Notice
Public Law Section
Annual Meeting & CLE

Friday, May 19, 2006
 8:00 a.m. to 2:00 p.m.
 Commodore Hotel
 79 Western Avenue, St. Paul, Minnesota

Schedule and Presenters:

- 8:00 to 8:30 a.m. Registration and Continental Breakfast
- 8:30 to 11:45 a.m. The MSBA Public Law Section will present a seminar on issues related to the development and financing of affordable housing. Speakers and topics include:
- Overview of Affordable Housing Issues**
Angie Skildum, Research and Policy Director, Family Housing Fund
Rebecca Rom, Faegre & Benson
- Financing Affordable Housing with Low Income Tax Credits**
Angela Christy, Faegre & Benson
- Municipal Use of Tax Increment Financing for Affordable Housing**
Stephen Bubul, Kennedy & Graven
Peter Berrie, Faegre & Benson
- 12:00 to 2:00 p.m. Annual Meeting, Luncheon & Annual Public Law Awards Presentation

3.0 hours of Standard CLE credits to be applied for. **RSVP by May 15, 2006.**

How To Register:

Register & Pay Online Now

MSBA
 Attn: Kim Basting
 600 Nicollet Mall #380
 Minneapolis, MN 55402

Fax: (send credit card #)
 612-333-4927

MSBA Public Law Section Annual Meeting *RSVP 05/15/06*
Friday, May 19, 2006

Method of payment:
 Check made payable to "MSBA/Public Law" in the amount of:

- \$45 Public Law Section member*
- \$55 Non-Section member*
- \$25 Law Students (1/2 day CLE & Luncheon)*
- \$25 Annual Meeting & Luncheon Only

*includes awards luncheon and annual meeting

Visa/MC # _____ Exp Date: _____

Name: _____

Employer: _____

Phone: _____ **Email:** _____

Please note requests for special accommodations, dietary needs, accessibility requirements, or teleconferencing when registering.
 Minnesota State Bar Association, City Center, 600 Nicollet Mall, #380, Minneapolis, MN 55402
 612-333-1183 | www.mnbar.org | 800-882-6722



...and Justice for All

The Public Law Section and Criminal Law Section present:

**Lost in Translation:
Interpreters in Minnesota Courts**

Thursday, June 22, 10:30 a.m. – noon

Minnesota's immigrant population continues to grow, introducing new and diverse challenges into the legal system. This expert presentation will guide private and public attorneys through the thorny problems interpreter cases can present.

Topics

- Demographics and linguistic needs in Minnesota courts
- Statutes, rules, case law and JIGS applicable to interpreter cases
- Best practices for hearings and trials involving interpreters
- Interpreter certification programs

Katrin Johnson, Court Interpreter Program Coordinator,
State Court Administrator's Office

MSBA 2006 Convention•June 21–23

Madden's in Brainerd

To register:

www2.mnbar.org/convention

Community/Public Service Project



**April 21, 2006
Habitat For Humanity
Public Law Day**



LRAP Thank You Letter

January 31, 2006

The Honorable Diane Alshouse
Ramsey County Courthouse
15 Kellogg Blvd W, Room 1310
St. Paul, MN 55102

Jay Heffern
Minneapolis City Attorney's Office
333 S. Seventh St., Suite 300
Minneapolis, MN 55402-2453

Dear Judge Alshouse and Mr. Heffern:

On behalf of the Loan Repayment Assistance Program of Minnesota (LRAP), please accept my heartfelt thanks for the MSBA Public Law Section's generous contribution of \$300.00 received in December 2005. Your gift will truly go a long way toward sustaining important public interest legal services through education loan assistance to new public service attorneys. We look forward to acknowledging your generosity in the March 2006 issue of the *Bench & Bar* magazine and in other publications throughout the year.

Thanks to support such as yours, LRAP was recently able to add **fifteen** new attorneys to our program. All together, **forty-six** attorneys have been awarded vital loan repayment assistance during our current award cycle. With your help, we are working to alleviate the heavy burden of education debt on new public interest attorneys and ensure the provision of essential legal services to the disadvantaged.

We are grateful for the MSBA Public Law Section's continued support.

Very Truly Yours,

Heather Rastorfer Vlieger
Executive Director

Educational Conference For City Attorneys

By: Terry Adkins, Rochester City Attorney

Each year, city attorneys from around Minnesota gather to discuss and learn about recent developments on a number of timely municipal legal issues. This year, the Educational Conference occurred in Bloomington at the Hotel Sofitel on February 3 and 4. John Lervick, in his role as President of the Minnesota Association of City Attorneys, moderated this year's Conference.

There has been considerable legal coverage over the past year's U.S. Supreme Court trilogy of takings/ eminent domain cases. As such, it was not surprising to see that the first topic discussed during this Annual Meeting involved an update and overview of those cases and their

impact upon local government. Other sessions discussed the recent Minnesota Pollution Control Agency's SPDES and TMDL decisions, the interplay between electronic communications and the various open government laws and the impact of a recent Eighth Circuit Court of Appeals decision upon Minnesota joint powers agreements.

Most attendees were taken aback by the news of a "sign code shakedown" occurring throughout the state. This presentation informed attendees as to the issues involved in a series of lawsuits brought against cities and their sign ordinances and the steps that could be taken now to prevent additional lawsuits from being filed. I heard more

than one attendee suggest that, upon returning to the office, the first order of business was a closer review of a particular city's sign ordinance. It is this type of useful and practical information that makes the annual Education Conference relevant and helpful for a local government lawyer.

Finally, the Saturday morning session was devoted to two subjects. The first subject involved development fees and development agreements. We learned some useful tips about how best to draft development agreements for greenfield, redevelopment and multi-phase projects. Another "hot topic" addressed was fair, reasonable and proportionate development fees. We learned the legal basis for the establishment of fees and some appropriate and defensible expense items that might not have occurred to us or our city officials.

The second subject was a series of factual scenarios where a city attorney might find himself or herself "on the spot" in terms of "now what do I do?" The scenarios ranged from alleged open meeting law violations to blunt questions about the legality of city actions. Several experienced practitioners told us what they would do and the attendees were able to throw in their views as well. Tim Kuntz moderated this session, and so you may safely assume some humor found its way into the presentations.

The city attorneys will next gather on June 22, 2006, at the Crowne Plaza Minneapolis North in Brooklyn Center for their legislative update. No doubt the primary topic of discussion for this update will be the Minnesota Legislature's response to the Kelo v. City of New London decision.

Bylaw Changes For The Public Law Section

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

At its February and April meetings the Executive Council approved changes to its Bylaws.

Article II, Section 2.2 of the section By-Laws currently reads:

Section 2.2 An MSBA member employed full-time or part-time, but exclusively by a government agency shall be eligible to become a member of this Section upon the payment of dues of \$10 per year. Other members may become members of this Section by paying dues of \$20 per year. Such dues may be changed annually by appropriate action of the membership subject to approval by the Assembly of the Minnesota State Bar Association.

The first sentence of section 2.2 was amended for clarity. This is not a substantive change. The amended version reads:

Section 2.2 An MSBA member exclusively paid by the government, whether full or part-time, shall be eligible to become a member of this Section upon the payment of dues of \$10 per year. Other members may become members of this Section by paying dues of \$20 per year. Such dues may be changed annually by appropriate action of the membership subject to approval by the Assembly of the Minnesota State Bar Association.

The Executive Council also made changes in the definition

of a public lawyer for purposes of Council membership.

Article III, Section 3.4 currently reads:

Section 3.4 Officers and Council members must be public lawyers and current members of the Section at all times when in office. For purposes of this section, public lawyer is defined to mean a licensed attorney who works for a government agency (including titles such as legal assistant, legal analyst, legal advisor, staff attorney, law clerk, etc.) or provides legal services to a government agency or agencies 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 Council members.

The Bylaw was amended to make it clear that judges, hearing officers and administrative law judges are defined as public lawyers for purposes of serving on the Executive Council. The term "government agency" was changed to "governmental entity" to include organizations which are not technically considered as government agencies.

The amended Bylaw reads as follows:

Section 3.4 Officers and Council members must be public lawyers and current members of the Section at all times when in office. For purposes of this section, public lawyer is defined to mean a licensed attorney who works exclusively 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 Council members.

Finally, the Executive Council voted to add an additional section to Article III.

The additional section reads as follows:

Section 3.8. The Executive Council may also include such *ex officio* members as approved by the Council.

This section allows the Council the flexibility to include additional members on the Council who may not fit into the definition of "public lawyer" but who nevertheless can offer the Council valuable insight and ideas.

These changes will take effect upon approval by the Assembly of the Minnesota State Bar Association.

News And Notes

Local Rule Amendments

The U.S. District Court for the District of Minnesota has approved amendments to the Local Rules that go into effect February 9, 2006. To read a summary of the changes and view the full text, follow this link to our website. <http://www.mnd.uscourts.gov>

Federal Court Filing Fees

Effective April 9, 2006, both the federal court civil filing fee and the fee for filing an appeal will increase. For details please click on the link provided below. http://www.mnd.uscourts.gov/Press_Releases_350filingfeememo032306.pdf

Judicial Independence Resources

A recent letter to Section CoChairs from MSBA President Susan Holden included information on and referenced:

Judicial Independence Resources is accessible via links from www.mnbar.org or directly at www2.mnbar.org/JudIndependence/index.htm

CLE Credit Proposal

Our Minnesota Justice Foundation Liaison reports that, "The LAD Committee proposes that one CLE credit be given for every 6 hours of qualified pro bono work, up to a maximum of 6 CLE credits in every three-year reporting period. The proposal is based on models used by other states including New York and Washington. For more information, contact Caroline Palmer, Pro Bono Development Director, MSBA 612-278-6308 or <cpalmer@mnbar.org>

Tips For Working With Interpreters At Public Assistance Fair Hearings

By: Louis Thayer, Assistant Chief Human Services Judge, Minnesota Department of Human Services

The Minnesota Department of Human Services conducts over 6000 administrative hearings per year. The subject matter of the administrative hearings ranges from cash assistance, food support, medical assistance, child maltreatment, vulnerable adult maltreatment and licensing issues. In recent years, there has been a significant increase in the number of hearings involving public assistance recipients whose primary language is other than

English. This growth has also resulted in a larger number of administrative hearings involving interpreters. Recently, I was able to discuss some of these challenges with Katrin Johnson, Coordinator of the Minnesota Courts Interpreter Program.¹ She offered these tips:

WORKING WITH FOREIGN LANGUAGE INTERPRETERS

- Request a trained interpreter first, which means someone who is proficient at speaking English and the target language, and has experience working as an interpreter. This will be the most effective way of obtaining necessary information and explaining the rehabilitation process.

1. The use of untrained interpreters, volunteers, or family is considered inappropriate because it undermines confidentiality and privacy.
2. When several interpreters are available, select one who is the same gender and approximately the same age as the individual.
3. Characteristics of a skilled, trained interpreter include:
 - a. demonstrates courtesy and respect for the individual;
 - b. explains his/her role to the individual;
 - c. positions himself/herself to avoid disrupting direct communication between the staff person and the individual;
 - d. has a good memory for what is said;
 - e. converts the information in one language accurately into the other without commenting on the content;
 - f. attempts to preserve the emphasis and emotions that both people express;
 - g. asks for clarification if verbalizations from either party are unclear;
 - h. indicates instances where a cultural difference has the potential to impair communication;
 - i. does not interject personal opinions;
 - j. does not engage in side conversations with the non-English speaker, does not give advice to non-English speaker;
 - k. discloses when there is a potential conflict of interest, or if the interpreter and the non-English speaker have incompatible dialects; and
 - l. maintains confidentiality.

- Working with a foreign language interpreter involves many of the following parameters.
 1. Speak in short units of speech – not long involved sentences or paragraphs.
 2. Be patient – an interpreted interaction takes longer as not all words and thought exist in other languages and may require more words to express the same meaning.
 3. Expect that the interpreter may occasionally pause

to ask you for an explanation or clarification of terms in order to provide an accurate interpretation.

4. Avoid abstractions, idiomatic expression, slang, similes and metaphors.
5. Look at and speak directly to the individual, not the interpreter, when asking questions and listening for responses. This indicates that the individual is the primary focus of the interaction and helps you to interpret nonverbal cues.
6. Avoid saying to the interpreter, “Ask him...” or “Tell her...” Speak in the first person, as will the interpreter.
7. The interpreter will relay all that is said in the presence of the individual and will not omit anything spoken on the side or anything that is said to others in the room.
8. Listen to the individual and watch the nonverbal communication. Much can be learned by regarding the affective aspects of the individual’s response and by observing facial expressions, voice intonations, and body movements.
 - a. Nonverbal cues need to be interpreted from the point of view of a specific culture’s meaning of that nonverbal cue, not from the view of your culture.
 - b. If you are unsure of the meaning of a specific cue, stop the interaction and ask the individual to explain the meaning of what you are seeing.
9. Repeat important information more than once. Always give the reason or purpose for a specific process.
10. Check the individual’s understanding and accuracy of the interpretation by asking the individual to repeat instructions or whatever has been communicated in his or her own words, with the interpreter facilitating.
11. When possible, reinforce verbal interaction with materials written in the individual’s own language or with visual aids. **DO NOT** use computer software to translate any written information as the translations are often not accurate.
12. Realize that the interpreter can not reveal any information or opinions about the individual. Do ask the interpreter to clarify any cultural norms.

REMEMBER: Conducting a hearing with a party who does not speak English will take considerably longer than with other parties, so schedule most hearings for at least twice as long as you normally would.

Notes

¹ Ms. Johnson will be providing a detailed two-hour workshop at the MSBA Annual Bar Convention, June 22, 2006. The event is co-sponsored by the Public Law and Criminal Law Sections.

2006 Legislative Actions Of Interest To Public Lawyers

By: Michelle Timmons, Revisor of Statutes

As of the date of this writing, April 10, 2006, the Minnesota Legislature has passed six laws. Most of these early laws relate to specific jurisdictions, and do not have general application, but one law relates generally to counties and is described below. Perhaps more significantly, the House and Senate have taken action on bills to restrict the power of eminent domain. In addition, there are eight bills pending which relate to criminal law.

Soldiers' Rest. Chapter 176 of Session Laws enacted S.F. 2749, which relates in general to counties. This new law modifies Minn. Stat. sec. 375.36, subd. 1, by removing the \$3,500 annual limit on the amount a county may spend on the cost and maintenance of soldiers' graves. This law is effective April 8, 2006.

Eminent Domain. At this time, the House and Senate have each passed different versions of a bill restricting eminent domain power, and a conference committee is expected to resolve the differences and recommend a final bill. On March 27, 2006, the Senate passed S.F. 2750, the fourth engrossment. The House next passed the second unofficial engrossment of S.F. 2750 on April 6, 2006. The text of these two versions can be found on the Minnesota Legislature's website at www.leg.state.mn.us.

Both bills define "public use" or "public purpose", in addition to possession or ownership by a public entity, to include "mitigation of a blighted area, remediation of an environmentally contaminated area, reduction of abandoned property, or removal of a public nuisance." The term "public nuisance" would have the definition already in section 609.74, and new, narrowly drawn definitions would be added for "abandoned property", "blighted area", and "environmentally contaminated area". Both bills state that the public benefits of economic development (the House version adds an exception for necessary and required public services), including an increase in tax base, tax, revenues, employment, or general economic health, do not by themselves constitute a public use or public purpose.

Both bills require a public hearing before commencement of an eminent domain proceeding, with some specific notice provisions. At the court hearing on the taking, both bills would specify the evidentiary standard by which the

condemning authority must show the taking is necessary and for the designated public use, if the taking is for the mitigation of a blighted area, remediation of an environmentally contaminated area, reducing abandoned property, or removing a public nuisance. The House version would require a "clear and convincing" standard, while the Senate would require a "preponderance of the evidence" standard.

Both bills would require compensation for loss of a going concern. In addition, both bills have provisions for attorneys fees, including where the final award is more than 20% higher than the last written offer by the condemning authority. In sections six and seven of the House unofficial engrossment, compensation is added for removal of a legal nonconforming use or other regulatory takings. The House version, in section 9, would also deem the entry of government into the mixed municipal solid waste business to be inverse condemnation.

Criminal law proposals. What follows is a list of prominent bills relating to crime being considered in the 2006 session. The status of these bills can be followed on the legislature's website.

- H.F. 3308. This bill contains the Governor's immigration, identity theft, and computer crime policy initiatives. The bill creates a Special Crimes Unit and permits the commissioner of public safety to enter into memorandums of understanding with federal immigration officials, and creates a state immigration task force. The bill also creates new computer crimes and creates new crimes related to fraudulent documents.
- H.F. 3504. This bill modifies career offender sentencing, codifies the patterned sex offender sentencing law, removes the sunset provision for Blakely hearing provisions, and applies Blakely provisions to other sentencing enhancements.
- S.F. 3273. This bill creates a 20-member Forensic Laboratory Oversight Commission to develop and implement a reporting system for forensic laboratories and to investigate allegations of professional negligence. The commission is required to adopt forensic analysis processing time period standards.

The Bureau of Criminal Apprehension is required to establish a four person unit to work on cold cases involving DNA analysis.

- S.F. 2614. This bill creates criminal penalties and civil remedies for disruption of funeral services.
- S.F. 2552. This bill requires the commissioner of corrections to require all sex offenders assigned to risk level III and placed on release to be monitored with the global positioning system (GPS) electronic monitoring device.
- H.F. 3506. This bill creates the new crime of counterfeiting currency.
- H.F. 2829. This bill creates a Crime Against Children Team that investigates technology facilitated crimes

such as solicitation of minors and possession or distribution of child pornography.

- H.F. 3244. This bill creates a Human Trafficking Task Force to carry out a plan to address and prevent trafficking in Minnesota. The bill also requires the commissioner of public safety to study trafficking and develop victim assistance services. The bill enhances criminal trafficking penalties.

As the news media has widely reported, a major state bonding bill is expected to pass this session. The legislature has also begun consideration of three stadium proposals, for the Gophers, Twins, and Vikings.

Under the Minnesota Constitution, the 2006 regular session must conclude on Monday, May 22, 2006.

MSBA General Assembly Meeting Summary

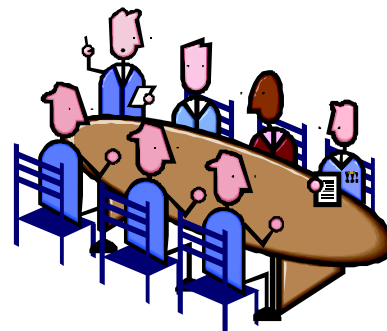
Friday, April 12, 2006

By: Dianne Ward, Ramsey County Attorney's Office

The following items from the MSBA Assembly meeting are of particular interest to public lawyers.

1. MSBA charge to sections. The MSBA has been charging the sections, including the Public Law Section, an administrative fee of \$3.00 for each member for several years. They now have sufficient funds built up that they will not need to charge the sections anymore. As the Public Law Section did not increase its section membership dues when this fee was added, this welcome change will free up more of our membership dues for Section activities, including offering more free CLE's.
2. MSBA Convention June 21-23, Madden's in Brainerd. The convention CLE's this year are organized into four different tracks, and you can attend all the sessions in one track or move between tracks. The themes of the tracks and many of the CLE's offered within them will be of interest to public lawyers. One track is called "...and Justice for All" and is highlighting some of the hot legal topics, including Use of Interpreters (in a CLE co sponsored by the Public Law Section). "Playing the Back Nine" has topics of interest to those who are nearing

"retirement." The "Growing Your Career" track will address the issues of being resilient and engaged, who are we as professionals, and practicing integrity and authenticity. Then there's the "Successful Lawyer" track for those wanting tips on maintaining a successful practice. Don't forget about the Brainerd Lakes Ride, the bike ride sponsored by the Life and the Law Committee to raise money for Lawyers Concerned for Lawyers. It offers a good time for a good cause.



Ways For Law Students To Network With Public Lawyers

By: Kelly Keegan, Public Law Section Law Student Liaison

Here are some simple ways to connect with public lawyers through the MSBA.

Join the Minnesota State Bar Association (MSBA) Public Law Section! Visit www.mnbar.org for membership information. Click on 'Application Forms' and then 'Law Student'. Fill out and submit the membership form. An annual membership costs \$30-\$40, depending on which district you join. It is free to then become a public law section member. Your membership will give you access to email discussion boards, notices for upcoming events, and newsletters.

Attend upcoming MSBA events and Public Law Section events. On the main MSBA web page, click on 'Calendar/Events'. More information coming soon.

- The MSBA Annual Convention. June 21-23, 2006 at Madden's in Brainerd.

Attend Continuing Legal Education Programs (CLEs) for public lawyers. The MSBA website allows searches of upcoming CLEs related to public law. On the main MSBA web page, click on 'CLE', then click on 'CLEs (Upcoming programs by CLE sections)', then use the pull down menu to select 'Public Law Section', then click on 'List By Section'.

- The Public Law Section's Annual Meeting & CLE Program. Friday, May 19, 2006, 8:00 a.m. to 2:00 p.m., Commodore Hotel, St. Paul.
- The Public Law Section's CLE Program, *Lost in Translation; Interpreters in Minnesota Courts* (co-sponsored with the Criminal Law Section). Thursday, June 22, 2006, 10:00 a.m. - noon, Madden's in Brainerd.

Many CLEs put on by the public law section are free, or if they are not free, may be free for students.

Volunteer for one of several public service projects organized by the public law section. Work along side public lawyers and network with them in an informal setting, while volunteering your time and efforts for those in need. Contact Nancy McLean at nancy.mclean@co.hennepin.mn.us for more information on how to volunteer.

- The public law section members participate in Habitat for Humanity to help build homes for those in need. Review the website for the next Habitat for Humanity work day. The last one was Friday, April 21, 2006.
- Volunteers are always needed to help staff tables at CLEs and the public law section annual meeting. The annual meeting will take place on **Friday, May 19, 2006** at the Commodore Hotel. This is a great way to meet public lawyers in the community.
- The first Wednesday of every other month public law members participate in Loaves and Fishes, a program to prepare food for those in need. The next date is **Wednesday, June 7, 2005** at 2:45 p.m. at 2425 18th Avenue South in Minneapolis.

Call public lawyers to ask if you can visit their office and shadow them for a day or a few hours. Most lawyers are happy to have curious students come see what a day in the office is like. If a lawyer cannot meet with you, he or she will likely refer you to someone in his or her office who can. This is a wonderful way to get information on different public sector jobs and to meet public lawyers in practice. The MSBA website offers a member directory to make finding lawyers in specific offices easier. On the main MSBA web page, click on 'Member Directory'.

Contact Kelly Keegan, MSBA student liaison, for more information. keeg0009@umn.edu



Honorable Louis Thayer Completes Faculty Development Workshop At The National Judicial College

RENO, NV – The National Judicial College (NJC) is pleased to announce that the Honorable Louis Thayer, Department of Human Services, Appeals and Regulations Division, St. Paul, Minn., recently completed *Planning and Presenting Effective Presentations: A Faculty Development Workshop* at the NJC in Reno, Nevada. This is the third course Human Services Judge Thayer has completed at the NJC.

After attending *Planning and Presenting Effective Presentations*, participants are able to incorporate different learning styles into their presentations; work effectively with judicial education providers; incorporate presentation software into their presentations; apply adult learning theory when developing their presentations; and use an electronic group responder system.

The NJC was formed in 1963 to fill the nationwide gap in judicial education. Prior to the 1960s, judicial education was nonexistent in our nation. With its state-of-the-art building at a central location on the historic 255-acre University of Nevada, Reno, campus, the NJC is the nation's top judicial training institution. Although state judicial colleges have cropped up around the country, the

NJC remains the only national organization to offer training to judges.

For more than 40 years, the NJC has been offering courses to improve judicial productivity, challenge current perceptions of justice and inspire judges to achieve judicial excellence. With courses held onsite, across the nation and around the world, the NJC offers an average of 95 courses annually with more than 3,000 judges enrolling from all 50 states, U.S. territories and more than 150 countries. Since it opened, the NJC has awarded more than 73,000 professional judicial education certificates.

The National Judicial College has successfully created a dedicated judicial education endowment fund program to enable individual states and courts to utilize the NJC's services without straining their budgets. The College has an appointed 18-member Board of Trustees. It became a Nevada not-for-profit (501)(c)(3) educational corporation on January 1, 1978. Please visit the NJC website at www.judges.org for NJC news, ways to donate, course information and more. Or, call (800) 25-JUDGE for more information.

White II - The Other Shoe Drops

By: Karen Cole, Attorney at Law

In 2002, the United States Supreme Court struck down the “announce clause,” one of the judicial canons governing campaign speech in Minnesota. Following that decision, judicial candidates may “announce” their views on “disputed legal or political issues.” Republican Party of Minnesota v. White, 536 U.S. 765 (2002) (White I). On August 2, 2005, the other shoe dropped. On that day, the Eighth Circuit struck down additional judicial canons based on White I. Republican Party of Minnesota v. White, 416 F.2d 738 (8th Cir. 2005) (White II). This decision will open the door to political races for judicial seats in this state. Specifically, following White II:

- Judicial candidates may identify themselves as members of a political party.

- Judicial candidates may attend and address political gatherings such as political conventions.
- Judicial candidates may ask for the endorsement of political parties and use those endorsements in running for judge.
- Judicial candidates may personally ask for campaign funds.

To make sense of White II, it's necessary to go back to White I. In White I, the U.S. Supreme court held the announce clause violated the first amendment. Political speech is at the core of the first amendment, and is, of course, highly protected. It is, therefore, subject to strict scrutiny. Under the familiar test, restrictions on candidate speech must be narrowly tailored to serve a compelling

state interest. The compelling interest considered in White I was the State's interest in preserving the impartiality and the appearance of impartiality of the judiciary. Writing for the majority, Justice Scalia identified three possible meanings of "impartiality." The first two possible meanings he identified were straw men and were easily knocked down. The first was a lack of bias as to particular parties; that meaning was not implicated by the announce clause, the Court said, because the clause restricted speech as to particular issues, not speech as to particular parties. The Court then considered another definition of impartiality: lack of preconception in favor of or against particular legal views. It concluded that protecting impartiality under this definition is not a compelling state interest. The Court said it is virtually impossible to find judges without preconceptions about the law. In fact, Justice Scalia reasoned, a mind that is tabula rasa on important legal issues may be "evidence of lack of qualification not lack of bias." Id. at 778. The Court then turned to the third definition of "impartial" – open-mindedness. The Court said, "This quality in a judge demands not that he have no preconceptions on legal issues, but that he be willing to consider views that oppose his preconceptions and remain open to persuasion, when the issues arise in a pending case." Id. The Court concluded that even though open-mindedness may be a compelling government interest, the announce clause was not narrowly tailored to serve it. The Court reasoned that statements made in a judicial election are a small share of the public commitments on legal issues made by judges and other judicial candidates. Id. at 779. Justice Scalia pointed to the other kinds of statements made by lawyers and judges throughout their legal careers, in classes, articles, books, speeches and even in prior legal opinions. Id.

In White II, the Eighth Circuit considered the partisan activity clauses and the solicitation clause in light of White I. Again, the Court noted the three possible meanings of impartiality, and again dispatched the first two summarily. The Court again devoted most of its analysis to the third possible meaning of impartiality — open-mindedness. The Court concluded that the political activity restrictions were not narrowly tailored to serve open-mindedness, because they are under-inclusive. This is true, the Court said, because the restrictions apply only for the limited period when a lawyer or judge is a judicial candidate. It is also true, according to the Court, because similar restrictions on attending meetings and seeking endorsements do not apply to bar associations and other groups. Judicial candidates may belong to these groups, may address these groups and may seek endorsement from them without restriction. The Court found that under-inclusiveness gave rise to two problems: 1) it undercut the "purported purpose" of the partisan clauses — to promote impartiality — and 2) it undercut the State's position that the interest

is compelling enough to survive first amendment attack.

The White II Court also held that the solicitation clause was unconstitutional. Because reaching the public in the course of a political campaign costs money, restrictions on fundraising implicates the first amendment. The Court determined that the solicitation clause didn't serve any interest in lack of bias, and didn't serve any interest in open-mindedness. The plaintiffs did not challenge the campaign committee requirements of the judicial canons. Under these requirements, donations must be made to a campaign committee which may not tell the candidate who contributed or declined to do so. When the campaign committee requirements are considered, the solicitation provision has been read to allow candidates to sign solicitation letters and to ask large audiences to make financial contributions.

Some reactions to the decision

One of the most disturbing parts of White II is a section at the beginning of the majority opinion joined in by nine of the 16 judges. That section says, "[It is a] myth that courts are apolitical and do not make policy. The Legal Realists exploded that myth and showed that judges do make policy." Id. at 747 (quoting a law review article). The Court noted that, "Courts must often fill in gaps created by the legislature" and "find themselves as a matter of course in a position to establish policy for the state and her citizens." Id. This rationale ignores the role of the canons in setting ideals and norms for judicial candidates. Yes, we know that some judges are political, but the purpose of the canons is to set a standard. And yes, appellate judges are called on to fill in gaps in the law. But those gaps should be filled by resort to legal principles and precedent, not personal views or political platforms.

The Court's legalistic analysis does not take into account the reality that speech in the context of a political campaign is not like other speech. It is more likely to be perceived as a campaign promise. It is more likely to give rise to political pressure and to create the appearance of partiality. The Court also seriously discounted the unique and powerful role of the political parties, which exist to influence the outcome of elections and which operate on a far larger scale than other interest groups. Moreover, the Court's analysis gives insufficient weight to competing constitutional interests in due process and the separation of powers. Lastly, as the dissent notes, the court's reliance on under-inclusiveness to strike down the canons is troubling. White II at 783. It seems perverse that a restriction that is struck down as under-inclusive is invalid because it does not infringe enough speech. Under-inclusiveness may create an inference of pretext; it should be possible to rebut that inference with sufficient evidence.

Here, the restrictions served compelling state interests in the administration of justice and should have been allowed to stand. They certainly should not have been struck down on summary judgment.

What is the outlook?
Where do we go from here?

Judicial seats are on the ballot again this fall. The Republican Party has indicated through a spokesman that it has made the necessary preparations for the endorsement of judicial candidates. One legislator has indicated he will be running for a district court seat, identifying three specific decisions as the basis for his challenge. There is talk that there will be other politically-based challenges at the district court level throughout the state.

The Supreme Court announced that it was appointing a citizens' commission to study the problems posed by the White cases and to make recommendations. That commission is headed by former Governor Quie and is expected to make recommendations before the next legislative session. The MSBA has been studying the issues as well. It is considering the formation of a "fair judicial campaign conduct committee" to monitor and comment on judicial campaign conduct. Minnesota Women Lawyers is educating the public on the importance of judicial independence, the role of judges and the qualities to look for in electing judges. If you would like more information or would like to be involved, please contact the writer.

Karen R. Cole may be reached at krcole18@msn.com.

Eyes On The Courts

By: Greg Brooker, Assistant U.S. Attorney

Public Employment:

Winkoski v. City of Stephen, No. 05-27777, 2006 WL 783375 (March 29, 2006, 8th Cir.)

In November 1998, the city council of Stephen, Minnesota, began discussing whether to disband its police department and purchase police services from Marshall County. At the time, Gregory Winkowski was the city's only full-time police officer. At its November 1998 meeting, the city council considered the savings that would occur if it contracted for police services with the county. The council's discussion continued at its December 7, 1998, meeting, during which one council member began to criticize Winkowski's job performance with some specificity. In response to the council member's criticism, Winkowski requested a grievance hearing, which was held at the city council's meeting of December 14. Another item on the December 14 meeting agenda was the police department's budget for the upcoming year. Following the discussion regarding the police department's budget, the council closed the meeting to conduct Winkowski's grievance hearing. At the hearing, Winkowski read from prepared remarks, responding to the council member's earlier criticism. Following the hearing, the council re-opened the meeting and eventually voted 3-2 to terminate its police department and contract for police services with the county. Winkowski thus lost his job as a police officer.

Winkowski did not request a post-termination hearing from the city but rather commenced suit, alleging that the city deprived him of his property interest in continued



public employment without sufficient due process. He also claimed that the city stigmatized him by publicly stating that he was a liar, thus depriving him of his liberty interest in his good name by failing to offer him a sufficient opportunity to clear his name. The court denied summary judgment to the city and the case proceeded to trial. The jury returned a verdict for the city on Winkowski's property-interest claim but found in his favor on his liberty-interest claim. The trial court thereafter refused to grant the city's motion for judgment as a matter of law on the liberty interest claim, and the city appealed.

The Eighth Circuit Court of Appeals reversed, holding that Winkowski failed, as a matter of law, to establish a valid liberty interest claim. The court first summarized the case law in this area. It noted that a government employee is entitled to procedural due process when the employee has been deprived of a constitutionally protected liberty interest, and that a public employee's liberty interest is implicated when a public employer levels accusations at the employee that are "so damaging as to make it difficult or impossible for the employee to escape the stigma of those charges." The Eighth Circuit further noted that an employee's procedural due process rights are vindicated by a "name-clearing hearing at a meaningful time" during which the employee can respond to the employer's accusations. The court stated that, in some cases, this name-clearing hearing must occur "pre-termination."

In Winkowski's case, the Eighth Circuit held that even if he were entitled to a pre-termination, name-clearing hearing

based on the council member's specific criticism of him, the grievance hearing held at the city council meeting on December 14, 1998, "constituted a sufficient pre-termination name-clearing hearing." That closed-session, the court held, afforded Winkowski a chance to respond to the council member's charges and was as completed as other hearings previously upheld by the Eighth Circuit.

Winkowski also alleged that the city failed to provide him with a post-termination hearing. The appellate court, however, held that because Winkowski did not ask for a post-termination hearing, he is precluded from suing for damages for the failure of the city to provide one. "Allowing an employee to claim damages for being deprived of a hearing never requested would greatly expand government employers' potential liability and force such employers prophylactically to offer name-clearings when it is not at all clear that the employee is entitled to – or even desires – one." The judgment for Winkowski was reversed, as was the district court's award of attorney fees.

Police Pursuits:

***Thompson v. City of Minneapolis*, No. A04-1050 (January 10, 2006, Minn. Sup. Court)**

At approximately 1:30 p.m., on November 29, 2001, a Minneapolis police officer was driving a police detox van when he observed an SUV driven by Michael Litz go through a red light in downtown Minneapolis. The detox van flashed its emergency lights at Litz, who "got scared and took off." The officer then followed the SUV throughout downtown Minneapolis for some seven blocks. Some eyewitness accounts were that at some point the emergency lights and sirens were not on. While being pursued, Litz drove through yet another red light and struck Kristen Thompson, who was crossing the street. Thompson sued the police officers and the City of Minneapolis, alleging that the failure by the police to continuously operate the vehicle's emergency lights and siren while pursuing Litz was negligent because the police had a duty to warn her of the pursuit. The city argued that the officers involved were entitled to official immunity because they never initiated a pursuit under the city's police pursuit policy and therefore did not have the ministerial duty to continuously operate the emergency lights and siren as required by the policy.

The city moved for summary judgment based on official and vicarious official immunity. The district court granted the motion, and Thompson appealed. The Minnesota Court of Appeals reversed and remanded, holding that the city pursuit policy imposed ministerial duties on the officers in conducting a pursuit and because the officers failed to follow these ministerial acts, the official immunity

was lost.

The Minnesota Supreme Court affirmed in part, reversed in part, and remanded for trial. The high court held that the precise conduct at issue was the officer's conduct in following Litz after the officer initially observed Litz committing a traffic violation. The court noted that the city's pursuit policy created a ministerial duty to continuously operate emergency lights and siren during a vehicular pursuit. On the record before it, however, the court could not determine whether the officer initiated a vehicular pursuit as defined by the policy. The court therefore remanded the case to the district court for trial to determine if the officer initiated such a pursuit and, if so, whether he violated a ministerial duty, thereby subjecting the city to damages.

More Police Pursuits:

***Mumm v. City of Minneapolis*, No. 04-729 (Minn. Supreme Court, January 10, 2006).**

On March 28, 2002, a Minneapolis police officer responded to a 911 call regarding a potentially suicidal woman, GERALYN MORNISON, who was in the parking lot of her therapist's office. Mornison did not want to be transported to a hospital but rather stated that she wanted to go to her church in Eden Prairie. While the therapist and officer were talking, Mornison got into her husband's car and drove out of the parking lot. The officer activated his squad car's emergency lights and siren and began to pursue Mornison. A Minneapolis sergeant told the officer to call the chase off, and a lieutenant instructed the officer by radio to monitor Mornison with his siren off. The officer thereafter turned off his lights and siren but continued to follow Mornison. Soon thereafter, however, two state patrol cars and another Minneapolis squad car joined the chase, all with their lights and sirens on. Mornison entered Interstate 35W and began weaving in and out of traffic and honked at others to induce them to move out of her way. Eventually the Minneapolis police officers were granted permission to "take her out safely." On city streets in Richfield, the Minneapolis officers rammed their squad cars into Mornison's vehicle, resulting in a crash in which Mornison's car struck and killed Duane Munn, a pedestrian on the sidewalk.

Munn's wife sued, and the issue before the Minnesota Supreme Court was whether the court of appeals erred in affirming the denial of summary judgment by holding that the police officers were not entitled to qualified immunity or official immunity and that the city was not entitled to vicarious official immunity. The Minnesota Supreme Court held that the police officers were not entitled to summary judgment on qualified immunity grounds from a Fourth Amendment claim for the use of deadly force against a

fleeing mentally disturbed individual who had committed no serious crime prior to the pursuit by police when the fleeing individual had not attempted to injure the police or public. The ramming of the police cars – a deadly force— could not, the court noted, be justified here, where the risk was a suicide. Given that Mornson’s only crimes were traffic violations and her refusal to stop for police, and given the evidence that Mornson did not overly seek to injure anyone either before or during the chase, it would have been clear to a reasonable officer that the officer did not have probable cause to believe Mornson posed a significant risk of serious injury to the police or others.

The Minnesota Supreme Court also held that the officers were not entitled to common law official immunity for their decision to engage in and continue a pursuit when that decision violated the ministerial duty imposed by a binding police department policy governing police conduct in emergencies. The court held that not all police conduct in emergency situations is discretionary in the face of binding police department policies.

Land Use:

***Koscielski v. City of Minneapolis*, No. 05-1664 (8th Circuit, January 25, 2006).**

The sole remaining gun retailer in the city of Minneapolis sued the city alleging that he could not relocate his gun shop to any proper location within the city due to zoning restrictions. The gun shop owner challenged the zoning ordinances on due process, equal protection, and takings grounds, claiming that the zoning ordinances impermissibly prohibit firearms retailers from locating within the city. The federal district court granted the city’s motion for summary judgment on all counts and dismissed the takings claim without prejudice as not ripe for review.

The Eighth Circuit Court of Appeals affirmed, first holding that the gun shop owner’s equal protection claim did not involve a suspect classification or fundamental right. Accordingly, the gun retailer must establish that he “was treated differently by the government than similarly situated persons and the different treatment was not rationally related to a legitimate government objective.” The appellate court held that the city’s ordinance was proper and the retailer provided no evidence his firearms dealership is similar to any other firearms dealership that received favorable treatment.

The gun retailer also argued that the city ordinance violated the due process clause because it effectively eliminated the ability of firearms dealerships to relocate within city limits. The court, however, noted that “due process claims involving local land use decisions must demonstrate the government action complained of is truly irrational.” The Eighth Circuit noted that in non-

constitutional standard cases, there is no obligation to ensure that reasonable alternatives exist for relocation and held that the city’s ordinance is not irrational. The court also found the gun retailer’s takings claim lacking. Because the gun shop owner failed to follow state law for seeking just compensation, his federal takings claims were not ripe for review.

Excessive Force:

***Szabla v. City of Brooklyn Park*, No. 04-2538 (8th Circuit, December 1, 2005).**

Henry Szabla was homeless on the night of August 16, 2000. He decided to sleep in Becker Park located in the city of Crystal, Minnesota, because it was across the street from Labor Ready, a temporary employment agency that hires workers on a daily basis. Szabla wanted to be the first in line when the agency opened at 5:30 a.m. Szabla settled in to a shelter for portable toilets that was partly empty, which gave him room to lie down on the concrete within the shelter.

At about 1:30 a.m. that night, the Crystal police were called to Becker Park to investigate a car wreck. The police arrived on the scene to find a car rammed into a tree and abandoned. The car’s windshield was broken, and when the registered owner was contacted, he indicated that he sold the car. The Crystal officers called the Brooklyn Park police and requested that they send over their police canine unit to help search for the injured driver, who may have stolen the car or been involved in other criminal activity. The Brooklyn Park officer commanded the dog to “track” which meant to find and apprehend the person. The track command instructs a police dog to bite and hold the person until the handler arrives. The officer and dog ran through the park, and when they approached the shelter, the dog bit Szabla, who was sleeping on the concrete floor. Szabla had twenty-three tooth puncture wounds on his legs and hip. Szabla was handcuffed while still lying down and forced to get up off the concrete by himself. Eventually Szabla was taken by ambulance and treated for the bites.

Szabla brought suit under Section 1983, alleging a violation of his Fourth Amendment rights against unreasonable detention and use of force. He also alleged state-law claims under a dog-bite statute, common-law negligence, negligent training, false arrest, intentional infliction of emotional distress, and assault. The federal district court granted summary judgment to the officers and both cities, and Szabla appealed.

The Eighth Circuit reversed in part and remanded the case for trial against the City of Brooklyn Park. The appellate court noted that a city operating under a policy or custom that deprives people of their constitutional rights can be liable even though the individual officers who carried out

the deprivation are entitled to qualified immunity. Here, the court held that the City of Brooklyn Park allowed the use of dogs without requiring a warning, sufficient evidence of a constitutional violation to withstand summary judgment. The court stated that to grant summary judgment to Brooklyn Park would retreat from

its decision in Kuha v. City of Minnetonka, 365 F.3d 590, 596 (8th Cir. 2004), in which it held a jury could properly find it objectively unreasonable to use a police dog trained in the bite-and-hold method without first giving the suspect a warning and opportunity for peaceful surrender.

MSBA Public Law Section Public Attorney Awards Ceremony

By: Louis Thayer, Assistant Chief Human Services Judge, Minnesota Department of Human Services

Each year the Executive Council of the Public Law Section recognizes outstanding achievements of attorneys and judges engaged in public service and in the public practice of law. Through these awards, we celebrate the commitment to public service and the public practice of law. This year the Public Law Section is proud to present a new award for outstanding work by a public sector attorney in providing pro bono legal services. This year the awards committee worked hard to increase the number and diversity of the people nominated. The process was very successful with a high number of nominations from a wide diversity of public law backgrounds. The selection process was very challenging for the executive committee. The committee is in the process of contacting the recipients.

This year the awards ceremony will take place at the Commodore Hotel in St. Paul*, beginning at noon, Friday, May 19, 2006.

**Commodore Hotel
79 Western Avenue
St. Paul, Minnesota**

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

The awards will be announced at the luncheon and include the following categories (former recipients are listed as well):

1. **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 an appellate, federal court, state

district court, or administrative law judge who not only possesses high ideals, personal character and judicial competence, but also has 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.

Past recipients are:

- 2005 **The Honorable Allan W. Klein**, Office of the Administrative Hearings
- 2004 **The Honorable John R. Tunheim**, Federal District Court of Minnesota
- 2003 **The Honorable Joanne M. Smith**, Judge of the Second Judicial District
- 2002 **The Honorable Renee L. Worke**, Asst. Chief Judge of the Third Judicial District
- 2001 **The Honorable George A. Beck**, Administrative Law Judge
- 2000 **The Honorable J. Earl Cudd**, United States Magistrate Judge
- 1999 **The Honorable Leslie May Metzen**, Chief Judge of the First Judicial District
- 1998 **The Honorable Kenneth F. Fitzpatrick**, Judge of the Second Judicial District
- 1997 **The Honorable George H. Hoey**, Judge of the First Judicial District

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

This award is intended to recognize the work and dedication of an outstanding prosecutor working 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.

Past recipients are:

- 2005 **Steve Redding**, Assistant Hennepin County Attorney
- 2004 **Kathryn A. Santelmann**, Assistant Ramsey County Attorney
- 2003 **Larry M. Collins**, Waseca County Attorney
- 2002 **Al Zdrzil**, Assistant Ramsey County Attorney
- 2001 **Alan J. Harris**, Senior Assistant Hennepin County Attorney
- 1999 **James C. Backstrom**, Dakota County Attorney
- 1998 **Dianne A. Ward**, Chief Deputy Hennepin County Attorney
- 1997 **John R. Speakman**, Assistant Anoka County Attorney
- 1996 **Conrad I. Freeberg**, Morrison County Attorney

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

This award is intended to recognize the work and dedication of an outstanding public defender working at the federal, state, or local level. The award is named in memory of the late William E. McGee 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 the Hennepin County Chief Public Defender.

Past recipients are:

- 2005 **Brad Colbert**, Minnesota Public Defender's Office and Legal Aid to Minnesota Prisoners clinic at William Mitchell College of Law
- 2004 **Paul G. Thompson**, Assistant Public Defender, Ninth Judicial District
- 2003 **Richard G. Carlson**, Assistant Public Defender, Fourth Judicial District
- 2002 **Ronald Greenley**, Assistant Public Defender, Tenth Judicial District
- 2001 **Cynthia T. Daly**, Assistant Public Defender, Fourth Judicial District
- 2000 **Larry Hammerling**, Deputy State Public Defender, MN Public Defender's Office
- 1999 **Manley Zimmerman**, Assistant Public Defender, Fourth Judicial District
- 1998 **Harry Newby, Jr.**, Assistant Public Defender, Sixth Judicial District
- 1997 **Candace Rasmussen**, Chief Public Defender, Third Judicial District
- 1996 **Fred Friedman**, Chief Public Defender, Sixth Judicial District

4. **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 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:

•**Public Law:** This award is given to an attorney practicing civil law in a public law office at the federal state, or local level.

•**Government Agency:** This award is given to an attorney practicing 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 Prosecutor Award of Excellence, the William E. McGee Public Defender Award of Excellence, or the Public Attorney Awards of Excellence must have at least five years of experience as a public sector 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.

Past recipients for Government Agency are:

- 2005 **Gail M. Olson**, General Counsel of the Minnesota State College and University System
- 2004 **Kenneth A. Nickolai**, Chief Administrative Law Judge, Office of Administrative Hearings
- 2003 **Richard A. Wexler**, Assistant Commissioner, Minnesota Department of Health
- 2001 **Thomas W. Anderson**, Metropolitan Airports Commission
- 2000 **Laura D. Kadwell**, Director, Child Support Enforcement Division, Minnesota Department of Human Services
- 1999 **Ann Russell**, Assistant Hennepin County Attorney, Hennepin County Medical Center
- 1998 **Michael B. Johnson**, State Court Administrator's Office
- 1997 **Julie M. Brunner**, St. Louis County Administrator

Past recipients for Public Law Office are:

- 2005 **Joan D. Humes**, Assistant United States Attorney, United States Attorney's Office
- 2004 **Toni Beitz**, Senior Hennepin County Attorney

- 2003 **Mark J. Ponsolle**, Director, Office of the Ramsey County Attorney
- 2002 **David R. Ornstein**, Bloomington City Attorney
- 2001 **Robert A. Stanich**, Assistant Attorney General
- 2000 **John L. Kirwin**, Assistant Attorney General
Desyl Peterson, Minnetonka City Attorney
- 1999 **William P. Donohue**, University of Minnesota
- 1998 **Alan C. Williams**, Assistant Attorney General
- 1997 **Richard S. Slows**, Assistant Solicitor General
- 1996 **Beverly Jones Heydinger**, Deputy Attorney General

5. **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.

Past recipients are:

- 2005 **Philip J. Olfelt**, Retired, Assistant Minnesota Attorney General
- 2004 **Carl Conney**, Assistant Minnesota Attorney General
Wayne G. Johnson, City Attorney to Beaver Bay and Silver Bay
Eldon G. Kaul, Assistant Minnesota Attorney General
Clayton LeFevere, In Memoriam, City Attorney to Lauderdale, Richfield and Robbinsdale
- 2003 **William E. Falvey**, Retired Chief Public Defender, Second Judicial District
William E. McGee, In Memoriam, Chief Public Defender, Fourth Judicial District
John D. Tierney, Retired Principal Attorney, Hennepin County Attorney's Office
- 2002 **The Honorable Gary L. Crippen**, Retired Judge of the MN Court of Appeals
LeRoy Jackson, Retired Senior Attorney, Hennepin County Attorney's Office
The Honorable Kenneth J. Maas, Retired Judge of the Tenth Judicial District
- 2001 **The Honorable Douglas K. Amdahl**, Retired Chief Justice of the MN Supreme Court
- 2000 **The Honorable Doris Ohlsen Huspeni**, Retired Judge of the MN Court of Appeals
Phillip B. Byrne, Retiring Deputy City Attorney, St. Paul City Attorney's Office
- 1999 **The Honorable A.M. "Sandy" Keith**, Former Chief Justice of the MN Supreme Court

- 1998 **The Honorable Esther M. Tomljanovich**, Former Justice of the MN Supreme Court
James N. Bradford, Former Assistant Attorney General
Floyd B. Olson, Bloomington City Attorney, Deputy Minneapolis City Attorney
- 1997 **The Honorable Rosalie E. Wahl**, Justice of the MN Supreme Court
Stanley G. Peskar, General Counsel, League of Minnesota Cities
William R. Kennedy, Hennepin County Chief Public Defender
Julius E. Gernes, Winona County Attorney
- 1996 **Earle T. Anderson, Jr.**, Maple Grove City Attorney
Robert R. W. Johnson, Anoka County Attorney
The Honorable Jon L. Lunde, Administrative Law Judge, Office of Administrative Hearings
Lloyd J. Moosbrugger, Assistant Attorney General

6. **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 new 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 that:

A lawyer should render public interest legal services. A lawyer may discharge this responsibility by providing services at no fee to a person of limited means or to public service or charitable groups or organizations, by service 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 addition, the Minnesota State Bar Association 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.

**From either downtown, take interstate 94 to the Dale Street exit. Go south on Dale Street about ½ mile to Selby. Turn left (going east) onto Selby Avenue. Go east on Selby Avenue ½ a mile to Western Avenue. Turn right to go south on Western Avenue. Take Western Avenue south three blocks to 79 Western Avenue. The ceremony will be on the main floor of the facility.*

Minnesota Department Of Administration

Data Practices Opinions Index

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

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

No. of Opinion	Date of Opinion	Gov't Entity Involved	Topic	Opinion Requestor
05-038	11/29/05	Metropolitan Airport Commission	Data: Runway/hangar expansion and take off weight limitation charges.	Price, for <u>Zero Expansion/talktrans.</u>
05-039	11/30/05	St. Paul: B-PAD contract with	Contract with government entity; Private agreement compliance with law, Official Records Act, M.S. § 15.17; Obligation to make/preserve records.	"X"
05-040	12/14/05	Minneapolis	Test results; Official Records Act M.S. § 15.17 requirement of data creation and retention.	Walther/Police Officer Federation of Minnesota
05-041	12/28/05	Hopkins	Report on drainage. Employer/ insurer investigative data becoming public; attorney work product.	Stobbe/Marofsky
06-001	1/30/06	ISD 281	Data that document how much the District spent on lawsuit and related grievances; government creation of categories of data.	Carlson
06-002	2/10/06	Middle-Snake-Tamarac Rivers Watershed District	Funding issues. Obtaining clarification of requests.	Stengrim
06-003	2/10/06	Red River Watershed Management Board	Funding issues; related entity.	Stengrim
06-004	2/14/06	Red River Watershed Management Board	Water management project data; whether all data was provided.	Stengrim
06-005	2/21/06	Department of Public Safety (MDPS)	Response to Department Request for Proposal. Trade Secret.	MDPS/Newton
06-006	2/24/06	Department of Revenue	City assessing practices investigation.	Musgjerd
06-007	2/27/06	Hampton Township	Chapter 13 jurisdiction vel non.	McKenzie
06-008	3/8/06	ISD 191	Employee personnel file memos; settlement agreement.	Wallner
06-009	3/17/06	Minnesota Historical Society	Chapter 13 jurisdiction vel non.	White
06-010	3/23/06	North St. Paul	Names of complainants.	Kubiatowicz
06-011	3/28/06	Sherburne County	Remote inspection of government data; fee for such access.	Pistilli

News From the Bench

By: Kim Buechel Mesun, Minneapolis School District, Office of District Counsel

Governor Pawlenty appointed **Mary Carroll Leahy** to a Third Judicial District trial court bench vacancy in the City of Winona in Winona County. The vacancy occurred with the retirement of the Honorable Lawrence T. Collins on December 16, 2005. Leahy is a senior staff attorney with American Family Insurance in Rochester, a position she has held since 1998. She was an associate attorney with the law firm of Hoversten, Johnson, Beckmann and Hovey in Austin from 1992 to 1998, an associate attorney with Michael D. Klampe and Associates in Rochester from 1991 to 1992, and a Third Judicial District law clerk from 1990 to 1991. Leahy earned her juris doctorate degree *cum laude* from Hamline University School of Law in 1990, and her bachelor of arts degree from the University of Wisconsin at Madison in 1984. Leahy is a member of the American, Minnesota State, and Olmsted County Bar Associations, the Defense Research Institute, Minnesota Defense Bar Association, and is a Supreme Court-appointed member of the Court's No-Fault Standing Committee. She has also served as a volunteer attorney coach and judge for the Minnesota State Bar Association's Mock Trial Program, a judge for Hamline University's Mock Trial Competition, and had served as a mentor for the Austin High School Mentorship Program. She has also been a Daisy Scout Leader and a volunteer at her children's schools. Leahy, 44, resides in Rochester with her husband and their four children.

Governor Pawlenty appointed **Toddrick S. Barnette**, **Jeannice M. Reding**, and **Robert M. Small** to three Fourth Judicial District trial court bench vacancies in Hennepin County. The vacancies are as a result of the resignation of the Honorable Jeanne J. Graham, the retirement of the Honorable Diana S. Eagon, and the upcoming retirement of the Honorable Steven Z. Lange.

Toddrick Barnette is a senior assistant Hennepin County attorney in Minneapolis, a position he has held since 2004. He was an assistant Fourth Judicial District public defender in Hennepin County from 1993 to 2004, becoming senior attorney in that office in 2001. He was also a law clerk in the Hennepin County public defender's office from 1991 to 1992. Barnette earned his juris doctorate degree from the University of Minnesota Law School in 1992, and his bachelor of arts degree from George Washington University in Washington, DC in 1988. Barnette is a member of the Restorative Justice Peacemaking Project, Minnesota State Bar Association, Hennepin County Bar Association,

Minnesota County Attorneys Association, Minnesota Association of Black Lawyers, Black Prosecutors Association, Mavin Foundation, and has served on the National Association of Criminal Defense Lawyers, Minnesota Association of Criminal Defense Lawyers, Black Law Students Association, Hennepin County Juvenile Advisory Committee, and was a board member of Chrysalis. Barnette, 39, resides in Maple Grove with his wife. He has an adult son and two young children.

Jeannice Reding is a Fourth Judicial District referee in the family court division. She has also been a Fourth Judicial District contract child support magistrate from 1999 to 2004; a contract administrative law judge with the Office of Administrative Hearings from 1997 to 1999; and an attorney with the law firm of Best and Flanagan in Minneapolis from 1990 to 1997. Reding earned her juris doctorate degree *cum laude* from the University of Minnesota Law School in 1990 and her bachelor of arts degree from the University of Wisconsin at Madison in 1984. Reding is a founding member and past treasurer of the Minnesota American Indian Bar Association; volunteers at her children's schools; and is a member of Peace Lutheran Church in Plymouth where she is the nursery coordinator, a Sunday school teacher, and actively involved in hosting homeless families at the church. She has also served on the Church Council and the Facilities Planning Committee. In addition, she has been a board member of Family and Children's Services in Minneapolis, and a Guardian ad Litem for children of tribal members in the tribal court of the Shakopee Mdewakanton Sioux Community. Reding, 43, resides in Plymouth with her husband and their three children.

Robert Small is the first assistant United States attorney in Minneapolis, a position he has held since 1998, except during 2001, when he was the acting United States attorney for the district of Minnesota. He has been an attorney in the U.S. Attorney's office since 1981. He was the administrative assistant to the chief of staff with the United States Veterans Administration Medical Center in Minneapolis from 1980 to 1981, an attorney in the Veterans Administration Office of District Counsel at Fort Snelling from 1975 to 1980, and a staff sergeant with the United States Marine Corps from 1964 to 1968, where he served a tour in Viet Nam. Small earned his juris doctorate degree from William Mitchell College of Law in St. Paul in 1975, and his bachelor of arts degree from the University of St.

Thomas (then called the College of St. Thomas) in St. Paul in 1971. Small has been a baseball coach for the Richfield American Legion, Richfield High School, Richfield Babe Ruth, and Richfield Little League, and has served on the Babe Ruth and Little League Board of Directors. He has also been an Assumption Catholic School Basketball coach and Girls Softball assistant coach, a Richfield Soccer Association coach, Richfield Youth Football Association coach, and was a coach and member of the Board of Directors with the Richfield Basketball Association. He received the Richfield Chamber of Commerce Award for contributions to the Richfield sports community in 1998, and the Minnesota Athletic Directors Association 2004 Distinguished Service Award for Commitment to Youth of Richfield High School. Small also served on the Richfield High School Committee on Gender Equity, and the Assumption Catholic School Finance Committee. Small, 61, lives in Richfield with his wife. They have one adult son.

Governor Pawlenty appointed **Jeffrey S. Remick** and **Tamara L. Yon** to two trial court bench vacancies in the Ninth Judicial District. The first vacancy occurred with the retirement of the Honorable Dennis J. Murphy on November 7, 2005. The second vacancy occurred with the retirement of the Honorable John M. Roue on January

31, 2006. The Supreme Court certified the chambers of both of these positions for the city of Crookston in Polk County.

Jeffrey Remick was an attorney and partner with the Odland, Fitzgerald, Reynolds and Remick law firm in Crookston. He was a partner with the law firm since 1995, and an associate attorney with the firm's predecessor, Odland, Fitzgerald and Reynolds, from 1990 to 1994. He was also an associate attorney with the Reed and Pond law firm in Mound from 1989 to 1990. Remick earned his juris doctorate degree from the University of Minnesota Law School in 1989, and his bachelor of arts degree *magna cum laude* from Concordia College in Moorhead in 1985.

Tamara Yon was an attorney and partner with the Johansson, Rust, Yon, Stock and Rasmussen law firm in Crookston, a position she held since 1999. She was an associate attorney with the firm from 1994 to 1999. Yon has also been a Chapter Seven trustee – based in Crookston – with the United States Department of Justice since 2003, and an adjunct professor with the University of Minnesota in Crookston since 1999. Yon earned her juris doctorate from the University of North Dakota Law School in Grand Forks in 1994, and her bachelor of arts degree from Concordia College in Moorhead in 1991.

Public Attorneys on the Move

By: Kim Buechel Mesun, Minneapolis School District, Office of District Counsel

Anna Krause Crabb has joined the Minnetonka City Attorney's Office as Assistant City Attorney. She will be practicing in the area of criminal prosecution. She was previously in private practice for five years. She replaces **Laurel M. Hersey**, who retired after 25 years of service with the city.

Kimberly Weinacht has joined the Minneapolis City Attorney's Office as an Assistant City Attorney. She is a 1999 *cum laude* graduate of the University of Minnesota Law School. Weinacht is a former law clerk for Fourth District Court Judge Bruce Peterson and has practiced with the Walling and Berg law firm.

Tracey Nelson has joined the Minneapolis City Attorney's Office as an Assistant City Attorney. She is a 2001 *cum laude* graduate of the University of Minnesota Law School. Nelson clerked for the Minnesota Court of Appeals and most recently was in private practice.

Melissa Stockman-Maher has joined the Minneapolis City Attorney's Office as an Assistant City Attorney. She is a 2002 graduate of the Hamline Law School.

Flavio Abreu has joined the Minneapolis City Attorney's Office as an Assistant City Attorney. He is a 2005 graduate of the William Mitchell College of Law.

Steven Liss will be leaving the Minnesota Attorney General's Office to join the Minneapolis School District as Director of Inter-Governmental Affairs. Liss has been with the Attorney General's Office since 1990 working in the Education Division. He is a 1980 graduate of Georgetown University Law School.

Announcements

The General Counsel's Office of the Minneapolis School District is proud to announce that Minneapolis South High

School won the 20th Annual State High School Mock Trial competition for the fourth time in the past five years. Team members are Simi Kang, Camille Mefleh, Samantha Sencer-Mura, Jen Walker, Dustin McEvoy and Arthur Noble. Phylis Hayes is the team's teacher-coach; Randy Thompson and Pat Yoedicke are attorney-coaches. The Minneapolis South team will represent Minnesota at the

National High School Mock Trial Championship in Oklahoma City in May.

If you have any attorney moves or announcements you would like to include in the PLS Newsletter send it to Kim Buechel Mesun at kim.mesun@mpls.k12.mn.us. The next newsletter is due out in early September 2006.

Upcoming CLE Seminars

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

Date	Seminar	Time	Place	Sponsor and Contact
5/12/06	Prevention, Detection & Investigation of Workplace Fraud	8:30 a.m. to 11:45 a.m.	HCBA Office	HCBA Larry Schultz, 612-752-6622
5/19/06	Affordable Housing (before PLS Annual Luncheon & Awards)	9:00 a.m. to Noon	The Commodore Hotel, St. Paul	MSBA Public Law Section & Faegre & Benson LLP/ Carol Lansing, 612-766-7005
5/24/06	Federal Bar Ass'n Luncheon CLE, Chief Judge James Loken	Noon to 1:00 p.m.	Palomino Club Minneapolis	Federal Bar Ass'n, Allison Katz, 612-335-3869
5/25/06	Prosecutorial Misconduct	Noon to 1:00 p.m.	Ramsey County Courthouse Room 40	Second Judicial District, Bob Isakson, 651-266-8271
6/13/06	32 nd Federal Practice Seminar & Mason Memorial Lunch	All Day	Hyatt Regency Minneapolis	Federal Bar Ass'n, Patrick Martin, 612-333-9524
6/16/06	Technology and the Law	All Day	St. Thomas	Attorney General's Office, Marty Casserly, 651-297-5919
6/20/06	2006 Election Law & Campaign Financing	8:00 a.m. to 10:00 a.m.	University Club St. Paul	MSBA Administrative Law Section, David Aafedt 612-604-6447
6/22/06	Using Interpreters- Katrin Johnson of MN Supreme Court staff	10:30 a.m. to Noon	MSBA Convention at Maddens	MSBA Public Law Section, Honorable Diane Alshouse, 651-266-8336
7/27/06	Interpreting and the Law	Noon to 1:00 p.m.	Ramsey County Courthouse, Room 40	Second Judicial District, Bob Isakson, 651-266-8271

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

Memorium: Philip Olfelt (1929-2006)

By: James Schloessler, Jacobson, Buffalo, Schloessler & Magnuson

The public sector lost one of its most respected retired advocates in February. Phil Olfelt, recipient of the 2005 Douglas Amdahl Public Attorney Career Achievement Award, died of a stroke on February 9, 2006.

Phil spent his entire adult professional life working in the public sector. He began his legal career working on special projects as an employee of the State Legislature. He then moved to the Minnesota Office of the Revisor of Statutes. In 1967, Phil was hired by Douglas Head to be a lawyer in the State Attorney General's Office. Phil stayed in that Office and worked closely with subsequent Attorneys General Warren Spannaus and Hubert Humphrey, III. His career with the Attorney General's Office was spent entirely in the field of natural resources and he represented the Minnesota DNR and other natural resource-related agencies. Phil officially retired in 1991, but thereafter came back to work part-time for both the Attorney General's Office and the Revisor's Office.

Known widely for his integrity and deep concern for the public interest, Phil was heavily involved with legislation dealing with Voyageurs National Park, the Boundary Waters Canoe Wilderness Area, and Tettegouche State Park. He was part of the legal team that handled the State's efforts to force Reserve Mining Company to cease discharging taconite tailings into Lake Superior, and he participated in the State's efforts to force the Company to create an acceptable on-land disposal site. Phil was passionate about the creation of public accesses on many state lakes that were for all practical purposes closed to the public. He also was one of the State's leading experts on mineral law. He consistently taught and counseled young lawyers in the practice of public law.

Phil was loved and respected by his many colleagues, clients, and friends. His passion, wisdom, and good will are going to be missed by all.