

Public Law News

A Publication of the Minnesota State Bar Association Public Law Section

Volume XVI, Issue 2, Winter 2007

OUR SIXTEENTH YEAR!

Public Law Section

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Nancy McLean, 612/348-6755;
Cliff Greene, 612/373-0830

Visit the PLS web site:

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

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MSBA



www.mnbar.org

The MSBA Public Law Section is seeking nominations for the

2007 Public Attorney Awards

Nominations are due Thursday, March 1, 2007

You may send them electronically to kbasting@mnbar.org or by mail to the MSBA Offices: 600 Nicolett Mall, #380, Mpls, MN 55402

The Minnesota State Bar Association-Public Law Section (PLS) invites nominations for awards honoring attorneys and judges engaged in public service and in the public practice of law. Through these awards the PLS celebrates our commitment to public service and the public practice of law. These awards are also used to recognize attorneys and judges who have distinguished themselves by their significant and outstanding contributions to public service and the public practice of law. Nominations are due MARCH 1, 2007. Please contact either of the co-chairs of the Awards Committee or any executive council member of the PLS for further information about the awards. A nominee does not need to be a member of the Minnesota State Bar Association to be eligible for an award. The awards include:

Rosalie E. Wahl Judicial Award of Excellence

This award is named for former Minnesota Supreme Court Justice Rosalie E. 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

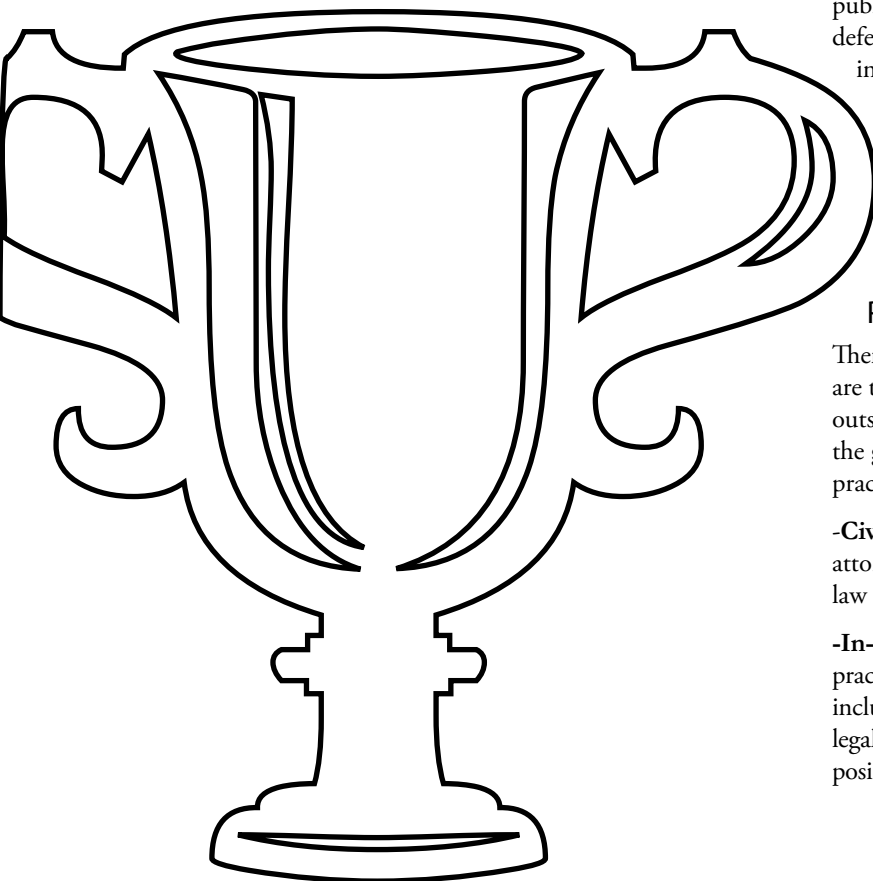
The William E. McGee Public Defender Award of Excellence is intended to recognize the work and dedication of an outstanding public attorney working in the State of Minnesota as a public defender at the federal, state, or local level. The award is named in memory of the late William E. McGee, former public 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 5 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.

A nomination should consist of the following:

- 1) Nominee's full name, employer, address and telephone number;
- 2) Nominator's name, employer, address and telephone number;
- 3) Attach a short narrative statement (not to exceed two pages) explaining how you know the nominee and describing the nominee's qualifications for the award; and
- 4) Nominee's resume, if available.

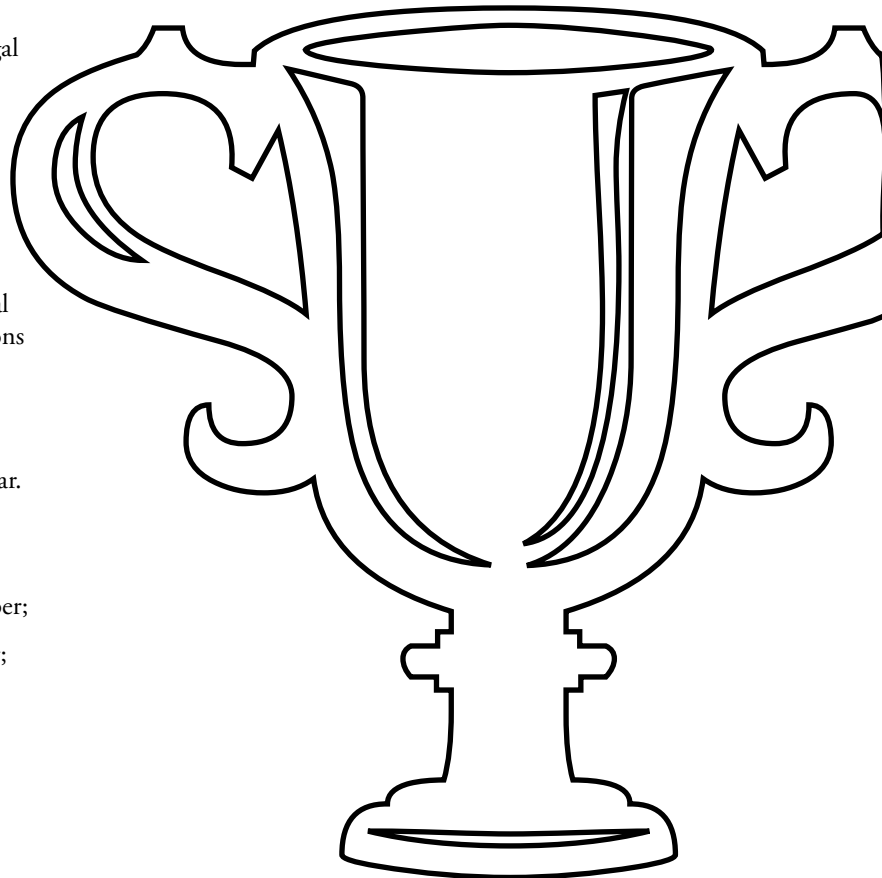
Nominations must be submitted no later than March 1, 2007. You can send an email, fax or mail to (email with attachments in MSWord is preferred):

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Meet Your Public Law Executive Council Members & Committee Chairs

At the Public Law Section Executive Council Meeting in January at the U.S. Attorney's Office in Minneapolis, council members and committee chairs posed for their photograph near the flag bearing the great seal of Minnesota.



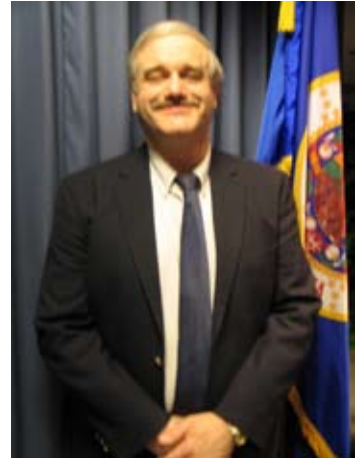
Ramsey County District Court
Judge Diane Alshouse



Kim Buechel Mesun,
General Counsel's Office, Minneapolis Schools



Blair Buccicone,
Ramsey County Assistant Public Defender



Barry Greller,
Assistant Minnesota Attorney General



Jay Heffern,
Minneapolis City Attorney



Mary Miller, *Compensation Attorney*
Principal, MN Dept. of Labor & Industry



Hennepin County District Court
Judge Daniel Mabley



Todd Shuffelman,
Assistant Sherburne County Attorney

Missing:
Louis Thayer
Judge Tom Kalitowski
Jim Alexander
John Jung-Hoon Choi
Mary Ellison
D. Christopher Smith



Margaret Westin, *General Counsel's*
Office, Minneapolis Schools



Dan Alexander, *St. Thomas Univ. Law*
School (Student Representative)

Missing:
Eileen Wells
Nancy McLean

Photographer:
Greg Brooker

Notes From the MSBA Assembly

by Jay Heffern, Minneapolis City Attorney

The Minnesota State Bar Association 2006 - 2007 Assembly met on September 15, 2006 and December 15, 2006.

The September 15th meeting included two matters of significance to the Public Law Section. First, the Assembly approved the proposed changes to the Public Law Section's bylaws. Two of these changes merit a brief description. Section 3.4 of the Bylaws was amended to make it clear that judges, hearing officers and administrative law judges are "public lawyers" for purposes of serving on the PLS Executive Council. Section 3.8 was amended to allow for "ex officio" members. This change was proposed so that the Executive Council could include additional members who did not fit the definition of "public lawyer" but who would offer the Executive Council valuable ideas and insight. The other changes to the bylaws were not substantive and were made for clarity or to conform to the model language recommended by the MSBA. Second, the Legal Assistance to the Disadvantage Committee presented a proposal regarding granting up to six CLE credits during each three-year reporting period for those attorneys who provide qualifying pro bono legal services through specified organizations. After considerable debate, the Assembly adopted the recommendation that the MSBA petition the Minnesota Supreme Court to revise Rule 6 of the Minnesota State Board of Continuing Legal Education to include limited continuing legal education credit for pro bono legal services.

The December 15th meeting focused on the upcoming legislative session. The assembly discussed a variety of legislative proposals and adopted the MSBA's legislative priorities for Minnesota's 2007 legislative session. In addition, the Assembly amended its bylaws to grant members earning less than \$35,000 a discount of one-fifth of the regular dues rate. Prior to this amendment the earnings ceiling for this discount was \$25,000.

Eyes On The Courts

By Greg Brooker, Assistant U.S. Attorney

The Government Data Practice Act:

EOP-Nicollet Mall LLC v. Hennepin County

723 N.W.2d 270 (Minn. 2006)

The owner of the U.S. Bancorp Center in downtown Minneapolis contested the 2000 and 2001 assessed values of its property. During discovery, the owner sought to compel the production of any information in Hennepin County's files relating to at least twenty different third-party properties located in downtown Minneapolis. The county objected to the discovery request on the basis that

the third-party information was protected from disclosure by the Minnesota Government Data Practices Act (MGDPA or Act), Minn. Stat. ch. 13 (2004). Many of the third-party owners petitioned the Minnesota Tax Court to intervene in the case to protect the confidentiality of their information, and the tax court granted the intervention motions. The intervenors told the tax court that the requested information was "extremely sensitive" and "the core information of their business." They also argued that they provided this information to Hennepin County pursuant to a confidentiality agreement that precluded disclosure to competitors. The tax court denied the motion to compel disclosure of the data, applying the balancing test set forth in section 13.03 of the MGDPA and holding that the information was private or nonpublic under section 13.51 of the Act. The tax court, however, did order that any of the data relied on by the county's expert in her appraisal or at trial be disclosed to the owner's counsel and appraiser under a strict protective order. Following a trial on the merits, the owner appealed the case to the Minnesota Supreme Court.

The owner argued to the state supreme court that the decision in *Montgomery Ward v. Hennepin County*, 450 N.W.2d 299 (Minn. 1990) stands for the proposition that a taxpayer's constitutional right to due process requires access to relevant valuation data in the government assessor's files under an appropriate confidentiality order and that the tax court decision denying access to the data was an abuse of discretion and a denial of its due-process rights. The Minnesota Supreme Court disagreed, noting that *Ward* should not be read to mean that relevant nonpublic data must always be produced as long as there is a protective order. Such a reading, the court held, eviscerates the weighing of interests that the MGDPA clearly requires. The court stated:

If all that was necessary under the MGDPA for relevant nonpublic data to be disclosed in litigation was a protective order, the legislature would not have provided the balancing test; it would simply have provided for the disclosure of the data under a protective order. The legislature instead provided that the trial court must first conduct a balancing test, and if the results of the balancing test dictate, the trial court "may" turn to a protective order. It is not for this court to rewrite the statute.

The supreme court noted that it was not arbitrary or capricious for the tax court to conclude, in applying the MGDPA balancing test, that the county's tax assessment capabilities would be compromised by the disclosure or that taxpayers would be more likely to litigate their tax assessments in order to discover sensitive information about competitors. The supreme court thus held that the benefit to the owner of obtaining the information did not outweigh the harms, and that the tax court did not abuse its discretion in denying the production of the data in this case.

Land Use Law:

Minnesota Towers v. City of Duluth

No. 06-1118

(8th Cir., January 10, 2007)

On September 29, 2004, Minnesota Towers applied for a special use permit from the City of Duluth for the construction of a telecommunications tower. On November 9, 2004, the Duluth

Planning Commission voted to approve the application and forwarded a proposed approval resolution to the Duluth City Council. On November 22, 2004 – fifty-five days after Minnesota Towers filed the application for the permit – the city council voted 8-0 to reject the approval resolution from its planning commission. Six of the eight council members stated on the record their reasons for denying the special use permit. On the next day, November 23, 2004, the Duluth City Attorney sent a letter notifying Minnesota Towers of the Council's action and setting forth numerous reasons why the application was denied. On December 6, 2004 – sixty-eight days after the application had been filed – the city council passed a resolution adopting the city attorney's statement of reasons. Minnesota Towers sued in U.S. District Court alleging federal claims that ultimately were dismissed but also alleging that the city failed to comply with Minn. Stat. sec. 15.99 by failing to adopt a statement of reasons by the city council prior to the 60-day deadline. The U.S. District Court agreed and ruled that Minnesota Towers' application was thus automatically approved.

The City of Duluth appealed, and the Eighth Circuit reversed. The federal appellate court first noted that the Duluth City Council took action on the Minnesota Towers permit by voting down a proposed resolution approving the permit, rather than by voting in favor of a resolution denying the request. The court of appeals agreed with the City and held that the Duluth City Council's actions were therefore governed by subdivision 2(b) of section 15.99, which does not expressly require a written statement of reasons within the sixty-day period, only that council members "state on the record the reasons why they opposed the request." The court stated that the Duluth City Council members did just that prior to the expiration of the 60-day deadline. The court noted that under subdivision 2(b), an action voting down an approval resolution is a denial of the request for purposes of the statute, and the requirement in subdivision 2(a) that a city provide a written statement of reasons at the time that it denies the request is satisfied if those voting against the resolution of approval state on the record the reasons why they oppose the request. Although it was a "close question," the federal appeals court held that the Minnesota Supreme Court would so hold under state law.

The Commerce Clause and Garbage:

Paul's Industrial Garage and Gibson Sanitation v. City of Red Wing
No. 06-4770
(D. Minn., Dec. 22, 2006)

The City of Red Wing owns an incinerator that combusts solid waste. The City incinerator charges a tipping fee for the disposal of waste that is higher than other disposal facilities in the surrounding area of Minnesota and Wisconsin. Because it charged a higher tipping fee, local haulers were using other facilities and the City incinerator was not processing enough waste to cover its operating expenses. In 2004, the City of Red Wing proposed enacting an ordinance implementing an "organized collection" of commercial waste under which the City would collect all the commercial waste generated within its borders. Privately owned commercial haulers existing in the City objected to the City taking over their

business of hauling commercial waste. As an alternative to the ordinance, the City proposed that every hauler in the area enter into agreements with the City mandating that the haulers bring all commercial waste collected in the City to the City incinerator and pay the City the appropriate tipping fee for the waste. Under the proposed agreements, the City had no obligation to pay anything to the haulers and the only consideration flowing to the haulers was their right to collect garbage in the City for a period of ten years. The City informed the haulers that if all of them entered into such agreements with the City, it would not implement the organized-collection ordinance. If all haulers did not enter into agreements with the City, the City would go forward with its plan to implement the organized collection, but it would exempt any individual hauler that had entered into an agreement with the City. Thus, if a hauler refused to enter into an agreement with the City, that hauler would be precluded from collecting commercial waste within the City of Red Wing.

Two haulers that wanted to continue transporting commercial waste to less-expensive disposal facilities in Wisconsin refused to enter into an agreement with the City. The City enacted the organized-collection ordinance as planned, thus precluding the two haulers from handling commercial waste within the City. The two haulers sued the City in federal district court and moved for a preliminary injunction enjoining the application of the ordinance to them. The haulers argued that the City's action in passing the organized-collection ordinance and "coercing" them into signing the solid waste agreement violated the Commerce Clause.

The federal district court (the Honorable Richard H. Kyle) granted the haulers' motion and issued the preliminary injunction against the City. The court held that the City violated the Commerce Clause because its actions amounted to the exercise of local regulatory power for the purpose of isolating the local waste collection market from the national market. The court found that the City could not avail itself of the "market-participant exception" to Commerce Clause restraints, because it did not act as a proprietor in the garbage-collection market under the solid waste agreements under which the City paid nothing to the haulers and the haulers had to agree to waive any constitutional challenge to the contract. Under such terms, the court held, the City acted as a regulator, not a market participant, and thus was subject to Commerce Clause restrictions. The court concluded that the City's actions overtly discriminated against interstate commerce. It stated: "The inescapable conclusion here is that the Ordinance and the Solid Waste Delivery Agreements have a discriminatory purpose: they favor the City's economic interest by forcing all commercial waste to be disposed of at the [City] Incinerator while, at the same time, they burden out-of-state interests by preventing the transportation of commercial waste across state lines for disposal." The preliminary injunction issued by the court enjoined the City from prohibiting the plaintiffs from collection and hauling commercial waste within the City of Red Wing.

School Law:

A.C. v. Moorehead Area

Public Schools, et al.

No. 06-3099

(D. Minn., Nov. 7, 2006)

The parents of an autistic son sued the Moorehead school district after their son was placed in a windowless, small room during large parts of the school day. In 2005, the parents and the school developed a behavior intervention plan and an individualized education program. Under these plans, which were revised periodically, the autistic student would spend at least some time in a distraction-free room working with a paraprofessional. If the student became disruptive, the plans stated that he would be taken to a time-out room until he became physically quiet for five consecutive minutes. The parents alleged in their complaint that their son was placed for long periods in a small, windowless room to which various paraprofessionals would come and provide instruction. At least one paraprofessional complained that the student's behavior seemed to escalate when he was confined to the small room. Despite these complaints, the student remained in the room for most of the school day. The parents were initially unaware that their son was being confined to the room, although they observed that their son stopped wanting to attend school. In February 2006, the parents came to the school and discovered that their son was spending many hours in the room, which had a sign on it marked "storage." Shortly thereafter the parents removed their son from the school.

The parents initially requested an administrative hearing through the Minnesota Department of Education. The school moved to dismiss, contending that because their son was no longer enrolled at the school, the ALJ lacked jurisdiction over the complaint. The motion to dismiss was granted, and the parents commenced a suit in federal court pursuant to the Individual with Disabilities Education Act ("IDEA"). The school moved the court to dismiss for lack of subject matter jurisdiction, arguing that the parents failed to exhaust their administrative remedies by appealing the ALJ's decision.

The court noted that a federal court lacks subject matter jurisdiction to hear an IDEA dispute unless a plaintiff exhausts all available state administrative review procedures prior to filing suit. The parents argued that their claims in federal court against the school district related to injuries their son sustained as a direct result of being confined to the small room and had nothing to do with his individualized education plan under IDEA. Because his injuries from the confinements were not compensable under IDEA, the parents argued that no exhaustion of administrative remedies was necessary. The court agreed, holding that it lacked jurisdiction over only IDEA and IDEA-related claims, and because the parents' federal claims related specifically to only their son's confinement against his will, the school's motion to dismiss was denied.

Land Use:

Rixmann v. City of Prior Lake

No. 06-252

(Minn. App., Nov. 14, 2006)

A Minnesota statute provides that when any road or portion of any road has been used and kept in repair and worked for at least six years continuously as a public highway by a road authority, that road shall be deemed dedicated to the public, whether it has ever been established as a public highway or not. See Minn. Stat. sec. 160.05. Mary Rixmann owned a lot in the Breezy Point Addition in the City of Prior Lake. The original plat included a private road that at some point became a public city street known as Breezy Point Road. At the end of Breezy Point Road was a circular driveway or turnaround that was located on the property of a neighbor of Rixmann's. This driveway or turnaround was not officially dedicated as part of the public street. Rixmann brought a declaratory judgment action in state court, arguing that, through public use and maintenance for more than six years, the turnaround became a public road under Minn. Stat. sec. 160.05. The City of Prior Lake denied Rixmann's claim and moved for summary judgment, which the state district court granted. Rixmann then appealed to the Minnesota Court of Appeals.

The appellate court reversed. The court first rejected the City's argument that Rixmann had to establish the maintenance requirement of the statute by clear and convincing evidence. The City relied on *Foster v. Bergstrom*, 515 N.W.2d 581 (Minn. App. 1994), in which the court stated that statutory dedication requires "clear and convincing evidence" of public use and maintenance for six years. This statement in *Foster*; the appellate court now held, was in error and dicta, in that the standard of proof was not an issue in that case. The court noted that the statute is silent on the standard of proof and that the case law prior to *Foster* did not support the standard of proof articulated in *Foster*. The court therefore concluded that the standard of proof required to establish dedication of a road under Minn. Stat. sec. 160.05 is preponderance of evidence and not, as the court erroneously stated in *Foster*, clear and convincing evidence.

With the standard of proof under Minn. Stat. sec. 160.05 clarified, the appellate court held that the district court improperly weighed the evidence in light of what it perceived Rixmann must prove to succeed at trial, rather than applying a summary judgment standard. It noted that the cases on statutory dedication held that Rixmann's only burden was to show that the City performed the necessary work on the turnabout over a six year period. The court stated that Rixmann presented evidence that the work performed by the city in the turnaround, including snow plowing, not only equaled, but exceeded work performed on the rest of Breezy Point Road since its creation. The case was remanded for trial on the merits.

Public Employment Law:

Hervey v. Koochiching County

No. 04-4537

(D. Minn., Oct. 20, 2006)

For over 25 years, Florence Hervey was the deputy jail dispatcher for Koochiching County. In 2001, she was promoted to the newly created position of “jail administrator.” Initially Hervey reported directly to the county sheriff. The undersheriff at the time, Robert Byman, was a hands-off administrator who did not object to Hervey exercising almost complete authority over the jail. But Byman retired in 2003, and the county sheriff appointed John Mastin to replace Byman. Unlike Byman, Mastin was a hands-on administrator and wanted all of the employees, including Hervey, to report directly to him. The county sheriff agreed. Hervey was appalled that she now had to report to Mastin, whom she considered her peer and not her supervisor. From that moment on, a feud began between Hervey and Mastin – a feud that would last over two years. Eventually, Hervey commenced suit against the county, the county sheriff, and Mastin in federal court alleging sex discrimination, a hostile work environment, and retaliation. After discovery, the defendants moved for summary judgment.

The court (the Honorable Patrick J. Schiltz) granted the defendants’ motion and dismissed the case with prejudice. The court first considered Hervey’s sex discrimination claims and rejected each one. Hervey complained that she was asked to take on additional duties and that this constituted sex discrimination, but the court noted that in 2003, due to cuts in state aid, all county jail employees, both male and female, were asked to assume additional duties. Hervey claimed that the county sheriff’s request to her that she cut her department’s budget during the budget crisis was sex discrimination too, a claim the court flatly rejected. Next the court rejected Hervey’s hostile-work environment allegations. Hervey alleged that both the county sheriff and Mastin spoke to her in an angry and demeaning way. She alleged that they both constantly lost their tempers with her. The court noted that the evidence indicated that Mastin “had a strong personality and an aggressive presence,” but that he put both male and female employees “on their guard.”

Regulation of Sexually Oriented Businesses:

Morrison County v. Wheeler

No. C8-03-1358

(Minn. App., Oct. 10, 2006)

Wheeler opened a business called “Lookin Fine Smut & Porno” in Morrison County between October 18 and 21, 2003. At the time the business opened, Morrison County had a zoning ordinance, enacted in 1995, that restricted adult-use businesses from operating within 1,320 feet of residential districts, daycare centers, schools, parks, playgrounds, or religious institutions, or within 200 feet of a building licensed to sell alcoholic beverages. In 2001, the county enacted a moratorium prohibiting any new adult use businesses in the county for one year. In November 2002, the county extended the moratorium for an additional year to December 12, 2003. On October 21, 2003, after Wheeler’s porn store had opened, the county amended its existing

zoning ordinance to further restrict adult uses. The county also enacted a new ordinance that licensed sexually oriented businesses. Prior to enacting these ordinances, the county considered a series of studies that allegedly evidenced an increase in certain crimes, a decrease in property values, and an increase in transmission of sexually transmitted diseases in geographical areas surrounding adult businesses. The new ordinances did not become effective until November 3, 2003.

On October 30, 2003, Morrison County filed suit in state court seeking an injunction to enjoin Wheeler’s business from operating, alleging that the business violated the set-back in the new 2003 ordinance, the moratorium on opening or expanding adult businesses within the county, and county health regulations since the business lacked an operating septic system. Wheeler filed a counterclaim under Section 1983 alleging deprivation of his federal constitutional rights. The state district court issued an injunction on the septic issue, but deferred action on the adult use issues. After the parties moved for summary judgment on the adult use issues, the district court held that the county’s moratorium was an unconstitutional speech regulation because it failed to provide any alternative avenue for expression, but the court found that Wheeler’s business did not have grandfather rights under the 1995 ordinance because it was not a lawful nonconforming use at the time the 2003 ordinance went into effect. The district court thereafter held an evidentiary hearing for the purpose of determining whether the county provided adequate evidence to support its enactment of the 2003 ordinance and whether the new ordinance provided sufficient alternative locations for adult businesses in Morrison County. After the hearing the court granted summary judgment to the county, and Wheeler appealed.

The Minnesota Court of Appeals affirmed, holding that the district court 1) properly determined that Wheeler’s business did not acquire status of a legal nonconforming use under the ordinance, 2) properly enjoined the operation of the adult business, and 3) properly upheld the constitutionality of the ordinance. The appellate court noted that Wheeler’s business was never a lawful use of the property because it was not in compliance with all land-use regulations including regulations governing septic systems. Wheeler attempted to open the doors of his business just days before the enactment of a regulation change at a location that had not previously been in conformance with septic regulations. The court of appeals also upheld the constitutionality of the 2003 ordinance. The court noted that the 2003 ordinance was designed to serve a substantial governmental interest (the regulation of adverse secondary effects of sexually oriented businesses) and that Morrison County did not need to establish that its 1995 ordinance had been ineffective in reducing these secondary effects before enacting the ordinance in 2003. Moreover, the court noted that, in enacting an adult-use ordinance, Morrison County was not required to consider only studies that more closely correspond with the demographics of Morrison County. Because the new ordinance provided some 236 sites for adult uses within Morrison County, the new restrictions were constitutional. The Minnesota Court of Appeals noted: “The law requires at least some change of an alternative source; it does not require that it be immediately available and cheap.”

Data Practices Update

By Todd Shuffelman, Assistant Sherburne County Attorney

The Public Law Section's Data Practices Sub-Committee had a busy quarter. The group meets monthly to discuss recent cases and general data practice and privacy issues. The group represents Counties, Minneapolis School District, Metropolitan Airports Commission, Minnesota Department of Health, Minnesota Department of Revenue, Minnesota Department of Agriculture, State Auditors Office and the Department of Administration Information Policy Analysis Division (IPAD).

Among other duties, IPAD assists the Commissioner of Administration in performing duties under Chapters 13 and 13D, including researching and drafting Commissioner's opinions. IPAD has issued the following opinions this quarter regarding Data Practices and Open Meeting Law:

[06-028](#): October 2, 2006; City of Marshall. This held that the finalists' names for a public job are public data, pursuant to Minn. Stat. 13.43 (3). The public body must release the names, even if the names were previously released because the finalist group had been narrowed from the previously supplied names.

[06-029](#): October 19, 2006; Hennepin County Attorney's Office. This re-affirmed the need to respond to data practice requests in a reasonable time, pursuant to Minn. Stat. 13.03 (2)(a).

[06-030](#): November 8, 2006; Minnesota Office of Enterprise Technology. This dealt with data breaches and a state agency's notification requirement in Minn. Stat. 13.055 (2). It held that in determining whether a breach of security has occurred pursuant to Minn. Stat. 13.055, a government entity may consider the fact that the data in question was encrypted.

[06-031](#): November 14, 2006; Stillwater City Council. This held that the interviews to fill a vacant City Council position could not be done in a closed City Council meeting. There was no statutory basis for such a closed meeting in Minn. Stat. Ch. 13D.

[06-032](#): November 30, 2006; City of Mankato. This held that tax data provided to the City, in order to qualify for an exemption to

a City smoking ban, was public data. The data was provided to the City, and not the Department of Revenue, so the Department of Revenue privacy protections in Minn. Stat. Ch. 256B do not apply to this data.

[06-033](#): December 12, 2006; City of Rock Creek. This re-affirmed a public body's obligation to timely respond to a data request and to appoint an individual city employee as the responsible authority for data practice requests.

These are brief summaries of these opinions. The entire opinions can be accessed at state.mn.us/opinions/index.html

The Minnesota Supreme Court dealt with a request for private or non-public data in [EOP Nicollet Mall v. County of Hennepin](#), 723 N.W.2d 270 (Minn. 2006). The Court addressed the balancing test in Minn. Stat. 13.03 (6), which a presiding officer must use, when ruling on a request to access private or non-public data maintained by a political subdivision.

A court, in response to a motion to compel production of private or non-public data, must apply the following two-part test to determine whether to compel disclosure of the data;

[1] The presiding officer shall first decide whether the data are discoverable or releasable pursuant to the rules of evidence and of criminal, civil, or administrative procedure appropriate to the action.

[2] If the data are discoverable the presiding officer shall decide whether the benefit to the party seeking access to the data outweighs any harm to the confidentiality interests of the agency maintaining the data, or of any person who has provided the data or who is the subject of the data, or to the privacy interest of an individual identified in the data.

This case involved a Tax Court appeal. Realtor was seeking private or non-public third-party data. The Tax Court applied the two part test and only allowed Realtor's attorney to access, subject to a strict protective order, the private or non-public data that Respondent's expert used for her opinion. The Supreme Court held that the Tax Court Judge's order was not an abuse of discretion.

March 2nd CLE on Data Practices

MSBA Public Law Section and Public Defender's Office - Second Judicial District present

The Data Practices Act: Why Should Criminal Defense Lawyers Care?

Presenter:

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

Friday, March 2, 2007

12:00 noon - 1:00 pm

101 E Fifth Street, St. Paul (Public Defender's Office)

[Please click here to view the notice](#)

LOAVES AND FISHES VOLUNTEERS IN ACTION!

By Greg Brooker, Assistant U.S. Attorney

On December 6, 2006 and February 7, 2007, public attorneys prepared the Loaves and Fishes meal at Holy Rosary Church in Minneapolis. Attorneys from the Hennepin County Attorney's Office, the U.S. Attorney's Office, the Minneapolis School District, the Minnesota Attorney General's Office, and the State of Minnesota participated. Come and join the fun at the next Loaves and Fishes meal prep on April 4. Contact Nancy McLean at nancy.mclean@co.hennepin.mn.us if you would like to join us.



The peanut butter and jelly sandwich crew in action: Barry, Kim, and Louis



Kim with the finished product: Care for a peanut butter sandwich anyone?



Isn't cutting up oranges fun?



I love this tator tot hot dish!



Now the hard part — cleaning dishes: Nancy and Louis

Making A Difference: Upcoming Member Volunteer Opportunities

Habitat for Humanity

Come and help build a Habitat home. Look for an email announcement to help construct a Habitat for Humanity home in May 2007. The Public Law Section is currently working with Habitat for Humanity to determine a location and date.

Loaves and Fishes

Join us on Wednesday, April 4, to make a meal to those less fortunate. You can either help make the meal (from 2:45 p.m. to 5:00 p.m.) or help service the meal (5:00 p.m. to 7:00 p.m.). Call or email Nancy McLean at (612) 348-6755 or nancy.mclean@co.hennepin.mn.us.

Did you know?

...that public attorneys provided holiday gifts to over 20 families in December 2006.

...that every other month the Public Law Section pays for the ingredients and prepares a meal to feed approximately 250 people at a Loaves and Fishes site in Minneapolis.

...that public attorneys participated in the MSBA's Third Annual Law Student Networking Event on February 8, 2007. It was a great opportunity for us to promote our activities to students and to share information about public law.

... that the Public Law's Pro Bono Committee is putting the finishing touches on a model pro bono policy for government law offices and is working with outside groups to provide pro bono projects in which government lawyers can participate. The chairs of the committee are Nancy McLean and Cliff Greene.

Public Law News Recipe Corner

By Eileen Wells, Mankato City Attorney

Winter Salad:

A perfect way to brighten up a dreary winter day!

Salad:

1-1 1/2 heads Romaine lettuce, torn
1 c. shredded Swiss cheese
1/2 c. Craisins
1 c. cashews or cashew pieces
1 apple, cubed
1 pear, cubed

Dressing:

1/2 c. sugar
1/2 tsp. salt
1 tsp. Dijon mustard
1 T. poppy seeds
1 T. grated onion
1/3 c. lemon juice
2/3 c. olive oil

Combine the lettuce, cheese, Craisins, cashews, and cubed apple and pear in large bowl. Combine the sugar, salt, mustard, poppy seeds, onion, and lemon juice in a blender. Slowly add the oil while blending. Just before serving, toss the salad with the dressing.

To submit a recipe for our next newsletter, contact Kim Buechel Mesun at kim.mesun@mpls.k12.mn.us or 612/668-0482

Keep This Date Open: May 18, 2007

Public Law Section Elimination-of-Bias CLE & Public Attorney Awards Of Excellence Luncheon

Friday, May 18, 2007

Midland Hills Country Club

\$45 for PLS Members

\$55 for Nonmembers

Price includes cost of elimination-of-bias CLE and lunch!

Watch your email for registration materials

The Public Law Awards will be presented at the luncheon following the CLE

The Elimination-of-Bias CLE is "Journey to Safety," a presentation by Pangea World Theater of a series of vignettes reflecting the barriers faced by battered immigrant women trying to access legal and social services:



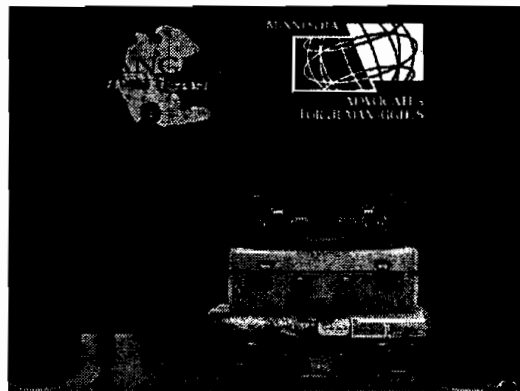
Journey to Safety



Journey to Safety is an artistic stage presentation of the challenges facing battered refugee and immigrant women when negotiating legal, medical and government systems. The performance by Pangea World

Theater is based on a recent report issued by Minnesota Advocates for Human Rights. In order to access services and protection, battered refugee and immigrant women must overcome obstacles such as language barriers, fear of deportation, and community pressures. Pangea World Theater and Minnesota Advocates for Human Rights

have collaborated to create training designed for government agencies, educational institutions, and civic groups. Following each performance by Pangea actors, a moderator from Minnesota Advocates for Human Rights will comment on barriers faced by immigrant women and will suggest ways to improve our community's response to domestic violence in immigrant communities.



Journey to Safety

"The theater format was such a powerful way of getting your information across!"

"A picture is worth a thousand words. We all could learn so much more about immigration and refugee women by watching this piece."

"Minnesota Advocates for Human Rights' report is unquestionably a monumental report that is breaking ground nationally in the field of violence against immigrant women."

"While all women are at risk for violence, refugee and immigrant women are particularly vulnerable to abuse and less likely to access and receive government protection and services."

Notices of Interest to Public Lawyers

NOTICE AND REMINDER TO COUNSEL

November 30, 2006

Contact: Richard Sletten, Clerk of Court

(612) 664-5026

Pursuant to the E-Government Act of 2002, "[A] party that wishes to file an otherwise proper document containing...protected information may file an un-redacted document under seal".

A filer wishing to file a document which contains sensitive information must ensure that the following personal data identifiers must be partially redacted from the document whether it is filed traditionally or electronically: Social Security numbers to the last four digits; financial account numbers to the last four digits; names of minor children to the initials, dates of birth to the year; and home addresses to the city and state. A party wishing to file a document containing personal data identifiers may file an un-redacted document under seal. If a redacted document is filed, it is the sole responsibility of counsel and the parties to be sure that all documents and pleadings comply with the rules of this court requiring redaction of personal identifiers.

Counsel is again strongly urged to share this notice with all clients so that an informed decision about the inclusion of certain materials may be made. Please note, the Clerk's Office will not review filings for redaction.

For more information on redaction procedures for the District of Minnesota, please consult the civil and criminal ECF Procedures guides for this district or call the ECF help desk at 1-866-325-4975.

Thank you for your attention to this important requirement.



UNITED STATES DISTRICT COURT District of Minnesota

Richard D. Sletten, Clerk
Wendy S. Osterberg, Chief Deputy Clerk

700 Federal Building
316 North Robert Street
St. Paul, MN 55101
(651) 848-1100

202 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5000

417 Federal Building
515 West First Street
Duluth, MN 55802
(218) 529-3500

212 U.S. Courthouse
118 South Mill Street
Fergus Falls, MN 56537
(218) 739-5758

NOTICE

December 13, 2006

**Contact: Richard Sletten, Clerk of Court
(612) 664-5026**

REVISIONS TO CM/ECF PROCEDURES IN THE DISTRICT OF MINNESOTA

Courtesy Copies

Effective December 18, 2006, the District of Minnesota will require that counsel file two paper courtesy copies of motions and related filings (affidavits and exhibits). When an attorney files motions, responses, or reply briefs on ECF, they must provide the paper copies of these documents to the Judge or Magistrate Judge hearing the motion. The paper copies should be mailed or delivered in an envelope addressed to the Judge's calendar clerk contemporaneously with the documents being posted on ECF. The rule applies to dispositive and non-dispositive motions. The ECF civil and criminal procedures guides have been revised to reflect this requirement.

Administrative Records

The court approved a change to allow conventional (paper) filing of any administrative records (ERISA, Habeas Corpus, Social Security) without court permission. Counsel should file a "Conventional Filing Placeholder" on ECF in place of the document being filed in paper, and deliver the paper filing to the clerk's office. Counsel should also provide the Judge with two courtesy copies of the conventionally filed documents. The ECF civil procedures guide has been updated on pages 20-22 to reflect the change.

News from the Bench

By Kim Buechel Mesum, General Counsel's Office, Minneapolis School District

Governor Pawlenty appointed **Conrad I. Freeberg, Frederick L. Grunke, and Frank J. Kundrat** to three trial court bench vacancies in the Seventh Judicial District.

The first vacancy occurred with the disability retirement of the Honorable Thomas A. Godzala on August 31, 2006. The Minnesota Supreme Court certified the continuation of the chambers of this position for the City of Little Falls in Morrison County. **Conrad Freeberg** was appointed to the Morrison County position. Freeberg was the Morrison County Attorney, a position he had held since 1987. He was an Assistant Morrison County Attorney from 1984 to 1987, an associate attorney with the Little Falls law firm of Rosenmeier and Anderson from 1981 to 1984, an Assistant St. Paul City Attorney in 1982, and a Ramsey County Court law clerk from 1977 to 1981. From 1969 to 1977, Freeberg was a history teacher at St. Charles Borromeo and Highland Catholic School. Freeberg earned his Juris Doctorate degree *cum laude* from William Mitchell College of Law in St. Paul (1980), his Master of Arts (1970) and Bachelor of Arts (1968) from the College of St. Thomas in St. Paul. Freeberg is a member and past president of the Seventh District Bar Association; a member of the Minnesota and Morrison County Bar Associations; a member of the Minnesota County Attorneys Association, where he served on its Board of Directors; member of the Morrison County Healthy Community Collaborative; and a member and former chair of the Morrison County Child Protection Team. He has also been a member of the Little Falls Area Chamber of Commerce; Unity Family Health Care Board of Directors; Central Minnesota Community Corrections Advisory Board, where he is a past chair; St. Cloud Diocese Catholic Charities Board of Directors; and the Great River Arts Association Board of Directors, which he chaired. Freeberg was the 1996 recipient of the Public Law Section's "Public Attorney Award of Excellence" for his work as Morrison County Attorney. Freeberg, 59, lives in Little Falls with his wife, Mary Rae. They have three adult children.

The second Seventh District vacancy occurred with the retirement of the Honorable Bernard E. Boland on October 16, 2006. This position will be chambered in the City of St. Cloud in Stearns County. **Fred Grunke** was appointed to this position. Grunke was a shareholder with the law firm Rajkowski Hansmeier Ltd. in St. Cloud. He had been an attorney with the firm since 1984. He was also an associate attorney with the law firm Donohue Rajkowski in St. Cloud from 1979 through 1983, and a Seventh Judicial District law clerk in St. Cloud from 1978 to 1979. Grunke earned his Juris Doctorate degree *cum laude* from the University of Minnesota Law School in 1978 and his Bachelor of Arts degree *summa cum laude* from Wartburg College in Waverly, Iowa in 1975. Grunke is a member of the American, Minnesota, and Stearns-Benton Bar Associations; Minnesota Defense Lawyers Association and American Arbitration Association. He has been named a "Super Lawyer" by Minnesota Law and Politics since 2000, and is listed in Leading

American Attorneys. Grunke's community activities include serving on the Central Minnesota Legal Services' Volunteer Attorney Program Advisory Board, and the Peace United Church of Christ Mission Committee, where he helps plan and coordinate service projects, including Kids Against Hunger, Habitat for Humanity and hurricane relief. Grunke, 53, lives in St. Cloud with his wife, Ann. They have three adult children.

The third Seventh District vacancy will occur with the retirement of the Honorable Richard T. Jessen on March 7, 2007. **Frank Kundrat** will fill that vacancy. Kundrat owns Kundrat Law Office in St. Cloud. He has practiced law in that office since 1999, and serves as City Attorney for Clear Lake, Clearwater, Dassel, Deerwood, and Ironton, as well as the attorney for numerous townships and other governmental entities. Kundrat has also been an adjunct professor of business law at St. Cloud State University. He was an attorney with the St. Cloud law firm of Hall and Byers from 1983 to 1999, Chief Counsel (1981 to 1983), Assistant Director of Law (1978 to 1981), and an Assistant Prosecutor (1976 to 1978) with the City of Shaker Heights, Ohio. Kundrat earned his Juris Doctorate degree from Cleveland-Marshall Law College in Cleveland, Ohio in 1976, and his Bachelor of Arts degree *cum laude* from Case Western Reserve University in Cleveland in 1973. Kundrat is a member of the Minnesota, Seventh District, and Stearns-Benton Bar Associations; the John E. Simonett Chapter of the American Inn of Court, and has served as a presenter for numerous continuing legal education seminars. Kundrat's community activities include volunteering as a mediator for the Minnesota Department of Human Rights, volunteer trainer and mediator for the St. Cloud State University Mediation Center, volunteer legal advisor for Central Minnesota Legal Services, volunteer judge for the St. Cloud Catholic Diocese Tribunal, secretary of the Stearns County History Museum, legal counsel for Paramount Theatre Arts District in St. Cloud, and writing monthly opinion columns for the St. Cloud Times newspaper. Kundrat, 55, lives in St. Cloud with his wife, Laura. They have three adult children.

Governor Pawlenty appointed **Tammi A. Fredrickson, Douglas B. Meslow, and Barry A. Sullivan** to three trial court bench vacancies in the Tenth Judicial District in Anoka County. The vacancies are as a result of the retirement of Judge Joseph Quinn on June 30, 2006, the retirement of Judge James A. Morrow on August 2, 2006, and the retirement of Judge Edward W. Bearse on December 12, 2006.

Tammi Fredrickson was the Coon Rapids City Attorney, a position she had held since 2005. She was an Assistant Coon Rapids City Attorney from 1995 to 2005, and an associate attorney with the law firm of Morrison and Fenske in Edina from 1992 to 1995. Fredrickson earned her Juris Doctorate degree *magna cum laude* from William Mitchell College of Law in St. Paul in 1992, and

her Bachelor of Arts degree from the University of Minnesota in 1987. Fredrickson is a past president of the Anoka County Bar Association and is a member of the International Municipal Lawyers Association, Minnesota Women Lawyers, and Minnesota State Bar Association, where she is a member of the Public Law and Criminal Law sections. She is a coordinator with Minnesota StandDown, an annual court for homeless veterans, and trains volunteers at Alexandra House, a domestic abuse shelter. Fredrickson is also an assistant coach with the Coon Rapids Fastpitch Softball Association, a frequent classroom speaker at Coon Rapids and Andover High Schools, a parent volunteer at Sand Creek Elementary School, funeral lunch volunteer at Epiphany Catholic Church, and a Basilica Block Party volunteer. Fredrickson, 40, lives in Coon Rapids with her husband, Tom, and their two children.

Douglas Meslow had been an attorney and partner with the White Bear Lake law firm of Meslow and Olson since 1997, and had served two terms in the Minnesota House of Representatives. Meslow was a solo practitioner in White Bear Lake from 1995 to 1997, an attorney and partner with the Geck and Meslow law firm in White Bear Lake from 1992 to 1995, an associate attorney with the law firm of Sweeney and Bohrer in St. Paul from 1988 to 1992, an associate attorney with the law firm of Salmen and Brinkman in St. Paul from 1985 to 1988, and an associate attorney with the law firm of Moss and Barnett in Minneapolis from 1984 to 1985. Meslow earned his Juris Doctorate degree from the University of Minnesota Law School in 1984 and his Bachelor of Arts degree from St. Olaf College in Northfield in 1981. Meslow is a Minnesota State High School League football official; a member of the White Bear Lake Chamber of Commerce; an instructor of business law at the University of Minnesota Academic Health Center, an instructor with the Maplewood/White Bear Lake Police Reserves, and the White Bear Lake Citizens Academy; and a member of the Minnesota State and Ramsey County Bar Associations. He also served as vice chair of the White Bear Lake Area School Board, a founding member of the White Bear Lake Area Educational Foundation Board, a member of the Northeast

Family YMCA Board, an instructor with the Century College Law Enforcement Training Program, and a youth sports coach. Meslow, 47, lives in White Bear Lake with his wife, Jenny and two sons.

Since 1988, **Barry Sullivan** has been an associate attorney with William G. Hawkins and Associates law firm in Anoka, and serves as an Assistant City Attorney for Andover, Anoka and Lino Lakes. Previously, he was an attorney and partner with the Coon Rapids law firm of Stockman, Sullivan and Sadowski from 1983 to 1988. Sullivan earned his Juris Doctorate degree *cum laude* from Hamline University School of Law in St. Paul in 1983, and his Bachelor of Arts degree from the University of Minnesota in 1980. Sullivan is a member of the Minnesota State and Anoka County Bar Associations, Judicare of Anoka County Board of Directors, and heads up the Anoka County Internal Criminal Case Handling Committee. He has also taught POST-approved training of police officers in the areas of DUI and domestic violence, and presented Continuing Legal Education seminars for Tenth Judicial District law clerks. Sullivan, 53 lives in Coon Rapids, with his wife, Janet. He has three adult stepdaughters and one two-year old granddaughter.

The Honorable Mary Pawlenty announced on January 4, 2007 that she will be resigning from her position as a District Court Judge effective February 12 to become General Counsel for the National Arbitration Forum, one of the nation's largest providers of out-of-court dispute resolution services. Judge Pawlenty was appointed to the bench in 1994 as a district court judge in the First Judicial District by then-Governor Arne Carlson. The National Arbitration Forum (FORUM) was founded in 1986 and has become one of the largest providers of out-of-court dispute resolution services in the nation. Providing a full spectrum of dispute resolution services, including arbitration and mediation, FORUM resolved legal claims worth more than \$3 billion in 2005. FORUM has over 150 employees and has established a distinguished neutral panel of over 1,500 attorneys and retired judges throughout the U.S. and in 29 countries. Headquartered in St. Louis Park, Minnesota, FORUM also has offices located in New Jersey and Los Angeles.

Public Attorneys on the Move

By Kim Buechel Mesum, General Counsel's Office, Minneapolis School District

The Minneapolis City Attorney's Office has hired several new attorneys. **Thomas Miller** (Hamline '83), **Robin Hennessy** (William Mitchell '99) and **Heidi Johnston** (University of Minnesota '03) started in October. Miller is a Civil Trial Specialist, Hennessy was most recently at LeVander, Gillen and Miller, and Johnston was previously at the St. Paul City Attorney's Office. **Gregory Sautter** (Georgetown '97), **Stephen Norton** (William Mitchell '04), and **Nnamdi Okoronkwo** (William Mitchell '96) joined in November. Sautter was employed by the Zimmerman Reed law firm, Norton by U.S. Bank, and Okoronkwo by Best Buy Company.

Assistant U.S. Attorney **Hank Shea** resigned from the U.S. Attorney's Office to begin teaching law and corporate ethics at St. Thomas University Law School. Assistant U.S. Attorney **Mike Ward** has also left the office for a position with Target Corporation overseeing corporate investigations. Assistant U.S. Attorney **John Doherty** has taken a position with the World Court at The Hague, prosecuting war crimes in the Balkans. Assistant U.S. Attorney **Joan Humes** recently left the U.S. Attorney's Office in order to become Deputy General Counsel at Ovations, a UnitedHealth Group Company.

Harriet Sims Steps Down from PLS Executive Council After Twelve Years of Service

By Kim Buechel Mesum, General Counsel's Office, Minneapolis Schools

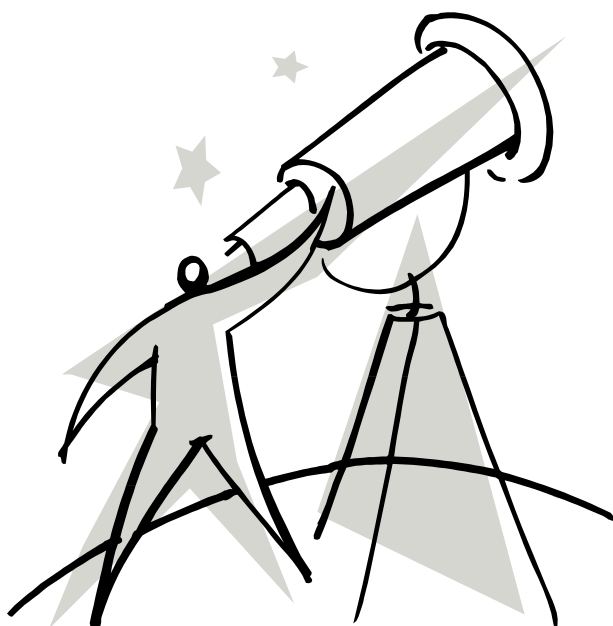
Harriet Sims recently stepped down from the Public Law Section Executive Council after 12 years of dedicated service. Harriet was first elected to the PLS Executive Council in 1994-95. She served as Section Co-chair in 1997-98 and 1998-99, and as Secretary in 2004-05 and 2005-06. She also was the PLS Membership Committee chair and liaison to the MSBA Membership Committee from 1999-2004. For many years she represented the interests of public lawyers on the MSBA Board of Governors. Harriet continues to be a voice for public lawyers as a member of the Minnesota Client Security Board, a position she has held since 2005.

Thank you Harriet for your many hours of service!

So Long Joan Humes and Good Luck in the Private-Sector World!

By Greg Brooker, Assistant U.S. Attorney

Joan Humes, a long-time government lawyer, is saying "so long" to government legal work -- at least for now. Ms. Humes started public service as a social worker for Hennepin County in the 1970s and thereafter went to the University of Minnesota Law School. She reentered public service in 1990 when she clerked for U.S. District Court Judge James M. Rosenbaum. In 1992, Joan began work as an assistant attorney general for the State of Minnesota. In July 1994 she began work as an assistant U.S. attorney for the District of Minnesota. At the U.S. Attorney's Office she served as deputy civil chief, chief of the civil division, and as First Assistant United States Attorney. Joan is a former member of the Public Law Section's Executive Council, and in 2004, she received the Public Law Attorney Award for Judicial Excellence. Joan recently accepted a job as deputy general counsel for Ovation, a division of UnitedHealth Care. We wish Joan all the best in the private-sector world and thank her for her many years of service to the people of Minnesota!



Editor's Note

All good things must come to an end. This is the final issue of Public Law News I will be editing and the last Eyes on the Court article I will be authoring. Thank you MSBA staff and Public Law Section Council for your support throughout the years and for making Public Law News the great newsletter that it is.

I will continue to serve on the Executive Council of the ABA Government and Public Sector Lawyers Division and hope to report on its activities from time to time.

Sincerely,

Greg Brooker

Elimination of Bias CLE a Success

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

On December 6th, ninety public lawyers and private practitioners attended a CLE program on "The Aftermath of *White I and White II*: Maintaining Fairness and Impartiality in the Court." This CLE was co-sponsored by the Public Law Section and the Minneapolis City Attorney's Office.

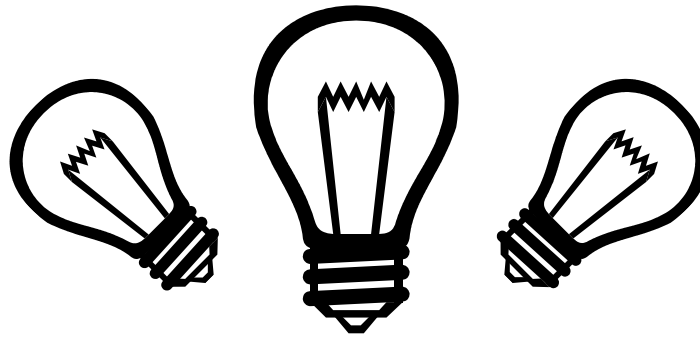
The *White* cases challenged Minnesota's judicial canon which provided that a candidate for judicial office, including an incumbent judge, could not announce his or her views on disputed legal or political issues. The United States Supreme Court held that this "announce" provision violated the First Amendment.

Assistant Minneapolis City Attorney Charles Brown provided an overview of the *White I and White II* cases and reviewed for the

attendees the history of judicial selection in Minnesota. Former United States Attorney B. Todd Jones described the impact of the *White I and White II* decisions on judicial selection in a number of other states and discussed the role of special interest groups and wealthy contributors in judicial elections.

Minnesota Supreme Court Justice Alan Page, Chief Judge of the Minnesota Court of Appeals Edward Toussaint, and former United States Magistrate Judge Jonathan Lebedoff led a discussion on how to maintain fairness, impartiality and public confidence in the court in the aftermath of the *White* decisions.

The CLE was approved for two Elimination of Bias credits.



Upcoming CLE Seminars

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

DATE	SEMINAR	TIME	PLACE	SPONSOR & CONTACT
3/14/07	Minnesota State Appellate Court Practice	1:15 to 4:30 p.m.	Elmer L. Anderson Bldg. 540 Cedar Street, St. Paul	Attorney General's Office Marty Casserly 651/297-5919
4/13/07	Ethics for the Public Lawyer	8:30 to 11:45 a.m.	Elmer L. Anderson Bldg. 540 Cedar Street, St. Paul	Attorney General's Office Marty Casserly 651/297-5919
5/10/07	Elimination of Bias	10 a.m. to Noon	Elmer L. Anderson Bldg. 540 Cedar Street, St. Paul	Attorney General's Office Marty Cassely 651/297-5919
5/18/07	Elimination of Bias: Journey to Safety Stage Presentation	a.m.	Midland Hills Country Club	MSBA Public Law Section Louis Thayer 651/431-3618
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	Annual CLE	All Day	TBA	Attorney General's Office Marty Cassely 651/297-5919
6/29/07	MSBA Convention CLE	afternoon	MSBA Convention River Center, St. Paul	MSBA Public Law Section Mary Miller 651/284-5306

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

November 7, 2006 Election Results

By Kim Buechel Mesum, General Counsel's Office, Minneapolis School District

Judges.

To view the judicial election results in their entirety refer to the Secretary of State's website at <http://electionresults.sos.state.mn.us/20061107/ElecRslts.asp?M=J&P=A>.

The Minnesota Secretary of State lists the results of the contested judicial races to be:

JUDGE - COURT OF APPEALS	Totals	Pct	Graph
Nonpartisan CHRISTOPHER J. DIETZEN *	886853	56.04	
Nonpartisan DAN GRIFFITH	690441	43.63	
Write-In WRITE-IN	5175	0.33	
JUDGE - 1ST DISTRICT COURT	Totals	Pct	Graph
Nonpartisan MICHAEL R. SAVRE *	124128	56.13	
Nonpartisan SCOTT NEWMAN	96514	43.64	
Write-In WRITE-IN	510	0.23	
JUDGE - 2ND DISTRICT COURT	Totals	Pct	Graph
Nonpartisan JAY BENANAV	63380	41.41	
Nonpartisan ELENA L. OSTBY *	89042	58.18	
Write-In WRITE-IN	630	0.41	
JUDGE - 4TH DISTRICT COURT	Totals	Pct	Graph
Nonpartisan PATRICIA KERR KARASOV *	177506	59.38	
Nonpartisan DEE ROWE	120130	40.19	
Write-In WRITE-IN	1305	0.44	
JUDGE - 4TH DISTRICT COURT	Totals	Pct	Graph
Nonpartisan JOHN Q. MCSHANE *	174092	60.32	
Nonpartisan KEVIN J KOLOSKY	113189	39.22	
Write-In WRITE-IN	1312	0.45	
JUDGE - 6TH DISTRICT COURT	Totals	Pct	Graph
Nonpartisan SHAUN R. FLOERKE *	66430	67.87	
Nonpartisan TIM LITTLE	31248	31.93	
Write-In WRITE-IN	194	0.20	
JUDGE - 6TH DISTRICT COURT	Totals	Pct	Graph
Nonpartisan MARK M. STARR *	59245	63.95	
Nonpartisan GORDON P. COLDAGELLI	33161	35.80	
Write-In WRITE-IN	231	0.25	
JUDGE - 9TH DISTRICT COURT	Totals	Pct	Graph
Nonpartisan TERRANCE C. HOLTER *	60113	49.26	
Nonpartisan JOHN G. MELBYE	61622	50.50	
Write-In WRITE-IN	291	0.24	

* Incumbent.

County Attorneys – contested races.

The Minnesota Secretary of State lists the official results of the contested county attorney races to be:

Fillmore County

• COUNTY ATTORNEY	Totals	Pct	Graph
Nonpartisan BRETT CORSON *	4864	54.98	
Nonpartisan ERIC V. HERENDEEN	3953	44.68	
Write-In WRITE-IN	30	0.34	

Mower County

• COUNTY ATTORNEY	Totals	Pct	Graph
Nonpartisan PATRICK A OMAN	6396	41.68	
Nonpartisan KRISTEN NELSEN	8923	58.14	
Write-In WRITE-IN	28	0.18	

Waseca County

• COUNTY ATTORNEY	Totals	Pct	Graph
Nonpartisan PAUL M. DRESSLER	4876	63.03	
Nonpartisan BRENDA MILLER	2845	36.78	
Write-In WRITE-IN	15	0.19	

Olmsted County

• COUNTY ATTORNEY	Totals	Pct	Graph
Nonpartisan MARK A. OSTREM	29726	63.60	
Nonpartisan RAYMOND F. SCHMITZ *	16871	36.09	
Write-In WRITE-IN	144	0.31	

Wabasha County

• COUNTY ATTORNEY	Totals	Pct	Graph
Nonpartisan PATRICK LOWTHER	3868	43.98	
Nonpartisan JIM NORDSTROM *	4901	55.72	
Write-In WRITE-IN	26	0.30	

Renville County

• COUNTY ATTORNEY	Totals	Pct	Graph
Nonpartisan MARVIN J. REIGSTAD	2639	40.57	
Nonpartisan DAVID J. TORGELSON *	3861	59.35	
Write-In WRITE-IN	5	0.08	

Hennepin County

• COUNTY ATTORNEY	Totals	Pct	Graph
Nonpartisan MIKE FREEMAN	224393	59.11	
Nonpartisan ANDY LUGER	153231	40.37	
Write-In WRITE-IN	1979	0.52	

Lac Qui Parle County

• COUNTY ATTORNEY	Totals	Pct	Graph
Nonpartisan RICHARD G. STULZ	1982	51.49	
Nonpartisan JOHN M TOLLEFSON *	1862	48.38	
Write-In WRITE-IN	5	0.13	

Chisago County

• COUNTY ATTORNEY	Totals	Pct	Graph
Nonpartisan TIMOTHY T. RYAN	8763	46.85	
Nonpartisan JANET REITER	9864	52.74	
Write-In WRITE-IN	77	0.41	

Todd County

• COUNTY ATTORNEY	Totals	Pct	Graph
Nonpartisan CHUCK RASMUSSEN	5047	52.52	
Nonpartisan MARLENE CLARK	4530	47.14	
Write-In WRITE-IN	33	0.34	

Morrison County

• COUNTY ATTORNEY	Totals	Pct	Graph
Nonpartisan MIKE CHISUM	4392	34.03	
Nonpartisan BRIAN MIDDENDORF	8491	65.79	
Write-In WRITE-IN	24	0.19	

Aitkin County

• COUNTY ATTORNEY	Totals	Pct	Graph
Nonpartisan JAMES (JIM) RATZ	4238	56.78	
Nonpartisan TOM MURTHA *	3198	42.85	
Write-In WRITE-IN	28	0.38	

Hubbard County

• COUNTY ATTORNEY	Totals	Pct	Graph
Nonpartisan DONOVAN D. DEARSTYNE	4679	51.82	
Nonpartisan ERIKA HENRY RANDALL	4331	47.97	
Write-In WRITE-IN	19	0.21	

Clay County

• COUNTY ATTORNEY	Totals	Pct	Graph
Nonpartisan ANITA FLATT	5196	28.60	
Nonpartisan BRIAN J. MELTON	12922	71.12	
Write-In WRITE-IN	52	0.29	

St. Louis County

• COUNTY ATTORNEY – RECOUNT***	Totals	Pct	Graph
Nonpartisan ALAN L. MITCHELL *	39931	49.88	
Nonpartisan MELANIE S. FORD	39878	49.81	
Write-In WRITE-IN	250	0.31	

***12/6/06 Recount results in Ford defeating Mitchell by 88 votes.

Cook County

• COUNTY ATTORNEY	Totals	Pct	Graph
Nonpartisan TIM SCANNELL	1972	72.00	
Nonpartisan DONALD B. DAVISON	755	27.56	
Write-In WRITE-IN	12	0.44	

* Incumbent.

Attorney General

ATTORNEY GENERAL	Totals	Pct	Graph
Independence JOHN JAMES	86032	4.05	
Republican JEFF JOHNSON	865465	40.72	
Democratic-Farmer-Labor LORI SWANSON	1131474	53.24	
Green PAPA JOHN KOLSTAD	41000	1.93	
Write-In WRITE-IN**	1238	0.06	

Minnesota Department of Administration Data Practices Opinions Index

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

Copies of these opinions can be requested by calling the Department of Administration at 651/296-6733 or 800/657-3721. The full text of the Data Practices Opinions are now available on line at www.ipad.state.mn.us

No. of Opinion	Date of Opinion	Gov't Entity Involved	Topic	Opinion Requester
06-022	8/9/06	Moorhead	Spreadsheet of active warrants in Clay County; joint powers agreement.	Larson, Moorhead Police Department
06-023	8/11/06	Department of Health	Employee complaint and witness statement about an employee; data disclosure to media.	Orren, Department of Health
06-024	8/17/06	Metropolitan Airports Commission	Attorney-client privilege; work product doctrine; Invoices for legal service and their explanations; chief attorney determination.	Heide, Rogers Lake East Airport Noise Reduction Committee
06-025	8/17/06	City of Rice	Township vehicle accident information; data sharing with contracting entity.	Wenner, City of Rice
06-026	9/21/06	Anoka County	Data on which a licensed day care provider receives child care assistance payments.	Some, Anoka County
06-027	9/28/06	City of Breezy Point	City council "emergency" meeting and Open Meeting law.	Slipy, Bd. of LAGT, Inc.
06-028	10/2/06	City of Marshall	Names of two finalists for a Director position.	Anfinson/ <u>Marshall Independent</u>
06-029	10/19/06	Hennepin County Attorney's Office	Schedules and travel records; labor grievances filed; referrals to Domestic Fatality Review Board; caseload statistics; projects undertaken; appeals. Timeliness of response.	Stephens, National Republican Senatorial Committee
06-030	11/8/06	Office of Enterprise Technology	Breach in security; encrypted data.	Buse, Office of Enterprise Technology
06-031	11/14/06	City of Stillwater	City council closed meeting to continue to interview candidates for council and Open Meeting law.	Remely
06-032	11/30/06	City of Mankato	Sales and use tax filings from businesses claiming exemptions from smoking prohibition.	Wells/Mankato City Attorney
06-033	12/12/06	City of Rock Creek	Responsible authority and compliance official; employees' pay and benefits.	Burger



MINNESOTA JUSTICE
FOUNDATION

November 30, 2006

Louis Thayer
Minnesota Dept of Human Services
PO Box 64941
Saint Paul, MN 55164-0941

Dear Louis,

Thank you very much for the MSBA Public Law Section's donation of \$300 to MJF, ensuring legal service to low income Minnesotans. Your generosity supports the Minnesota Justice Foundation's efforts in ensuring that:

- Practical experience will enhance the excellent legal training of students at Minnesota's four law schools,
- Our latest generation of lawyers remain committed to an ethic of public service, and that
- Low income and disadvantaged Minnesotans continue to receive the legal services and advice they need.

This gift of partial financial support to one Summer Clerk will help allow a student to work in the legal community, gaining valuable practical experience while serving a large population of people that may otherwise lack necessary legal aid.

We appreciate your help in working toward a vision of equal justice for all. With your assistance we will commit next year's efforts to building ever stronger alliances and networks with our community partners.

Many thanks,

A handwritten signature in black ink that reads 'Kerry Walsh Thank you.' The signature is written in a cursive style.

Kerry Walsh
Development Director

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