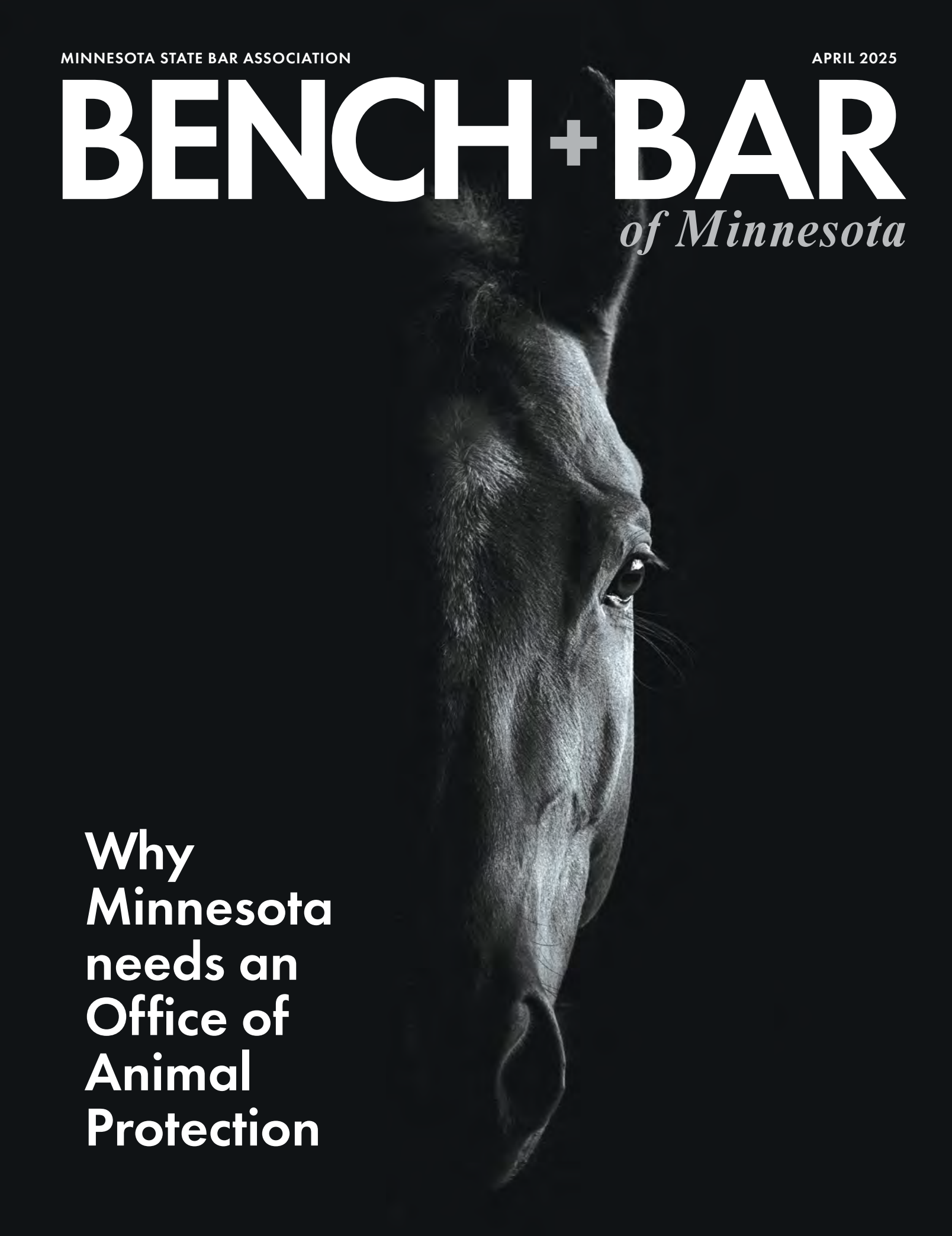
MINNESOTA STATE BAR ASSOCIATION

APRIL 2025

BENCH+BAR of Minnesota



Why Minnesota needs an Office of Animal Protection

MINNESOTA CLE

Your Success Is Our Goal

Did You Know?

MINNESOTA CLE...

Runs More Large Conferences Than Any Bar-Related Organization in the Nation.

The Real Estate Institute, the Employment Law Institute, the Family Law Institute, the Probate & Trust Section Conference, and the Business Law Institute are just some of the more than 20 major conferences presented by Minnesota CLE each year. They provide excellent education and a collegial gathering of attorneys by practice area.

MINNESOTA CLE...

Has More Than 35 Great "Deskbooks" and "Handbooks" in Nearly Every Practice Area.

These great books are authored and edited by some of the best and brightest Minnesota attorneys and provide great legal and practical guidance in most practice areas. They are each filled with hundreds of statutory, regulatory and case citations that you need to know. Additionally, they are filled with the sample forms that you need in your practice!

MINNESOTA CLE...

Offers All of Its "Deskbooks" and "Handbooks" in Digital Form.

And better yet, every case, statutory and regulatory cite is linked to the full text of the primary authority! And even better, in addition to being available by individual title, these Deskbooks and Handbooks are available in a single digital library accessible through a single search engine. Wow!

MINNESOTA CLE...

Produces Approximately 300 Live Seminars Each Year.

We produce approximately 100 full-day or longer live seminars – and more than 200 1-hour live webcasts every year. These seminars and webcasts cover most areas of law and are designed to provide practical instruction for practicing attorneys. Nearly all full-day live seminars are also re-presented as online replays 3-5 weeks after the live event.

MINNESOTA CLE...

Has More Than 400 Seminars in Its On Demand Classroom.

If you missed a great program or need special instruction on a specific topic, check our voluminous On Demand Classroom. It provides a wealth of resources in most practice areas.

MINNESOTA CLE...

Provides All of Its Seminars, Online Resources and Books at ½ Price to All Attorneys in Their First 5 Years of Practice.

Those starting practice need even more instruction and resources to begin their legal careers. That's why we offer all our products half price to those newest to practice. And many of our products are tailored to those newer to practice including our wonderful A-Z series of one-hour programs that walk viewers step-by-step through each practice area.

MINNESOTA CLE'S...

Product Lines Also Include "Cheat Sheets" (we call them Summary Guides and Legal QuickSheets), Document Assembly Systems, Annotated Documents and Much More.

Visit the Minnesota CLE website at www.minncle.org and explore the wealth of great practice resources available to you. Remember, your success is our goal.

MINNESOTA CLE

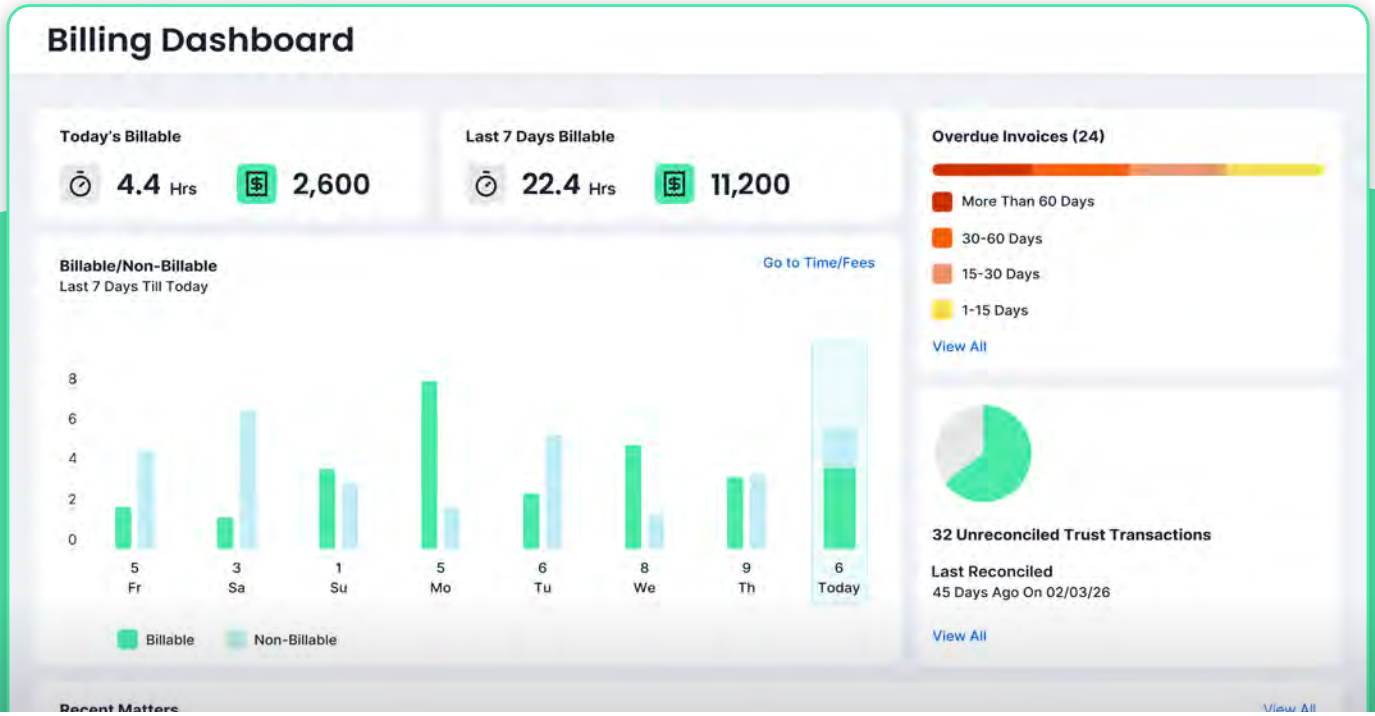
The Most Trusted Name in Continuing Legal Education.

www.minncle.org

SMOKEBALL.

Claim Your FREE Trust & Billing Software

Exclusively offered to **MSBA members**, Smokeball Bill helps law firms manage trust accounting compliantly, bill easily, and get paid faster.



MSBA

Scan to get FREE Smokeball Bill

*Or visit **smokeball.com/minnesotabill***

Smokeball is the trusted provider of legal practice management software to small and mid-size firms.

MINNESOTA STATE BAR ASSOCIATION APRIL 2025

BENCH+BAR of Minnesota

VOLUME 82, NO. 3

columns

features

BENCH+BAR
of Minnesota

Official publication of the
MINNESOTA STATE BAR ASSOCIATION
www.mnbar.org | (800) 882-6722

EDITOR
Steve Perry
sperry@mnbars.org

ART DIRECTOR
Jennifer Wallace

ADVERTISING SALES
Erica Nelson, Ewald Consulting
(763) 497-1778

Bench + Bar of Minnesota (ISSN 02761505) is published Monthly, except Bi-Monthly May/June and Jan/Feb by the Minnesota State Bar Association, 33 South Sixth St STE 4540, Minneapolis, MN 55402-3714. Periodicals postage paid at St Paul, MN and additional mailing offices. **POSTMASTER:** Send address changes to Bench & Bar of Minnesota, 33 South Sixth St STE 4540, Minneapolis, MN 55402-3714. Subscription price: $50.00. A subscription is included for members with their annual MSBA dues. Some back issues available at $10.00 each. Editorial Policy: The opinions expressed in *Bench + Bar* are those of the authors and do not necessarily reflect association policy or editorial concurrence. Publication of advertisements does not constitute an endorsement. The editors reserve the right to accept or reject prospective advertisements in accordance with their editorial judgment.

WE'D LIKE TO HEAR FROM YOU: To query potential articles for *Bench + Bar*, or to pass along your comments on matters related to the profession, the MSBA, or this magazine, write to editor Steve Perry at ***sperry@mnbars.org*** or at the postal address above.

Defending the rule of law is part of our job

BY SAMUEL EDMUNDS

SAMUEL EDMUNDS is a criminal law specialist, certified by the state bar since 2015. A former prosecutor, he is the 142nd president of the MSBA. Sam has twice been awarded the Attorney of the Year designation by Minnesota Lawyer. He represents clients and tries cases in criminal courts across Minnesota and Wisconsin.

Serving as president of the Minnesota State Bar Association is the honor of a lifetime. This role has given me an extraordinary opportunity to represent the legal profession, advocate for our shared values, and witness the strength and dedication of our bar. I do not take this privilege lightly. The commitment requires time away from my family and practice, yet every moment reinforces how fortunate I am to serve.

There are times I sit back in my office, walk out of a courtroom, or step away from a conference room and reflect on this opportunity. I am often invited to speak in front of esteemed groups of lawyers, judges, and leaders—at investiture ceremonies for new judges, the swearing-in of new attorneys at the historic House of Representatives chamber, or the installation of law school deans. I engage directly with legislators, leaders in the executive branch, justices of our Supreme Court, and representatives in Washington, D.C. These moments are surreal, and I remind myself how fortunate I am.

What makes this even more humbling is recognizing that I have not done anything more than any other member of our bar. We share the same education, have taken the same oath, passed the same bar exam, and work in the same legal system. I simply have the honor of serving as your representative this year. Leadership in our profession is not about individual distinction but about collective responsibility. I stand in this role on the shoulders of great lawyers and leaders who came before me and hope to pave the way for those who follow.

> "IF THE LAWYERS DO NOT SPEAK, WHO WILL SPEAK FOR THE ORGANIZED BAR? WHO WILL SPEAK FOR THE JUDICIARY? WHO WILL PROTECT OUR SYSTEM OF JUSTICE? IF WE DON'T SPEAK NOW, WHEN WILL WE SPEAK?"
>
> **– BILL BAY, ABA PRESIDENT**

Our role as lawyers in society cannot be overstated. We are the stewards of justice, the defenders of the rule of law. We advocate for equality, inclusion, and diversity—not just in our profession but in the broader community. The MSBA provides a platform to uphold these values, but it is up to all of us to do the work. Whether we are litigators, corporate attorneys, public defenders, prosecutors, legal aid lawyers, business leaders, or judges, our diverse experiences strengthen our profession.

Our profession faces clear choices. We can remain silent in the face of challenges or stand up and defend the rule of law and the principles we hold dear. Forces seek to erode judicial independence, circumvent constitutional processes, and undermine institutions that uphold accountability. It is imperative that we, as legal professionals, reaffirm our commitment to justice and democracy. This is not about partisanship; it is about the fundamental principles upon which our profession—and our nation—are built. The rule of law is not a given; it must be actively defended and passed on to the next generation of lawyers.

The Minnesota State Bar Association will continue to be a voice for justice, integrity, and the rule of law. We will not shy away from standing up for judicial independence, individual rights, and the core values that define our legal system. But we cannot do this alone. Each of us must make our voices heard, stand firm in our convictions, and act when justice is at risk. To quote Bill Bay, president of the American Bar Association: "If the lawyers do not speak, who will speak for the organized bar? Who will speak for the judiciary? Who will protect our system of justice? If we don't speak now, when will we speak?"

This is a defining moment for our profession. Now is the time for all of us to speak with one voice. The MSBA will stand and speak, and I invite each of you to stand with us. The honor of serving as your president is not just in the title—it is in the responsibility that comes with it. That responsibility belongs to all of us. Whether through leadership roles, mentoring young lawyers, providing pro bono services, or upholding the highest ethical standards in daily work, we all have a part to play in ensuring the strength of our profession.

Thank you for allowing me the privilege of representing you. Together, we will uphold the rule of law, strengthen our profession, and ensure that justice remains the bedrock of our society. ▲

Meet the new MSBA-certified specialists

The MSBA is honored to announce five newly certified legal specialists. These attorneys have demonstrated great knowledge and proficiency in their specialty areas.

Real Property Law Certified Specialists

■ **Ailana McIntosh**, a partner at Hellmuth & Johnson, has extensive legal and business experience representing clients in various transaction-related matters, including commercial and residential real estate, for-profit and nonprofit entity formation and governance, business mergers and acquisitions, leases, purchase agreements, and commercial contracts.

■ **Peter Snyder** is a real estate and business attorney at Felhaber Larson, where he represents businesses and individuals in real estate and commercial transactions. He graduated from the University of Wisconsin-Madison and William Mitchell College of Law.

■ **Darbie Tamsett** is a transactional attorney at Hellmuth & Johnson, practicing in the areas of corporate, real estate, and entertainment law. She focuses on issues faced by corporate clients, closely held businesses, investors, and high-net-worth individuals in matters of acquisitions, dispositions, and transactions.

Criminal Law Certified Specialists

■ **Derek Archambault,** of Archambault Criminal Defense, is an experienced criminal law attorney. Prior to 2023, he worked as a prosecutor throughout the greater metro area, representing at various times 27 different cities across eight counties. These ranged from large cities to smaller, more rural communities. In addition to his prosecution work, Archambault was also very active in training law enforcement and providing agencies guidance on best practices in investigating cases. In 2023, he entered private practice.

■ **Dane DeKrey** is an experienced attorney and co-founder of Ringstrom DeKrey PLLP, a boutique law firm that specializes in state and federal criminal defense and civil rights litigation. He previously worked as a federal public defender in the District of North Dakota and for the ACLU. He lives in Moorhead, Minnesota with his wife and four children.

Interested in becoming a certified specialist? Upcoming exams in 2025. For more information, visit ***www.mnbars.org/certify.*** ▲

MSBA celebrates state mock trial champions

Last month the state's top 16 teams competed in the two-day MSBA High School Mock Trial State Tournament at the U.S. District Courthouse in St. Paul.

Congratulations to Apple Valley High School for claiming this year's championship! The team will represent Minnesota at Nationals in Phoenix in May, where they will be joined by this year's courtroom artist winner, Elon Dekker, a student from De La Salle High School, who will also be competing for a national title.

This year's trial centered on a whodunnit murder case set in the Boundary Waters. A total of 110 high school teams participated in the tournament, taking part in more than 200 rounds of competition that began in January. The high school students were evaluated by more than 650 volunteer judges.

Minnesota was one of five founding states for the National High School Mock Trial Competition back in 1985. Many students who participated in mock trial over the past 40 years have since joined the ranks of the legal profession and are now giving back as mock trial judges. The mock trial tournament is a vital component of civics education in our state, introducing students to the legal system.

The MSBA and the Mock Trial Committee are deeply grateful to our volunteer judges and donors for your support of this enduring tradition. Please see a complete list of acknowledgements and details on how to get involved on pages 22-23 of this issue. ▲

New for members: free Smokeball Bill for trust accounting compliance

In March, MSBA announced its partnership with Smokeball, a leading legal practice management software provider. MSBA members can now receive complimentary access to Smokeball Bill, a complete billing and trust accounting solution.

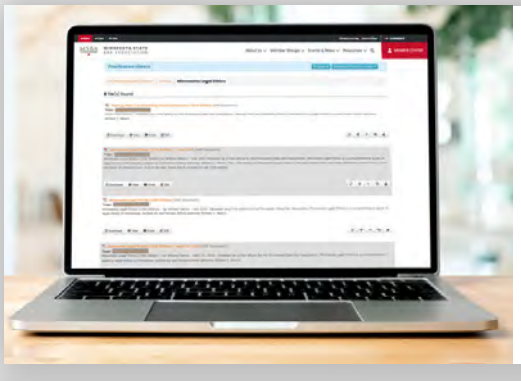
"Attorneys turn to the bar association for the latest information, programs, and tools that help them practice law effectively and serve their clients and communities," said MSBA CEO Cheryl Dalby. "This partnership provides members with free access to Smokeball Bill to enhance compliant trust accounting practices and reduce reliance on time-consuming manual processes."

Managing client funds is a critical responsibility that requires strict compliance with regulatory standards. Solo and small firms often rely on manual methods, increasing the risk of errors. Smokeball Bill simplifies trust accounting, helping MSBA members maintain compliance with ease. To learn more and sign up, visit ***www.mnbars.org/smokeball.*** ▲

MSBA Practice Resources

Included with your annual membership—

the latest online tools, information, and resources to keep your legal practice a step ahead.



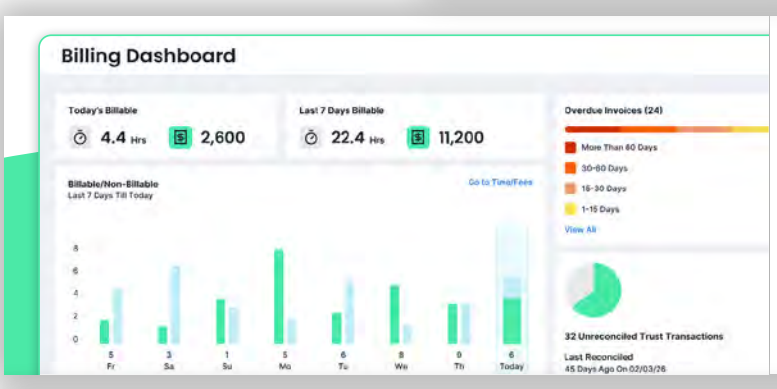
UPDATES COMING SOON!

Practice Law

RESOURCE LIBRARY

2,000+ legal forms, guides, court rules, and more.

www.mnbars.org/practicelaw



SMOKEBALL

NEW! TRUST ACCOUNTING & BILLING SOFTWARE

All MSBA members have access to free Smokeball Bill subscriptions (a $588 per user/per year value).

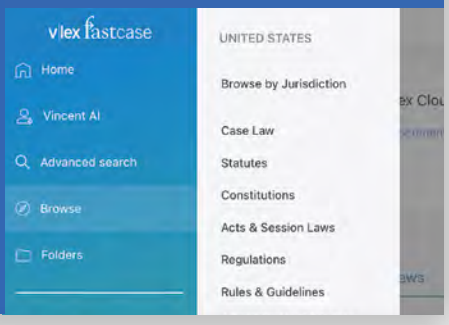
www.mnbars.org/smokeball

vlex fastcase

ONLINE LEGAL RESEARCH

Unlimited access to one of the largest law libraries in the world.

www.mnbars.org/practice-resources



BENCH+BAR of Minnesota

NEWS & PUBLICATIONS

Access our library of eBooks including Legal Ethics, Land Use, Title Standards, and Judges' Preferences. Plus, members receive the weekly Legal News Digest and Capitol Connection, and 10 issues of the award-winning Bench + Bar magazine.

www.mnbars.org/publications

Communities

DISCUSSION GROUPS

Member-only forums, Q&A, and networking for specific practice areas.

www.mnbars.org/communities

MSBA PRACTICE TECH WALKTHROUGH

Need help navigating MSBA's legal tech resources? Book a one-on-one appointment for assistance.

Mary Warner
Legal Technologist
MWarner@mnbars.org
612-278-6336

www.mnbars.org/walkthrough

Private conduct and lawyer discipline

BY SUSAN M. HUMISTON susan.humiston@courts.state.mn.us

SUSAN HUMISTON is the director of the Office of Lawyers Professional Responsibility and Client Security Board. Prior to her appointment, Susan worked in-house at a publicly traded company, and in private practice as a litigation attorney.

This month's column explores what happens when private conduct raises attorney license issues. Most of the misconduct that is reported to this Office involves a lawyer's legal practice. But we also see conduct outside the practice of law that results in discipline, both public and private. Below is a non-exhaustive list of private conduct that has led to professional discipline.

Taxes

April 15 will be here before you know it. Since 1972, the Minnesota Supreme Court has held that failure to file individual income taxes is professional misconduct. And repeated non-filing of individual tax returns warrants presumptively public discipline. The Court is less concerned about failure to pay your individual taxes as long as tax returns are filed. In a 1992 case, the Court stated "[w]e note again it is for failure to file tax returns that lawyers are subjected to disciplinary sanctions, not for failure to pay taxes owed. As we said in *In re Disciplinary Action against Chrysler*, 434 N.W.2d 668, 669 (Minn.1989), the lawyer disciplinary system is not, nor should it be, a tax collection auxiliary for the government."[1]

You must also ensure that employee withholding returns are filed, *and* that those withheld funds are promptly paid to taxing authorities. The Court treats it as serious misconduct if you fail to pay withholding taxes.[2]

Child support or maintenance arrearage

You can also be administratively suspended if you are in arrears on maintenance or child support and fail to enter into a payment plan or to comply with that plan. In 1996, the Court adopted Rule 30, Rules on Lawyers Professional Responsibility (RLPR), which provides for an administrative suspension from practice for just this situation. Further, to the extent that you may be knowingly disobeying a court order, discipline may be warranted under Rule 3.4(c), Minnesota Rules of Professional Conduct (MRPC).

Criminal conduct

Rule 8.4(b), MRPC, provides it is professional misconduct for a lawyer to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." Comment [2] provides some guidance as to which criminal conduct is particularly troubling for lawyers:

> "Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to the practice of law. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even if ones of minor significance when considered separately, can indicate indifference to legal obligations."

Some specific cases illustrate the types of criminal conduct that can lead to discipline, including misdemeanor conviction for interference with a 911 call,[3] felony driving while impaired,[4] misdemeanor convictions involving dishonesty such as theft by swindle,[5] crimes of violence,[6] and basically all felony level crimes. I'm sure this surprises no one. Minnesota ethics requirements depart from some other jurisdictions by not pursuing misdemeanor offenses for first-offense driving while impaired—though judges, in contrast, do receive professional discipline for misdemeanor driving while impaired convictions.

Dishonest conduct

Rule 8.4(c), MRPC, makes it professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." Dishonest conduct in one's personal life has led to discipline. Some examples include lying during *voir dire* as a potential juror,[7] lying during your own divorce,[8] lying to law enforcement,[9] dishonestly converting funds of a family member,[10] misleading statements in a lawyer's own bankruptcy,[11] and lying on your resume and forging transcript documents.[12] These are only a few examples, but I believe you get the point. Dishonest conduct by lawyers can lead and has led to serious professional consequences, even if the lies do not involve a client representation.

Duty to report

There is no duty to self-report your own misconduct either within the practice of law or outside the practice of law, with limited exceptions. Rule 12, RLPR, requires lawyers who have been publicly disciplined in another jurisdiction or who are facing public discipline charges in another jurisdiction to notify this Office of those facts.

Others likely will have a duty to report your misconduct, if it is serious, whether it relates to the practice of law or not. Rule 17(a), RLPR, requires court administration to report to this Office whenever a lawyer is criminally convicted of a felony. Rule 8.3(a), MRPC, requires lawyers who know that another lawyer has committed a rule violation that raises a "substantial question as to that lawyer's honesty, trustworthiness, or fitness" to report that information to this Office. One of the most frequently asked questions we receive on the attorney ethics hotline is whether particular facts give rise to a duty to report.

Conclusion

Most lawyers not only ensure their professional conduct is compliant with the ethics rules, but also ensure their personal conduct is compatible with the expectations the Court has established for lawyers. When lawyers are admitted to the bar, we must demonstrate good character. It is that good character that helps to protect the public and to safeguard the judicial system. Once we are licensed, good character remains relevant, and many actions contrary to good character can have professional consequences, even if no client conduct is involved. ▲

NOTES

[1] *In re Tyler*, 495 N.W.2d 184, 187 n1 (Minn. 1992).
[2] *In re Moulton*, 721 N.W.2d 900 (Minn. 2006).
[3] *In re Stoneburner*, 882 N.W.82 200, 206 (Minn. 2016).
[4] *In re Ask*, 991 N.W.2d 266 (Minn. 2023).
[5] *In re Glasser*, 831 N.W.2d 644 (Minn. 2013).
[6] *In re Thompson*, 953 N.W.2d 522 (Minn. 2021).
[7] *In re Warpeha*, 802 N.W.2d 361 (Minn. 2011).
[8] *In re Marcellus*, 13 N.W.3rd 679 (Minn. 2024).
[9] *In re Wesley Scott*, 8 N.W.3d 236 (Minn. 2024).
[10] *In re Trombley*, 916 N.W.2d 362 (Minn. 2018).
[11] *In re Crabtree*, 916 N.W.2d 869 (Minn. 2018).
[12] *In re Ballard*, 976 N.W.2d 720 (Minn. 2022).

Why Minnesota needs an Office of Animal Protection

For 150 years, enforcement of animal cruelty laws has been hit or miss. A new bill at the Legislature aims to change that.

BY STACY L. BETTISON

Minnesota has had animal cruelty laws on the books for over 150 years. These laws create criminal liability for torturing, neglecting, beating, mutilating, or abandoning animals; depriving them of food; or keeping them enclosed without providing exercise. Unlike other crimes of violence, however, the state of Minnesota has devoted virtually no resources to the enforcement of these laws. With the exception of a period in the early 1900s when the state devoted resources to animal cruelty—at the time it was associated in the civic mind with child abuse—such abuse has fallen through the cracks for well over 100 years. This lack of enforcement resources has hurt both animals and people. (Links between animal cruelty and human violence, as we will see, are long established.)

Recently there has been a concerted effort to provide better protection to animals and people by reforming this too-seldom-noticed area of criminal justice. In the words of Ann Olson, the executive director of a Minnesota-based animal protection organization called Animal Folks, "We have been tracking and analyzing animal cruelty cases in Minnesota for over 15 years. While many authorities, including law enforcement, prosecutors, veterinarians, and animal care facilities, strive to protect animals and enforce animal cruelty laws, we have found these authorities are not given adequate assistance, training, or resources to support their efforts."

In response to its findings, Animal Folks worked with Minnesota legislators and criminal justice partners to create the Office of Animal Protection bill. In the proposed legislation,[1] the office would be created under the Department of Public Safety and provide expertise and resources to assist local, state, tribal, and federal agencies in the prevention, investigation, and prosecution of animal cruelty.

This article examines the history of animal cruelty laws in Minnesota as well as the acute and long-standing need for better-organized and more concerted enforcement of these laws. It also explains how the proposed Office of Animal Protection would meet these needs.

A BRIEF HISTORY OF ANIMAL CRUELTY LAWS IN MINNESOTA

Criminal liability

Animal cruelty was designated a crime even before Minnesota became a state in 1858. In 1851, the Legislative Assembly of the Territory of Minnesota enacted a law providing for a maximum of 30 days in jail for anyone "who cruelly beat or tortures any horse, ox or other animal, whether belonging to himself or another..."[2]

After statehood, on March 6, 1871, the Legislature passed "An Act for the prevention of cruelty to animals."[3] This set forth an extensive body of laws that covered all species and substantially mirrored much of the current statute, with requirements of caring for animals (food, water, shelter) and prohibiting certain actions toward animals (overworking, torture, beating, and the like).[4] It defined "animal" to include "all brute creatures," and defined "owner," "person," and "whoever" to include corporations and individuals.[5] It widened the net of criminal liability by imputing the acts and knowledge of agents or anyone employed by corporations to the corporations themselves, thus creating vicarious liability.[6]

Another provision criminalized the abandonment of sick and disabled animals: "If any maimed, sick, infirm or disabled animal shall be abandoned to die by any owner, or person having charge of the same, such person shall, for every such offence, be punished in the same manner provided in section one."[7]

Twenty-seven years later, in 1905, the Minnesota Legislature passed an updated statute, which in many respects survives as our modern-day animal cruelty statute. The statute then defined "animal" the same as it does today: "the word 'animal' shall include every living creature except the human race."[8] The definition of "torture" or "cruelty" was simplified, and likewise remains largely the same today: "every act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering, or death shall be caused or permitted."[9] The most recent change to the law came in 2020, when immunity for veterinarians reporting cruelty was enacted.[10]

Government structure

But laws require an enforcement mechanism, especially when the subjects protected by the law are particularly vulnerable and have little or no voice. In 1869, recognizing that both animals and children were among society's most vulnerable, the state established the Minnesota Society for the Prevention of Cruelty to Animals to enforce humane laws and to prevent cruelty to *both* animals and children.[11] (Given this enlarged purview, the Legislature later changed the name to the Minnesota Society for the Prevention of Cruelty.[12]) In 1905, the society was officially made Minnesota's Bureau of Child and Animal Protection.[13]

This structure remained in place until 1925, when the enforcement of cruelty laws for animals and children was separated; animals were put under the Board of Control (Department of Public Institutions) and children were put within the Children's Bureau.[14] Under these auspices, the Society for the Prevention of Cruelty was charged with preventing cruelty to animals and providing a humane education program. The education program was discontinued in 1933 due to a lack of funds, and in 1939, the Board of Control that had overseen it was abolished. The Society for the Prevention of Cruelty subsequently reinstated its humane education program and focused on investigating complaints and enforcing humane laws.[15]

In 1971, the Legislature allowed the Society for the Prevention of Cruelty to refer to itself as the Minnesota Humane Society, and in 1977, the Minnesota Society for the Prevention of Cruelty was officially dropped; it was then that the Humane Society became an official state agency.[16] Later, in 1987, the Minnesota Humane Society was abolished and the power to assist law enforcement in the investigation of animal cruelty laws was granted to humane agents in county and district societies and a federation of humane societies.[17]

These entities are not state agencies. They operate as nonprofit organizations providing paid and volunteer humane agents. The Animal Humane Society, as one example, employs two paid humane agents to assist law enforcement with animal cruelty cases, and also provides assistance with equipment, veterinary care, and housing/care of seized animals.

Enforcement

As for enforcement of the cruelty laws**,** in 1871, the Legislature imposed an affirmative duty on law enforcement to prosecute all violations of the animal cruelty laws "which shall come to their notice or knowledge."[18] This allowed agents of the Minnesota Society for the Prevention of Cruelty to Animals the power to arrest and "bring before any court" anyone found violating the cruelty law.[19]

The 1871 statute required law enforcement to feed and take care of the animals once a person was arrested.[20] The person caring for the animals took a lien on the animals for the cost of caring for them until the arrested person was able to care for them again.[21] All fines and forfeitures imposed or collected under the act were to be given to the Minnesota Society for the Prevention of Cruelty to Animals.[22]

Today, primary jurisdiction for enforcement of animal cruelty statutes remains under police departments and county sheriff's offices, with some authority granted to humane agents and animal control officers. Law enforcement is able to call upon experts to assist in their investigations. The statute continues to impose the duty to investigate allegations of cruelty to animals and to arrest individuals believed to be violating the law.[23] Officers can "take possession" of cruelly treated animals and deliver them to the "proper officers of the county or district for custody and care."[24]

Early case law

One 1933 Minnesota case involved the death of a horse. In *State v. Maguire,* a jury found the defendant guilty of willfully and unlawfully depriving a horse of necessary food, causing the horse's death.[25] The issue was whether the evidence was sufficient to sustain a finding by the jury that the horse's death resulted from starvation. The Minnesota Supreme Court affirmed the case, noting that the evidence in the case showed that the grass in the pasture was insufficient to feed the horses. It further noted witness testimony that the pasture was "as bare as a floor," other evidence presented that the horse's condition "became poorer and poorer," and opinion testimony that the horse was starved to death. The court affirmed his misdemeanor conviction. In terms of jurisprudence, *Maguire* and later cases confirm that "torture" and "cruelty" include acts of omission and neglect, willful failures to *do something*—common elements in animal cruelty cases.[26]

The animal cruelty law has been challenged as unconstitutionally vague. In *State v. Hoseth*,[27] the Plymouth Police Department responded to a call reporting two German Shepherds and 12 puppies in a car. Upon arrival, police officers detected a strong odor of urine and feces coming from the car and observed dogs licking the windows and an absence of water in the car. The police opened the car and removed the animals, and upon doing so observed that some dogs' fur was soiled with feces, although the dogs did not appear to be in pain or dehydrated. Ultimately, the defendant contacted authorities to confirm ownership, asking that the animals be returned to him. The police refused and instead took them to the Humane Society, where they were determined to be in relative good health and not suffering from malnutrition or dehydration.

The defendant was charged with three counts of animal cruelty and argued that "necessary" was vague in the prohibition that "No person shall deprive any animal over which the person has charge or control of necessary food, water, or shelter."[28] The defendant argued that "necessary" implies a "level of food, water or shelter required to sustain life and that 'only deprivation of nourishment or shelter which results in death is criminalized" by the statute. The court disagreed, making clear that the statute did not require the death of an animal to find a party failed to provide necessary water or shelter:

> "This argument suggests that the legislature intended to prohibit persons from causing death to animals by depriving them of food, water or shelter but did not intend to prevent owners from bringing the animals to the brink of death by depriving them of these necessities. We find the legislature intended to prohibit animal owners from exposing their animals to conditions likely to result in needless suffering. Appellant's conduct violated this legislative prohibition."[29]

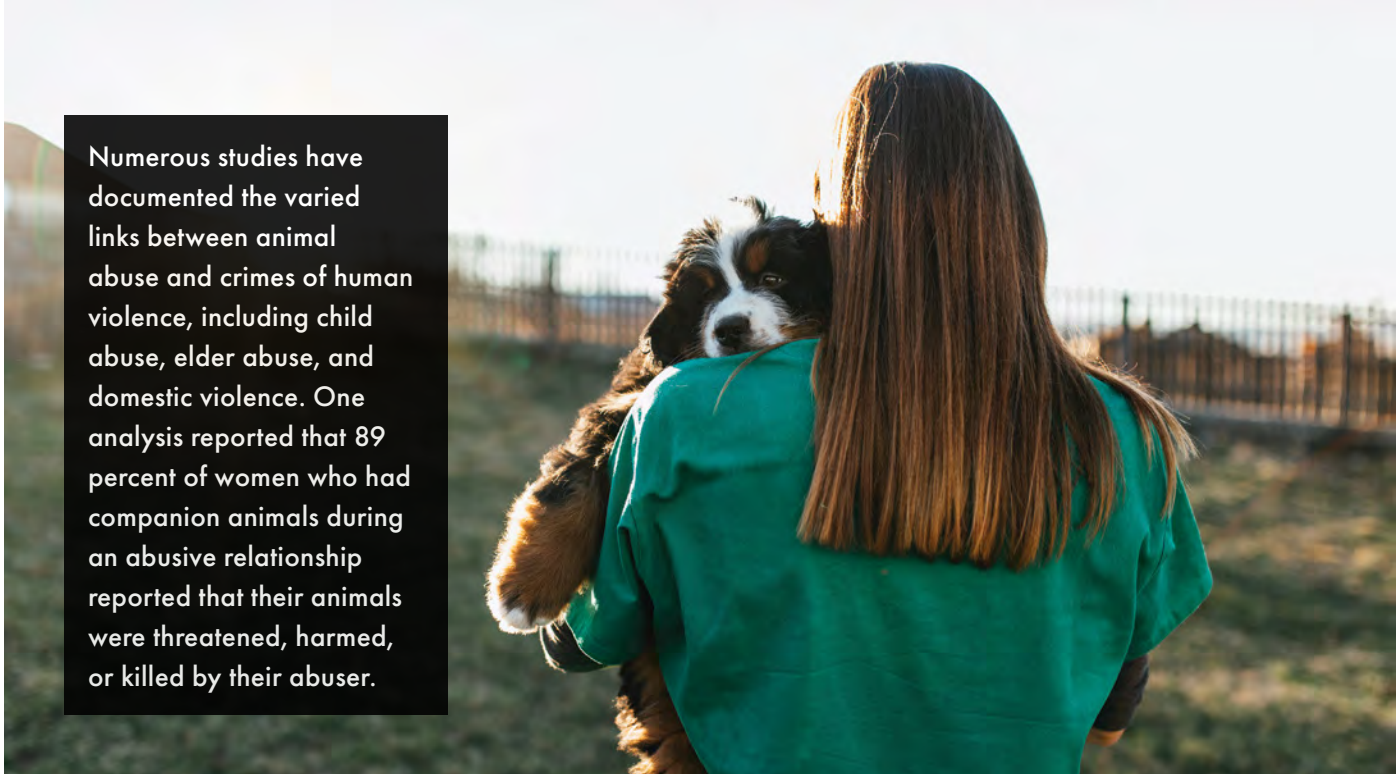
ANIMAL CRUELTY AND HUMAN VIOLENCE

Animal cruelty is recognized by the state of Minnesota to be a serious crime, rising to felony level criminal liability. This reflects the morally sound view that animal cruelty is wrong and people who commit this crime must be held accountable. But while animal cruelty was traditionally considered an isolated issue affecting only animals, it has since become clear that animal cruelty presents a public safety problem that very often impacts humans.[30]

Nearly 70 percent of households in the United States have a companion animal in their care, and, among other things, this presents opportunities for people who are abusing people to also abuse animals as a form of leverage and control. In 2015, the FBI classified animal cruelty as a Group A offense and a crime against society.[31] And numerous studies have documented the varied links between animal abuse and crimes of human violence, including child abuse, elder abuse, and domestic violence.

Some data points regarding the connection:

- 89 percent of women who had companion animals during an abusive relationship reported that their animals were threatened, harmed, or killed by their abuser.[32]
- 56 percent of battered women entering shelters delayed their escape from an abusive partner due to concerns for the welfare of pets or livestock left behind.[33]
- 88 percent of homes where children were being abused also contained animals that were being abused or neglected.[34]
- 43 percent of school shooters have tortured or killed animals.[35]



Numerous studies have documented the varied links between animal abuse and crimes of human violence, including child abuse, elder abuse, and domestic violence. One analysis reported that 89 percent of women who had companion animals during an abusive relationship reported that their animals were threatened, harmed, or killed by their abuser.

- 70 percent of people who committed violent crimes against animals also had criminal records for violent, property, drug, or disorderly conduct crimes.[36]

In Minnesota, there are countless cases where animal cruelty was connected to human violence. A few cases contained in Minnesota court records include:

- Ziggy, a dog, was abused repeatedly by owner's live-in boyfriend of three months, resulting in multiple injuries to the dog. Dog sustained bruising and abrasions to chest, puncture wounds on his front legs, three lacerations to lip, puncture to left chin, lacerated tongue, fractures to 16 teeth, complicated crown-root fractures of 9 teeth, and evidence of metal staining on the right maxillary canine tooth. Upon questioning by police, the boyfriend admitted to threatening girlfriend as well as kicking and using his fists to repeatedly punch Ziggy on multiple occasions.
- Thor, a dog, was used in sex acts of owner's live-in boyfriend. Boyfriend flagged by law enforcement after National Center for Missing and Exploited Children received a tip for potential sexual child abuse material located on Google photos infrastructure. The Minnesota Bureau of Criminal Apprehension investigated and identified defendant. Law enforcement executed a search warrant to find VHS tapes where defendant engaged in bestiality with Thor and other dogs. Defendant's electronic devices contained child pornography, depicting children who appeared to be as young as two.
- Dog was kicked multiple times by owner's estranged husband when he came over to her house intoxicated. After kicking the dog, the estranged husband grabbed and shoved wife. Wife reported to police that she and her husband were going through a divorce and she often gets nervous about his temper.
- Three cats, killed by owner. Law enforcement called to respond to house fire, saw "F*** U" and "C**t" written on the front door of his house. Owner stated that he was sick of his "old lady" and decided to "light it up." Fire was extinguished. Owner said he has let the cats out before setting fire. Law enforcement went inside house after fire extinguished and found dead cats.

No state agency exists to assist law enforcement, city or county prosecutors, veterinarians, animal care facilities, or others tasked with the job of enforcing animal cruelty law. Unlike predatory crimes, illicit drug crimes, human trafficking, and the newly established Fraud and Financial Crimes Unit at the Bureau of Criminal Apprehension, there is no state support for enforcing laws against the abuse or neglect of animals. That support ended in the late 1930s.

The result is inconsistency in investigations and enforcement—a problem I have personally witnessed over the past 13 years as a volunteer in animal cruelty cases. The reality is that, depending on a particular jurisdiction's resources and the experience and training of law enforcement and the other professionals involved in investigations, a crime could be fully and properly investigated and prosecuted, resulting in a conviction—or it could fall through the cracks, resulting in no accountability and continuing risk to the public.

THE PROPOSED OFFICE OF ANIMAL PROTECTION

Several elements of effective enforcement are currently lacking. The bill to create a state Office of Animal Protection (OAP) aims to address a number of those deficits.

The leadership gap

Animal cruelty investigations frequently require a multi-disciplinary approach that involves specialized expertise and skills. These different disciplines—from law enforcement and prosecutors to veterinarians, animal care facilities, and others—must collaborate to move a case forward successfully. This requires statewide leadership that the Minnesota OAP would provide through a unified command structure.

The intent of the office is to build out a team of experts in different fields, including special agents, crime analysts, veterinarians, and others skilled in specific aspects of animal cruelty investigations and forensics. Further, the office would hire a prosecutor, under the Attorney General's Office, to assist city and county attorneys and law enforcement agencies across the state.

The office would not supplant the authority or duties currently held by law enforcement or prosecutors; instead, it would provide the kind of assistance that effective prevention, investigation, and prosecution of animal cruelty crimes require.

The training gap

As in any discipline, training is critical for those who bear responsibility for enforcing the law. Many colleges and universities do not provide education specific to animal cruelty investigations, prosecutions, or veterinary forensics. Authorities must find acceptable training on their own—and much of this training is not specific to Minnesota law.

Reese Frederickson, the Pine County Attorney since 2014, has prosecuted numerous animal crimes, co-authored the animal cruelty chapter of the Minnesota Judges Criminal Benchbook, and presented CLE classes on prosecuting animal cruelty cases. "Minnesota's animal cruelty laws are only as good as those who are trained to enforce them," he notes. "Like any substantive area of the law, training throughout law enforcement, veterinary medicine, prosecutors, and the court system is a must. Animal cruelty presents a serious public safety problem, and proper training and education of all criminal justice partners will better serve and protect the public."

The resource gap

Animal cruelty cases can be costly due to the necessity of transport, care, and housing for animals once they are seized or surrendered. Cases may not be pursued or animals not seized due to a lack of qualified services or a high cost of care. Animal shelters are often asked to absorb expenses for animal care and keeping. Nancy Turner, founder and president of This Old Horse, Inc., a nonprofit rescue based in Hastings, has responded to numerous animal cruelty cases involving equines where trailers, food, and specialized care are needed to help the harmed animals.

Of particular concern is where to put horses when they are seized. An owner has up to 10 days to request a hearing concerning the seizure.[37] According to Turner, "There are very few places in the state that have the ability to hold horses for the 10-day hearing window. Horses need to be quarantined because, particularly in neglect and cruelty cases, they may be infested with parasites, have infectious diseases, and lack vaccinations such that other healthy horses would get sick if they were grouped together." When there is no place to hold the horses, the inclination may be to not seize the animals or pursue any investigation. "We'd rather have 10 horses come into our rescue program than have them languish," says Turner. "The challenge is always the quarantine piece."

A tale of two animal abuse investigations

'WITH A BOW ON TOP'

Froto, an eight-year-old male Bichon Frise that weighed 16 pounds, was the companion to a 73-year-old woman. Upon returning from an errand one day, she found the dog shaking, scared, and bleeding under her kitchen table. She immediately brought him to her veterinarian, who found blunt force trauma so severe that Froto had to be euthanized. The veterinarians suspected animal cruelty. Froto's owner reported it to the Washington County Sheriff.

Froto's body was sent to the University of Minnesota for a forensic necropsy. The necropsy found blunt force trauma, suggesting abuse. The woman had two tenants living in her home. A Washington County sheriff's deputy conducted interviews with the dog's owner, the tenants, and the veterinarians. A tenant who had lived in the house for one month admitted to beating Froto multiple times when the woman was not in the house. The sheriff's office submitted its incident report with evidence to the Washington County Attorney's Office, which charged the tenant with one count of felony animal cruelty.[1] The defendant pled guilty as charged and was sentenced to 90 days in jail, three years' probation, and restitution.

Marc Berris, assistant county attorney for Washington County, prosecuted Froto's case. He says the county attorney's office was able to get justice for Froto because "the investigation was flawless." The detective "saw the reports, took the calls seriously, applied the training he had received, and did everything right. By the time it got to me, it was gift wrapped with a bow on top."▲

TOO LITTLE TOO LATE

It was late October 2018. The strikingly poor condition of horses kept in a tiny round pen with no roof on a property in southern Minnesota caught the attention of a good Samaritan. All the horses were thin. One was lame. The witness called law enforcement to make a complaint, and an officer visited the property to assess the horses. The owner had an explanation for why the horses were thin: He had just gotten them from a "kill pen." The owner further explained that one horse was limping because her hooves needed to be trimmed, and that the horses were outside with no shelter because they had to be quarantined. The owner stated he intended to get only one horse at the kill pen but got seven instead.

Five months later, winter had come and gone and a second complaint about the same horses was called in. Law enforcement visited the property but failed to make contact with the owner and left a voicemail. The next day, a third call came in, this time reporting two dead horses under a tarp with their hooves sticking out.

Even after successful quarantine, nonprofits like This Old Horse, Inc. and other rescues then undertake an extensive and costly nutritional and injury rehabilitation, which is paid for through grassroots fundraising. Under the current terms of SF 1163/HF 1816, the OAP would seek grants to help communities with the costs of care for animals.

The data gap

If Minnesota is to build an apparatus capable of enforcing animal cruelty laws effectively, one of the sorest needs is better information. There is very little data collected about animal cruelty crimes in the state. While the Minnesota Bureau of Criminal Apprehension has been working with the FBI and reporting agencies in Minnesota to obtain animal crime data, it will take years to construct a data set that reflects an accurate picture of Minnesota animal cruelty crimes.

In the meantime, there is a dearth of information about animal cruelty that would help increase public safety: How many suspected violations of law are reported in any given year, and to whom are they reported? What areas of the state have the highest report rates and for what types of cruelty? How many reports are investigated? How many are not? How many investigations lead to criminal charges? Is sentencing applied accurately? Are sentencing conditions being followed?

The list of answers we need but don't possess is long. Animal Folks has been collecting animal cruelty data (convictions and dismissals) for Minnesota cases since 2008, analyzing charging statutes, penalties imposed, and other factors. But more data is needed, says Executive Director Ann Olson: "As with any crime, data is critical. The more data collected, the more effectively laws can be enforced and cruelty can be prevented from happening to animal and human victims."

Beyond data, additional needs include creating a systematic, organized way for people to report suspected animal cruelty. The public is often unsure about where to turn. Through the years I have responded to numerous calls that come into the Minnesota Horse Welfare Coalition. Most people don't know that calling the sheriff or local police is the first step they should take.

CONCLUSION

Minnesota law is clear: People should not torture, be cruel to, or neglect animals. Those who do so violate the law. While our laws are clear, Minnesota has fallen short of ensuring that animal cruelty laws are enforced with consistency and success. And while animals deserve protection under the laws in their own right, we also know that animal safety is intimately tied up with the health and safety of humans. The Office of Animal Protection is a bill to strengthen public safety. ▲

Law enforcement reached the owner by phone and the owner claimed that he rescued six horses in October, and all but one adapted. He said he fed his horses twice a day. Law enforcement called a veterinarian who had been out to the property four to six weeks earlier. The veterinarian indicated that the owner should have been feeding the horses twice what he was feeding them. He rated the body condition score of the horses 2 out of 10.[2] The auction facility was contacted to determine the body condition of the horses prior to purchase and claimed the horses' body condition scores were 5.[3]

The next day, law enforcement visited the property with two investigators and a humane agent. The horses' ribs and spines were protruding. There was no clear ground in the paddocks, and they were covered with manure and mud. The fence boards had been chewed on. Inside the barn, the horse pens were in the same condition as the outside paddocks—full of manure and dirt, with no bedding and no food remnants. The water trough had manure in it. An inspection of the full property found seven live horses, two dead horses, and one donkey. The owner surrendered the equines, which were brought to Anoka Equine Veterinary Services. Once at Anoka Equine, a 20-year-old bay named Buddy was euthanized shortly after his arrival. (I was on-site at Anoka Equine and obtained photos of the equines, including Buddy.)

The owner was charged with two felonies and two gross misdemeanors involving torture and cruelty, and four misdemeanors. The owner pled guilty to one gross misdemeanor count and all other counts were dismissed. He was sentenced to 365 days in jail, all but 20 of which were stayed, and to two years' probation.

Barbara Colombo, president of the Minnesota Horse Welfare Coalition, was at the crime scene when the horses were surrendered. "Horses don't decline to life-threatening conditions in a short amount of time," she notes. "This is a result of extreme neglect that occurred over many months. Sadly for these horses and donkey, they languished for five months in the winter—a time when adequate food and water became especially important. While we were relieved that the horses were removed from the property, the intervention was untimely. All the animals suffered unnecessarily." ▲

SIDEBAR

[1] Minn. Stat. §343.21.1.

[2] Body condition score (BCS) evaluates the fat deposit under the horse's skin in six areas: neck, withers, behind the shoulder, back, ribs, and tail head. BCS uses the Henneke scale: 1=poor; 9=extremely fat. The ideal BCS for most horses is 5, but can range from 4-6. *See* "Caring for the Underweight Horse," University of Minnesota Extension. *https://extension.umn.edu/horse-health/caring-underweight-horse* (last visited 3/3/2025).

[3] In my experience working in animal welfare for over a decade, encompassing numerous experiences with animal cruelty cases involving horses sold at auction, certain auctions do not consistently provide accurate information.

STACY BETTISON is an attorney and crisis communications expert. She is also vice president of the Minnesota Horse Welfare Coalition, where she has been a volunteer for 13 years. www.bettison.com

NOTES

[1] Senate File 1163/House File 1816.

[2] Territory of Minnesota, Chap. 107, §18 (1851). The statute was later revised, removing "other animal" and changing it to "other beasts." Rev. Stat. ch. 101, 39 (1854). An early case concluded that dogs were not "beasts" and this was one reason the conviction must be reversed. *United States v. Gideon*, 1 Minn. 292, 295 (1856). A full analysis of *Gideon* can be found in Corwin R. Kruse's law review article entitled *Baby Steps: Minnesota Raises Certain Forms of Animal Cruelty to Felony Status*, in which the author concluded that the 1854 statute was construed to protect "exclusively human interests." 28 Wm. Mitchell L. Rev. 1649, 1660–61 (2002). *Gideon*, plus the placement of the animal cruelty statute located in criminal code chapters dealing with "Offences Against Chastity, Decency, and Morality" (along with such offenses as blasphemy and fornication), suggested to Kruse that the concern was more for human morality than for animal suffering. *Id.* 1661. That may be true. By 1871, however, it seems that the times had changed at least somewhat, and the pain and suffering of animals became a concern in its own right. *See, e.g.*, Minnesota General Laws, Ch. XXXIV, §9 (1871) making it a punishable offense to abandon "any maimed, sick, infirm or disabled animal."

[3] Minnesota General Laws, Ch. XXXIV (1871). In 1878, the animal cruelty law was recodified under Chapter XCIX, Offences Against Public Policy, §§21-33, Cruelty to Animals (1878).

[4] *Id.* §1. The statute specifically set out what constituted cruelty and the penalties:

"That whoever shall overdrive, overload, overwork, torture, torment, deprive of necessary sustenance, cruelly beat, mutilate, or cause, or procure to be so overdriven, overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten, or mutilated, any horse, ox or other animal, and whoever having the charge or custody of any such animal, either as owner or otherwise, shall unnecessarily fail to provide such animal with proper food, drink and shelter, or protection from the weather, shall, for each and every such offense be punished by imprisonment in jail, not exceeding three months, or by fine not less than ten dollars, and not exceeding one hundred dollars, or by both such fine and imprisonment."

[5] *Id.* §8.

[6] *Id.*

[7] *Id.* §9. While it may have been a provision borne out of compassion, it could have also been a practical matter of declining to impose on others the inconvenience of dealing with someone's abandoned animals.

[8] Minn. Ch. 120, §5151 (1905); Minn. Stat. §343.20, subd. 2. (2024).

[9] Minn. Ch. 120, §5151 (1905); Minn. Stat. §343.20, subd. 3 (2024).

[10] Minn. Stat. §343.215 (2024); see Minn. Session Laws Ch. 28, art. 4, § 33 (2020).

[11] Minnesota Agencies, Minnesota Humane Society, *https://www.lrl.mn.gov/agencies/detail?AgencyID=785*, last accessed 2/25/2025.

[12] The society was given official status and powers in 1889 with the title Minnesota Society for the Prevention of Cruelty, continuing to apply to both animals and children. Minnesota General Laws, Chapter 224, §3 (1889).

[13] "An act to prevent wrongs to children and dumb animals and to establish a bureau of child and animal protection." Minn. Ch. 274 (1905). At this time it also began to be referred to as the state humane society. *Id.* §3 (referring to the bureau as "humane society").

[14] Minnesota Agencies, Minnesota Humane Society, *https://www.lrl.mn.gov/agencies/detail?AgencyID=785*, last accessed 2/25/2025.

[15] *Id.*

[16] Minn. Ch. 264 (1977).

[17] Minn. Ch. 394 (1987).

[18] Minnesota General Laws, Ch. XXXIV, §12 (1871).

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] "Duties of Peace Officers," Minn. Stat. §343.12 (2024).

[24] *Id.*

[25] 248 N.W. 216, 216 (Minn. 1933); Minn. Chap. 102, §10443 (1927) ("Every person who shall deprive an animal, of which he has charge or control, of the necessary food shall be guilty of a misdemeanor.").

[26] *State v. Klammer*, 41 N.W.2d 451, 453–54 (Minn. 1950) (animal maltreatment based on lack of food, emaciated living horses, and presence of dead horses); *State v. Dokken*, No. A12-1797, 2013 WL 4711131, at *7–9 (Minn. Ct. App. 9/3/2013) ("The lack of food at the site and the obvious emaciated condition of the horses were sufficient to suggest that Dokken disregarded the risk to the horses or was indifferent to the consequences.").

[27] *State v. Hoseth*, No. C6-91-2170, 1992 WL 189427, at *3 (Minn. Ct. App. 8/11/1992).

[28] Minn. Stat. 343.21, subd. 2.

[29] Supra note 27 at *3.

[30] Brinda Jegatheesan, Marie-Jose Enders-Slegers, Elizabeth Ormerod, Paula Boyden, Understanding the Link Between Animal Cruelty and Human Violence, *https://pmc.ncbi.nlm.nih.gov/articles/PMC7246522/*, last accessed on 2/21/2025.

[31] Dispatch Community Policies, *Animal Cruelty: A Serious Crime Leading to Horrific Outcomes*, April 2019, Vol. 12, Issue 3.

[32] *Animal Maltreatment as a Risk Maker of More Frequent and Severe Forms of Intimate Partner Violence,* 26-1 Journal of Interpersonal Violence, 1 (2017).

[33] *Betty Jo Barrett, BJ, et al., Interpersonal Violence, Dec 2020; Favor & Strand, Interpersonal Violence 2003.*

[34] Deviney, E. et al., *The care of pets within child abusing facilities*, 4 International Journal for the Study of Animal Problems 321-29 (1983).

[35] Madfis, E. & Arluke A., *Animal Abuse as a Warning Sign of School Massacres*, Homicide Studies (Feb. 2014).

[36] *Arluke & Luke, 1997.*

[37] Minn. Stat. §343.235, Subd. 3 (2024).

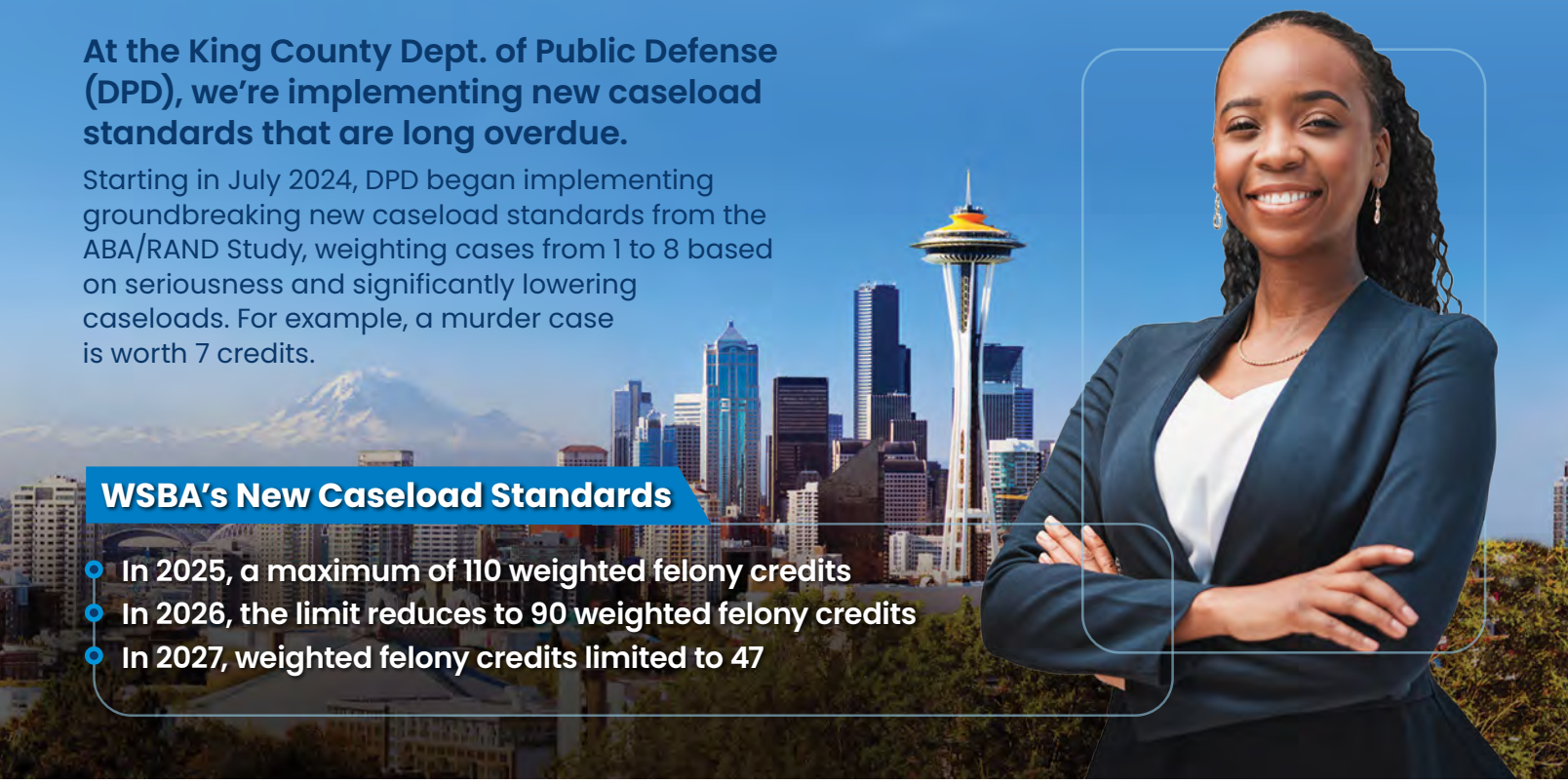
[38] The state collects data on a number of crimes and other issues. *See e.g.*, Minnesota Crime Statistics, Bureau of Criminal Apprehension, *https://dps.mn.gov/divisions/bca/data-and-reports/mn-crime-statistics* (last visited 3/3/2025).

YOU BECAME A PUBLIC DEFENDER TO FIGHT AGAINST THE HARMS OF THE CRIMINAL LEGAL SYSTEM.

JOIN THE FUTURE OF PUBLIC DEFENSE.

At the King County Dept. of Public Defense (DPD), we're implementing new caseload standards that are long overdue.

Starting in July 2024, DPD began implementing groundbreaking new caseload standards from the ABA/RAND Study, weighting cases from 1 to 8 based on seriousness and significantly lowering caseloads. For example, a murder case is worth 7 credits.



WSBA's New Caseload Standards

- In 2025, a maximum of 110 weighted felony credits
- In 2026, the limit reduces to 90 weighted felony credits
- In 2027, weighted felony credits limited to 47

Be the lawyer you always wanted to be

At King County DPD, you'll have:

- Felony and misdemeanor caseload limits
- Robust funding for expert witnesses
- Support from skilled, in-house investigators and mitigation specialists
- Supportive and inclusive workplace

We value your passion and experience

- Salary range: $103,272 - $163,621
- Comprehensive medical benefits
- Strong union workplace
- Well-funded and secure pension
- Ongoing training opportunities

CONSIDERING RELOCATING TO THE PROGRESSIVE PACIFIC NORTHWEST?

- Join a mission-driven, forward-thinking community
- Generous leave to help support work-life balance
- Washington State Bar Admission costs covered

If you have 3+ years as a criminal defense attorney or civil litigator and trial experience, join us.

READY TO LEARN MORE?

Visit kingcounty.gov/dpd/jobs or email dpd-hr@kingcounty.gov
Equal opportunity employer

King County
Department of PUBLIC DEFENSE

Ethical advice for these times, and all times

BY DAKOTA S. RUDESILL

My students have been asking me about what to do in these times of extreme partisanship, tectonic governance changes, and growing worries about the future of our republic and the rule of law.

As a teacher and scholar of professionalism, my answer to them right now is the same answer I have for everyone at all times: It is your first job as a professional, and as a citizen, to be a person of integrity and courage. Everything depends on these qualities. Without them, laws are empty words. Professional commitments, civic institutions, and personal relationships are mere vibes.

Integrity defined

What does integrity mean?

Professor Stephen L. Carter of Yale Law School offers a ready three-part framework in his book of the same title.[1]

First, discernment. Do the hard work of ascertaining what is true and right. Be deliberate about it. Sort the facts. Analyze your obligations, commitments, and values. Seek out information and arguments that challenge your theories, instincts, and initial conclusions. Identify and confront ambiguities and tensions. In the public space, we call this process thinking for yourself. Legal ethics conceptualizes it as diligence[2] and analytical professional independence.[3]

Second, act consistently with what you have determined to be right, even at personal cost. That last piece is critical. If you only do the right thing when it is convenient, you are being convenient rather than doing the right thing. You are not acting with integrity. Common terms for this are *walking the walk* and *living your values*. The official comments to the ABA Model Rules advise that lawyers must meet their obligations "despite opposition, obstruction or personal inconvenience."[4]

Carter's third principle is communication. Explain your actions and their reasoning. As every schoolkid doing a class presentation experiences (and every lawyer knows when writing a brief or otherwise performing their obligations of prompt, candid, and truthful communication),[5] having to

articulate your thinking improves it. Your mind works harder. You find gaps, fuzzy spots, and errors in your work. Explaining yourself also engages a free society's feedback loop by exposing your reasoning to criticism—and making it available, too, for endorsement and emulation.

Communicating with integrity also fosters social norms of careful thought, consistent action, and civil dialogue. It facilitates accountability. Ultimately, integrity's communication requirement underscores the value and importance of integrity itself.

Where to look, and why not to bend

The law, civic values, and moral values are key sources of guidance as we do the Step 1 discernment work and then follow through.

In a manner akin to civic principles such as the rule of law for citizens generally, ethical codes are also grounding, centering, and empowering for professionals in difficult and intimidating times. And their value is broader yet: As I wrote in the Hofstra Law Review,[6] professions generally share not just specialized training and licensure but also common ethical commitments of great value to public deliberation and institutional accountability in a free society. These include heightened fidelity to the truth (legal and factual), professional analytical independence, good process, civility, and accountability. Professionals who meet their responsibilities do civically vital work to manage complexity, establish common reference points of truth, and check error and abuse of authority.

Our times are afflicted with the spiraling factionalism of which Madison warned in *The Federalist Papers*,[7] flooded with bad information and brazenly rule-defiant and truth-defiant actors, and beset by cratering public confidence in institutions of all kinds—including the professions and anyone with expertise.[8] These circumstances make the ethical commitments and work of professionals all the more urgent. I wrote about the importantly similar professions of law, arms, and intelligence, and one could further add medicine and other sciences, budgeting, auditing, journalism, and other fields.

Consulting other thoughtful people helps everyone do the work of integrity. "Get an ethics buddy," I advise, while respecting any confidentiality obligations. Usually sensitive facts and parties can be anonymized or rendered hypothetical.

My students and I read Marcus Aurelius and his admonition to remain open to new information and thoughtful arguments. "If anyone can show me, and prove to me, that I am wrong in thought or deed, I will gladly change. I seek the truth, which never yet hurt anybody," the great Stoic philosopher and statesman wrote nearly 2,000 years ago.[9] If you become convinced that you erred in your integrity Step 1 work of discerning what is true, the act of integrity is to change your mind. For the lawyer, citizen, and faithful friend, often a correction to past statements is in order.

Absent persuasion, Marcus tells us to stick with our principles. Keep them handy as does a surgeon their scalpel.[10] Especially when other people are not doing the work, not thinking for themselves, or not expecting much from themselves or others.

When everyone else is lowering their standards, refuse to lower yours. As Tali Sharot and Cass Sunstein advised in their terrific recent book *Look Again*[11] and in a *New York Times* op-ed[12] last year, we have a psychological tendency to habituate to slowly increasing horror. Knowing this will

help you refuse to habituate. Instead, be what they term a dis-habituation entrepreneur—someone who helps others see problematic patterns and, together, insist on higher standards. At the very least, refuse to be part of normalization of illegality, unethical conduct, lies, and other dishonorable activity.

Bad actors who seek greater latitude for their horrible behavior often resort to intimidation. They seek cooperation or acquiescence. Every citizen and every professional must decide in advance to refuse to be intimidated. By anyone. Your freedom of conscience as a human and your obligation to maintain independent judgment as a lawyer demand it. Citizenship and your professional guild's ethical codes demand it. Courage can take effort, but it is not optional.

Of course, we are all imperfect. Sometimes we act thoughtlessly or impulsively. Too often, the classic "SMICE" factors[13] that tempt people to betray their clients, their employers, their country, and their spouses—sex (romantic interests), money, extreme ideology, coercion, and ego—tempt good people into corruption. Bar disciplinary cases, corruption prosecutions, espionage scandals, and divorce proceedings are rife with examples of people rationalizing lack of integrity and actively participating in self-corruption.

Thankfully, civic, professional, and personal redemption are often possible. Carter's three-step process of practicing integrity here is a roadmap as well: recognizing error, doing the work to put things right, and committing not to err again. It is never too late to do the right thing.

The gift of adversity

If, as you read this, you are feeling the stresses of this moment in time, know that you have a lot of company, nationally and worldwide. And remember this: One of the gifts of adversity is that what we do matters more. Every act of courage and integrity becomes so much more significant than in easy times. The potential impact is greater, and the messaging power of brave words and deeds is greater as well.

That is because, as my teacher Judge Jamie Baker[14] emphasizes to CLE audiences, we are all ethically leading all the time. By example. Every lawyer is a leader. Every professional is a leader, just like every citizen is a leader. Whether one knows it or not. You cannot quit that job. Best to know that, and to set an example that reflects your ethical commitments and inspires others.

Yes, cowardice is contagious. But courage is also contagious. Like love in the face of hate, and nonviolence in the face of force, courage tends to embarrass cowardice and disarm it.

As Dr. Martin Luther King, Jr., and other bloodied, peaceful civil rights marchers understood all too well, and professionals who are assailed or fired for their independent judgment know too, sometimes courage brings suffering. It is a badge of courage, showing that one is doing the work of integrity Step 2—acting consistently with what one has discerned is right, despite the costs. Being a person of integrity requires thinking beyond immediate self-interest. It requires playing the ethical long game, because that is where principles and a principled life are usually vindicated.

I advise all of my students to study history. If you do, you realize very quickly that our moment to play a role in human events is brief. Everything passes, and everyone, pretty quickly. The only way that we live on is in how others remember us. The example that we set.

It is never a wrong answer to decide to be the best version of yourself, a person of courage and integrity.

That's my advice now, and always. ▲

DAKOTA S. RUDESILL is a law professor at the Moritz College of Law at The Ohio State University.
Rudesill.2@osu.edu

NOTES

[1] Stephen L. Carter, *Integrity* (Harper Perennial, 1996).

[2] *https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_3_diligence/*

[3] *https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_2_1_advisor/*

[4] *https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_3_diligence/comment_on_rule_1_3/*

[5] *https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_4_communications/; https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_3_3_candor_toward_the_tribunal/; https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_2_1_advisor/*

[6] *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4730145*

[7] *https://avalon.law.yale.edu/18th_century/fed10.asp*

[8] Tom Nichols, *The Death of Expertise: The Campaign Against Established Knowledge and Why It Matters* (Oxford University Press, 2017).

[9] Marcus Aurelius, *Meditations*, VI.21 (Penguin Classics, 2018).

[10] Marcus Aurelius, *Meditations*, III.60 (Penguin Classics, 2018).

[11] Tali Sharot and Cass R. Sunstein, *Look Again: The Power of Noticing What Was Always There* (Atria/One Signal, 2024).

[12] *https://www.nytimes.com/2024/02/25/opinion/brain-habituation-horrors.html*

[13] *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4730145*

[14] *https://law.syracuse.edu/deans-faculty/faculty/hon-james-e-baker/*

2025 CHARITY GOLF Tournament

MONDAY JUNE 23

Southview Country Club, West St. Paul

We hope you can join us for a fun day on the course in support of the Ramsey County Bar Foundation.

Register at: www.mnbars.org/rcbf-golf

Or consider sponsoring our event. For questions contact Sabrina Sands at **ssands@mnbars.org**

RCBF

RAMSEY COUNTY BAR FOUNDATION

Proceeds from this event go to the Ramsey County Bar Foundation, which provides grants to legal-related nonprofits working to provide access to justice in our community.

high school MOCK TRIAL

THANK YOU

Members and volunteers who made the

Maria Abood
Wes Abrahamson
Julia Abreu Siufi
Hon. Matti Adam
Michael Adkisson
Avery Aiken Sanders
Keith Alden Loveland
Kenneth Alwin
Benjamin Anderson
Serrah Marie Anderson
Kristi Angus
Landon Ascheman
Thomas Atmore
Fatima Ayour
Carrie Backman
Marc Baer
CB Baga
Dexter Banks
Tom Barce
Michelle Barnes
Allen Barr
Hon. Luis A. Bartolomei
Anna Bauer
Lesley Bauer
Cassandra Bautista
G. Paul Beaumaster
Angela Behrens
Joy Beitzel
Stephanie Berens
Graham Berg
Sadie Betting
Faith Bickner
Hon. Jessica Bierwerth
Katherine Boland
Angela Bonilla
Karlyn Boraas
Shelby Borthwick
Hon. John Bowen
Heather Brandborg
Angela Brandt
Tara Brandt
Karolina Brekken-Hoerl
Theo Britton
Cheri Brix
Joe Bromeland
Hon. David Brown
Trevor Brown
Colette Bruder
Bailee Buche
Megan Burroughs
Beth Butler
Kinsey Button
Caleb Campbell
Jeffrey Campbell
Tom Canan
Bruce P. Candlin
Sarah Cannon
Kristy Cariveau
Hon. Kathryn Carlson
Brandon Carmack
Marie Carrell
Hon. Leonardo Castro
Elizabeth Chambers-Brown
Colin Chapman
Heather Chatterton

Hon. Annie Claesson-Huseby
Jennifer Clements
Scott Cody
Steven Collins
Hon. Francis Connolly
Nicole Cornale
Dea Cortney
Natalie Cote
Patrick Courteau
Adrienne Cousins
Jennifer Cross
Jenna Croymans
Charlotte Culbertson
Nate Dahl
Erin Davenport
Val Davis
Hon. Stacy Deery Stennes
Hon. James Dehn
Christopher Dixon
Paige Dobberstein
Hon. Amy Doll
Erika Donner
Carrie Doom
Sean Downey
Andrew Draper
James Dunn
Demetria Dyer
Joel Eaton
Jack Edell
Astrid Eglitis
Hon. Jill Eichenwald
Joe Ellig
Carl Erickson
Tamra Falk
Marian Farah
Ronni Farid
Sarah Federle
Lindsey Felton
David Fenske
Hon. William Fisher
Robert Foster
Damon Fraser
Kris Fredrick
Fred Friedman
Adam Froehlich
James Gempeler
Aubrey Gisen
Mariah Glinski
Rachel Glissmann
Kai Good
John Gordon
Stacey Green
Melanie Griffith
Hon. Sandra J. Grove
Joshua Gudahl
James Haase
Kira Hackett
Lee Hacklander
AnnaLisa Hamann
Portia Hampton Flowers
Hon. Steven B. Hanke
Rebecca Hanscom
Olivia Hanson
Marcy Harris
Jeff Haubrich

Dan Hedlund
Josh Heggem
Nicole Heringer
Vanessa Hird
Andrew Hoaglund
Lisa Hollingsworth
Devon Holstad
Landon Hoppe
Robert Huber
Kris Huether
Jack Hulet
Nicholas Hydukovich
Scott Ikeda
Margaret Jacot
Hon. Lisa Janzen
Larry Jennings
Joseph Jensen
Tara Jensen
Ruta Johnsen
Lauren Johnson
Randall Johnson
Tabatha Johnson
Tucker Johnson
Chris Johnston
Barbara Jones
Aaron Jordan
William Joyce
Elizabeth Juelich
Scott Jurichan
John Kalis
Shannon Kalmbach
Jacob Kamenir
Kylie Karsky
John Kedrowski
Sean Kehren
Kelsey Kelley
Marshall Kelner
Steve Kerbaugh
Nicholas Kimball
Janine Kimble
Cyndi Klaus
Jacqueline Kleinendorst
Peter Knapp
Hon. William Koch
Lydia Kozlowski
Chris Kradle
Don Krassin
Olivia Kratzke
Mary Krenzen Rockwood
Michael Kruckow
Thomas Kuesel
Daniel Steven Kufus
Karen Terese Kugler
Radd Kulseth
Mark Labine
Renee Ladd
Katja Lange
Robert Lange
Thevni Lelwala
Crystal Lemmer
Jennifer Lessinger
Steve Levine
Nicholas Lewis
Hans W. Lodge
Kathryn Lorsbach

Raghen Lucy
Brendan Lugoperez
Hon. Kevin Lund
Christopher Lynch
Chuck MacLean
Maria Maier
Katherine Malmanger
Daphneyse Marcelin
Hon. Krista Martin
Jordan Mason
Nell Mathews
Casey Matthiesen
Sean McCarthy
Amber McCullough
Hannah McDonald
Jim McGeeney
William McGinnis
Lilie A. McRoberts
Scarlet Medina
Brooke Meister
Phillip Mellon
Jennifer Melton
Mike Mergens
Sebastian Mesa
Sarah Metropulos
Owen Metzger
Sarah Meyer
Hilary Minor
Jennifer Moreau
Sam Morgan
JoMarie Morris
Anna Morrison
Hon. Elisa Murillo
Jeff Muszynski
Bridget Nason
John Neal
Carrie Nearing
Patrick Neaton
Adam Nelson
Angela Nelson
Sophie Newcomb
Eric Newmark
Dan Nitecki
Demonte Noble
Katie Nolting
Alicia Norby
Nancy Norman Sommer
Dawn Nyhus
Karen L. Odash
Wyatt Oelkers
Trevor Oliver
Kendra Olsen
Ashley Olson
Michael Orme
Michael O'Rourke
Danielle Osborne
Maleah Otterson
Karlen Padayachee
Christina R. Palme-Krizak
Brad Palmer
Colin J. Pasterski
Robert Patient
Hon. Lisa Pearson
Andrea Pelloquin
Michael Peterson

Lauren Pevehouse
Hon. Benjamin Pieh
Kristen Pierce
Megan Pierce-Campbell
Dennis Plahn
Cesar Plascencia
Nora Prener
Joseph Price
Hon. Jill Prohofsky
Hon. Laura Provinzino
Amanda Prutzman
Eric Quintana-Gwost
David Racine
Erika Randall
Carly Rasmussen
Wynne Reece
Taryn Reichow
Samuel Kenneth Renner
Adam Revoir
Zach Rider
Elizabeth Ridley Scott
Jezebel Ristow
Julie Ritz-Schlaifer
Lillie Roberts
Alice Roberts Davis
Brian Rochel
Kelly Rodgers
Aaron Rodriguez
Travis Roline
Ruth Rosengren
Adam Rowe-Johnson
Rachel Salinas
Hon. Christian Sande
Elizabeth Sauer
Ashley Scanlan
Truman Schabilion
Liselotte Schlunder
Stephanie K. Schmidt
Jack S. Schugel
David Schultz
Sam Schultz
Jake Schumann
Charles Schwartz
Jeffrey Scott
Victoria Serreno
Esther Sherman
Hon. Edward Sheu
Dan Shub
J. Noble Simpson
Andrea Smith
Curtis Smith
David Smith
Tyson Smith
Zachary Smith
Machaela Snyder
Angela Sonsalla
Chris Sorenson
Randy Sparling
Ben Spector
Andrew Staab
Hon. Jennifer Stanfield
Kelly Staples
Hon. Jason Steffen
Peter L. Stelter
Derek Stewart

Autumn Stokes
Martha Sullivan
Steven Sunde
Jim Susag
Joel Swanson
Mara Sybesma
Jodi Tagessen
Jackson Tate
Jeff Thone
Madge Thorsen
Christy Thorson
Collin Tierney
R. Stephen Tillitt
Evan C. Tsai
Hon. Joanne Turner
Andy Tweeten
Emily Uhl
Gay B. Urness
Michael Vadnie
John "Jack" Van de North
Madison Vandenberg
Madeline Vavricek
Clarissa Volpe
Amy Voss
Nancy Wallrich
Kate Warner
Casey Warren
Rob Wassenaar
Daniel Wassim
Shawn Webb
Deja L. Weber
Anthony Weigel
Caitlin Weis
Aaron P. Welch
Devona Wells
Jenna Westby
Schaefer Whiteaker
Ira Grant Whittenberg
Sheridan Wicker
Merryn L. Wier
Carissa Wigginton
Matt Wilcox
Matt Wilkening
Randi Winter
Karen Wolff
Eva Wood
Kimberly Woodgate
Corinne Wright
Graham Wyatt
Hon. Heather Wynn
Hon. Adam Yang
Hon. Paul Yang
Frank Yetka
Summer Young
Robert Yount
Jess Zeletes
Paul Zerby
John Zwier

Join the list!

To get involved contact
Kim Basting
612-278-6306
kbasting@mnbars.org
mnbars.org/mocktrial

& CONGRATS

2025 mock trial season a success!

State Champion: Apple Valley High School
Coaches: Eric Strauss and Becca Strauss; Attorney Coach David Racine. Panel of Judges: Hon. Laura Provinzino, Hon. William Fisher, Nicholas Hydukovich, R. Noble Simpson, Randy Sparling, and R. Stephen Tillitt. This is Apple Valley's second Championship and will represent Minnesota at the National competitions in May.

Courtroom Artist Champion: Elon Dekker, De LaSalle High School

Volunteer of the Year Award Recipient: William McGinnis, Rochester MN

A special thank you

United States District Court for the District of Minnesota, the Eighth Circuit Court of Appeals, U.S. District Court Chief Judge Patrick Schiltz, Eighth Circuit of Appeals Chief Judge Steven M. Colloton, U.S. District Court Judge Laura Provinzino, U.S. Bankruptcy Court Judge William Fisher, Clerk of U.S. District Court Kate Fogarty, 8th Circuit Deputy Clerk in Charge Maureen Gornik, and U.S. District Court Public Information Officer Rebeccah Park for hosting the State Tournament.

Thank you for your financial support

District Bar Associations
First District
Third District
Fifth District
Sixth District
Seventh District
Ninth District
Eleventh District
Twelth District
Sixteenth District
Eighteenth District
Nineteenth District
Twenty First District

MSBA Sections
Agricultural & Rural Law
Appellate Practice Law
Children & the Law
Civil Litigation
Communications Law
Construction Law
Corporate Counsel
ENRE Law
Family Law
Immigration Law
Labor & Employment Law
Public Law
Public Utilities Law
Real Property Law
Tax Law
Tech Law

Individual & Foundations
ABOTA
ACTLM
Fredrikson & Byron Foundation
Minnesota CLE
MSBA Foundation
Bridget Nason
Jill Prohofsky
Julie Ritz-Schlaifer
Karen Wolff
Ken & Michele Alwin
Paul Floyd
Quinlivan & Hughes, PA
Robert & Rebecca Patient
R. Stephen Tillitt
William Koch
William McGinnis
Anonymous Donors

Minnesota Judicial Branch for donating courtroom space statewide.

Mitchell Hamline School of Law for donating State Tournament gift bags.

ACTLM for donating to the State Champion for travels to Nationals.

Consider a tax deductible donation to the Amicus Society on behalf of the Mock Trial Program at GiveMN.org/mocktrial

What I've learned about loneliness, isolation, and the legal profession through my recovery

BY JON M. TYNJALA

One of the hallmarks of addiction is what many in long term recovery call "terminal uniqueness." For a long time, particularly at the nadir of my drinking career, I didn't think anybody else understood how I felt or why I drank. I was different. There was no solution to my problem. Sure, all those treatments and "programs" worked for others, but they were not for me. My problems were deeper, more complex. I was a rock. I was an island. I was alone. And I certainly didn't need you or your help, thank you very much.

It was a self-defeating and arrogant attitude that kept me from getting help. And, as I found out, I was not the only one who felt that way.

According to a recent report by the United States Surgeon General, 40 percent of Americans report being lonely.[1] That percentage has been increasing over the last several decades. But what does it mean to be "lonely?" The report defines loneliness as a perceived or subjective feeling of isolation based on a perceived or subjective feeling that the quality or quantity of relationships we need is not being met.[2] It is a purely subjective standard that differs from person to person. How many close friendships I need might be very different from your experience. But if we feel ourselves lacking in some way, we will experience loneliness. During the years of my active addiction, I often felt alone and isolated. Since entering recovery, I find that I do not feel that way anymore.

There is emotional pain associated with being lonely. Loneliness activates the same neural pathways as physical pain. Worse still, loneliness and isolation can have significant negative impacts on our physical and mental health. They are associated with a 26 percent increase in the risk of early death and a 30 percent increase in the risk of heart attack or stroke.[3] The risk of depression doubles, as does the risk of dementia. Loneliness has the same impact on our physical health as smoking 15 cigarettes a day—making it worse than obesity, lack of physical activity, and the negative effects of pollution combined.[4]

According to one survey, at least, the practice of law may be the loneliest profession.[5] Lawyers are therefore at even greater risk for the negative physical and mental health consequences of loneliness and isolation. The reasons may seem quite familiar to many of us: the relentless drive for more billable hours; the constant and sometimes seemingly unreasonable demands of partners and clients; the need to work long hours to get it all done; the competitive nature of the work (not just between opposing counsel, but often within our own organizations); the need to be seen as competent and capable; and perfectionism (which seems like a positive trait for keeping us from being sued for malpractice). When you add the perceived stigma of admitting weakness by asking for help or confessing the existence of an addiction or other mental health condition, you have the ingredients for a toxic soup of isolation and loneliness.

All of this, left unaddressed, often leads to increased stress, burnout, a decrease in work performance, higher rates of quitting, decreased job satisfaction, and strained professional and personal relationships. We may then reach for unhealthy coping mechanisms to relieve the pain like drugs, alcohol, gambling, or sexual compulsivity, among others. We may also suffer from mental health conditions like depression, anxiety, and other conditions that affect lawyers at much greater rates than the general population. If you are a leader or a person of influence in a legal organization, you should be very concerned about whether your most valuable assets are at risk—because they are. Addressing the risks associated with loneliness and isolation is not just the right thing to do, though it is certainly that; it is also a really good business decision. That's in part because addressing loneliness may also reduce the incidence of substance-use and other mental health issues in the workplace.

Welcome to Rat Park

The so-called War on Drugs began in the early 1970s under then-President Richard Nixon in response to the perceived epidemic of drug addiction in the United States. It was predicated on the assumption that certain kinds of drugs were inherently and irresistibly addictive and that the only way to win the war was to stop the supply and punish the user. It was an understandable approach given what people thought at the time about the nature of addiction, much of which was based on research with rats.

In the 1960s, researchers placed experimental rats in so-called Skinner Boxes, where they were completely isolated and alone. They were given no opportunity for exercise or social interaction with their fellow rats (don't scoff—rats are highly social animals). They were given a choice between water and heroin-laced water. Not surprisingly, given the choice between heroin and plain water, the rats chose heroin. The scientists concluded that drugs were irresistibly addictive and anyone who used them would become an addict.

Bruce Alexander, a psychologist who studied addiction, thought that something didn't quite add up.[6] So he decided to see what would happen if these same rats were introduced to a more pleasing environment with plenty of food and opportunities for recreation and social interaction with other rats. It was a little like Jurassic Park—only smaller, less deadly to humans, and more fun for the rats. Welcome to Rat Park! And unlike the rats placed in isolation, the rats in Rat Park consumed less drugs than the rats in Skinner Boxes. Much less. It was almost as if the rats in isolation took the drugs *because* they were alone. Painfully alone.

In my own recovery I have often heard it said that the opposite of addiction is connection. It turns out that we actually do need each other. The most effective recovery programs (such as AA, SMART Recovery, and LifeRing, among others) all include a component of robust mutual support. So it may be that the Rat Park study showed that drugs are only irresistible when our opportunities for a supportive social existence are deficient or non-existent. With a whole universe of social media at our fingertips today, that would seem impossible. But as far as your physical and mental health are concerned, 10,000 followers on Instagram all giving you a thumbs up is no substitute for a conversation over coffee with a trusted friend.

Advances in modern technology (social media, virtual conferencing, etc.) that hold such promise for bringing us closer together often have the opposite effect—serving mainly to exacerbate the problem of disconnection. And they often serve as another unhealthy coping mechanism. Doom scrolling, and other varieties of internet addiction, are some of the unhealthy ways we sometimes cope.

As a result, our society has become hyper-individualized, hyper-competitive, more frantic, and driven from crisis to crisis (real or imagined), all of which contributes to social and cultural isolation. Our houses keep getting bigger while our "communities" get smaller and less inclusive. When we experience the pain of chronic isolation and loneliness, we seek relief. Lacking other alternatives (real or perceived), drugs and alcohol (or other addictive behaviors) often provide that relief, even if it is only temporary. Addictive behaviors become the substitute for a full and engaged life.

JON TYNJALA is a clinical services director at Lawyers Concerned for Lawyers, which helps legal professionals and their organizations thrive in a stressful profession.

The Harvard Study of Adult Development

For over 80 years, Harvard has been conducting what is now the longest-running continuous longitudinal study of adult life ever attempted.[7] Designed to learn what it takes to live a longer, happier, and healthier life, the Harvard Study of Adult Development has been collecting personal information every year about the health and lives of its participants—a cohort that has now moved into the third and fourth generations from the original members.[8] The data collected includes both objective and subjective measures about each participant's physical and mental health. It is a goldmine of information for researchers looking at markers and drivers of human health and well-being as we age—a remarkable undertaking that has revealed profound insights.

The original study started with an all-male cohort from Harvard (Harvard was male-only at that time) that included John F. Kennedy and long-time Washington Post editor Ben Bradlee.[9] The study was later expanded to include a cohort of disadvantaged boys from inner-city Boston.[10] (Regrettably, if not surprisingly for its time, the study's insights were limited by its being restricted to male subjects.) The two cohorts, on the surface at least, could not have been more different. You would be forgiven if you thought that the results of the research would have different outcomes between the groups. However, the results of the study were consistent between the groups on at least one measure. It turns out that the key to happiness is not money, fame, or intellectual or professional success. It is, in a word, connections. Meaningful and supportive connections.

Weighing the respective experiences of the rats in Rat Park and the Harvard study participants underscores a profound bit of wisdom about connection. It can be summarized in the words of Clarence, the hapless angel looking to get his wings in *It's a Wonderful Life*, when he tells George Bailey, "No man is a failure who has friends."

Connection, service, and resilience in the practice of law

And what exactly do Rat Park and the Harvard study have to do with loneliness and isolation in the practice of law? The Rat Park study showed that isolation does not just make addiction worse: It may in fact be a primary causal factor. The Harvard study concluded that the key to happiness is connection. Thus, fostering and creating opportunities for supportive and meaningful connections is one of the vital prescriptions for our epidemic of loneliness.

Of course my path out of loneliness may not look much like yours. But the specific and individual solutions we pursue are less important than that we continue to focus on creating more opportunities for personal and professional connection. When we create those opportunities, the entire profession benefits, as do those we serve. Here are a few suggestions for building opportunities in our personal and professional lives.

Find your people.

Finding your people at work and in your personal life can help to forge the connections that are so important for our long-term physical and mental health. Cultivating supportive connections within your organization can help you both professionally and personally. Being active in your state, local, and/or affinity bar associations can be a great way to meet like-minded people. You can also seek out groups that are centered on a hobby or activity, or, as in my case, on your recovery. I also play in a

17-piece jazz band. Music allows me to exercise my brain and engage in the moment. I have also met many incredible people. What you do depends on what you are interested in and what gets you jazzed up (pun intended).

Find volunteer and service opportunities.

Engaging in volunteer work around something that you are passionate about can be a great way to find personal meaning as well as meaningful and supportive connections. I have been a long-term volunteer with Minnesota Lawyers Concerned for Lawyers (LCL). My decision to work at LCL and help other lawyers with substance use, mental health, and other concerns was one of the best decisions of my life. I love the work that I do and have found tremendous personal satisfaction and meaning from helping fellow lawyers and legal professionals and their families find the recovery help they need.

I have had many people reach out after a CLE on substance use and mental health issues to tell me that they could identify with some or all of what I said—that I was telling their story. That is connection! And it has had the gratifying effect of making the work in my business law practice (which I have continued) more meaningful and rewarding. Service can also be a part of how we earn a living; I now see my legal work from a more service-oriented perspective. I have greater empathy for my clients, and I believe it has made me a better lawyer.

Attend to your well-being.

Some additional strategies for overcoming the personal distress caused by our isolation and loneliness include meditation, yoga, exercise, and journaling, among others. Engaging in therapy is always a good idea. You do not need to be in crisis to benefit from therapy. Indeed, a good therapist can help you develop tools to employ when the stress of practice and life gets out of hand or feels like it is too much to handle. If you are looking to find a therapist, LCL can help. We provide up to four free counseling sessions per issue. Beyond those four sessions, we can also help you find a therapist who meets your individual needs.

There is no magic-bullet solution. And there is no preordained number of connections that will help me or you to overcome our sense of isolation or loneliness. It depends on the individual. But we can find ways to support each other in our efforts as individuals and organizations to foster the professional and personal connections that make life worth living. We work really hard to earn a living yet often forget that it is intended to allow us to live a life. One that is rich with the joy of sharing our time and our talents with others.

Final words

When I finally made my decision to get sober, my first call was to LCL. The phone had never been so heavy. To my great surprise and relief, what I found was support without judgment. LCL offered me hope for a solution that I could not seem to find on my own. I owe a debt that I can never truly repay. I can only give away what was so freely given to me. If you or someone you know is suffering from a substance-use or mental health issue, LCL is here for you wherever you may be on your personal journey to recovery.

I will be working on my own recovery for the rest of my life. Likewise, the solutions to the issue of isolation and loneliness in this country and in our profession will take time. But that should neither frighten us nor cause us to throw up our hands in the face of a seemingly hopeless task. We can solve this. We are lawyers, after all—problem solvers. We are a helping profession. We just need to be better stewards of our own health and wellness, as well as that of our colleagues. Which, in turn, benefits and strengthens the firms and organizations we work for and the clients we serve. If we do that, we will be better stewards of our profession as a whole.

The words of an Indian proverb are apt: "Blessed are they who plant trees under whose shade they will never sit." We do this work not only for ourselves and those around us, but likewise the future generations of lawyers who will benefit from these efforts.

In my recovery, I have found that meaningful and supportive connections seem to be the key ingredient in staying sober. To that I would add acceptance and gratitude, service to others, and resilience. A journey of recovery is not easy. And it does not happen overnight. It has been said that happiness is found in the pursuit, not the capture—the journey and not the destination, as they say. And while this may be a cliché, clichés often hold profound truth.

I will leave you with the words of the famous Indian poet and writer, Rabindranath Tagore: "I slept and dreamt that life was joy. I awoke and saw that life was service. I acted and, behold, service was joy." Take care of yourself, and then get out there and take care of each other. ▲

NOTES

[1] United States Surgeon General, *Our Epidemic of Loneliness and Isolation* (2023); *https://www.hhs.gov/sites/default/files/surgeon-general-social-connection-advisory.pdf*

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] Harvard Business Review, *America's Loneliest Workers According to Research*, 3/19/2018; *https://hbr.org/2018/03/americas-loneliest-workers-according-to-research*

[6] *Addiction: The View from Rat Park* (2010), Bruce K. Alexander, Professor Emeritus, Simon Fraser University: *https://www.brucekalexander.com/articles-speeches/rat-park/148-addiction-the-view-from-rat-park*

[7] The Harvard Gazette, *Good genes are nice, but joy is better*, 4/11/2017: *https://news.harvard.edu/gazette/story/2017/04/over-nearly-80-years-harvard-study-has-been-showing-how-to-live-a-healthy-and-happy-life/*

[8] *Id.*

[9] *Id.*

[10] *Id.*

Mastering trust and estate mediations

Experts offer tips for success

BY FRANCIS RONDONI frondoni@chestnutcambronne.com

Practitioners who frequently mediate trust and estate disputes recognize that these mediations involve unique aspects that differ markedly from general civil mediations, such as those concerning typical contract or business disputes. To effectively mediate trust and estate cases, legal professionals must comprehend the particular characteristics of this type of litigation and the strategies required for successful resolution. Given the rise in trust and estate disputes and litigation, it is imperative for legal counsel to understand the distinctive nature of these disputes.

Attorneys engaged in probate matters and the resolution of related disputes have observed an increasing frequency of such cases—a trend confirmed by more than mere anecdotal evidence. The baby boomer generation, comprising 55.8 million Americans aged 65 and over (approximately 17 percent of the national population), controls half of the nation's wealth, which amounts to about $96 trillion.[1] By 2040, it is estimated that 22 percent of the US population will be over 65 years of age.[2] Projections further indicate that between 2031 and 2045, approximately 10 percent of the total wealth in the United States will be transferred every five years.[3] In the next decade alone, an estimated $15.8 trillion will change hands.[4]

It is thus unsurprising that disputes frequently arise in the context of such significant wealth transfers. Common issues include challenges to the competency of testators and grantors, claims of undue influence—often perpetrated by family members—last-minute alterations to testamentary documents, and breaches of fiduciary duty by trustees, personal representatives, and agents holding powers of attorney. As individuals live longer, many Americans experience cognitive decline, rendering them particularly susceptible to undue influence and financial exploitation. Financial institutions report that elder financial exploitation amounted to $27 billion in one year from 2022 to 2023.[5]

Consequently, probate attorneys, financial advisors, and estate planners frequently encounter family disputes related to property, predominantly concerning financial assets, whether contained within the decedent's estate or trust. In many instances, the most effective course of action is to refer these matters to litigation counsel. Although the judicial system offers various forms of relief, such as invalidating flawed estate planning documents, removing fiduciaries, and recovering assets, an increasing number of these disputes are being resolved outside the courtroom through mediation. While litigation limits the remedies to strict legal alternatives, mediation allows the parties to craft solutions to meet their personal needs or the requirements of the situation.[6]

The resolution of such cases often hinges on the transfer and/or division of these assets. Most often, these assets are at the center of the fight. As aptly noted by my highly experienced partner, "When they tell you it's not about the money, it's always about the money." (While it's true that entrenched disputes arise in these cases over claimed sentimental property of little or no value, often such fights are more emotional in nature, underscoring the dysfunction of the relationships.)

Interestingly, there is no mandatory mediation policy in probate and trust litigation. Nonetheless, an increasing number of cases are being resolved through mediation, and judges are increasingly recognizing the value of requiring mediation between parties. To achieve success in estate and trust mediation, practitioners must possess a comprehensive understanding of the unique strategies necessary for effective resolution.

Valuable guidance can be obtained by consulting seasoned mediators who have extensive experience with various estate and trust mediations. Their insights into successful approaches and strategies are invaluable. I extend my gratitude to Retired Judge Myron Greenberg, Retired Judge Robert Blaeser, Retired Judge Michael DeCourcy, and Retired Judge Thomas Fraser, whose skill, expertise and perspectives have significantly contributed to this article.

Understanding family dynamics

The most crucial element in understanding these disputes is the family dynamics that give rise to the conflict and result in litigation. An in-depth grasp of the family background and dynamics is essential for successful mediation. As the saying goes, "Siblings bring baggage." It is imperative to understand and communicate to the mediator the history of sibling relationships, family background, the ages of involved individuals, and any health issues.

Importantly, deep-seated issues such as long-standing grievances, ego conflicts, or past harassment are highly emotional and must be understood for a successful mediation strategy. This is particularly the case in second or third marriages where the spouses have children from different marriages—an extraordinarily fertile ground for estate fights. More often than not, each side of the family has a strong belief that they are entitled to the lion's share of the estate or trust. Ensuring the presence of all relevant parties at the mediation is crucial. Including all beneficiaries, family advisors—and, in some cases, financial advisors—can be pivotal to achieving a successful outcome.

Mediators agree that it is important to "hear them out," allowing individuals to express their grievances and long-held grudges. This process enables the mediator to transition from emotional concerns to practical considerations. Experienced mediators acknowledge that these sessions often involve as much therapeutic engagement as legal analysis. At one heated mediation a few years back, the first half of the day was spent in four sisters' airing of long-held hurts accumulated over a lifetime, including a perceived stolen date from a high school dance. Once that catharsis was over, the case ultimately resolved in the second half of the day.

Providing the mediator with a thorough understanding of the family dynamics and emotional issues beforehand greatly enhances the likelihood of settlement. Attempting to address these issues unaware during the mediation process is less effective. Ultimately, a profound and critical understanding of the family relationships and dynamics is deemed essential by judges and mediators alike for successful mediation in estate and trust disputes or, for that matter, a trial on the merits.

Preparation for mediation

The participating judges have outlined several critical benchmarks that should be addressed prior to commencing mediation.

- **Preliminary offers and counteroffers:** It is essential that offers and counteroffers are exchanged before the mediation begins. Without a preliminary evaluation of each party's position and financial readiness, considerable time may be wasted at the outset of the mediation process.
- **Client preparation:** Preparing clients for mediation is crucial, particularly when dealing with individuals who may lack sophistication in business or litigation matters. Clients should be thoroughly informed about the mediation process and understand that it involves negotiation.

FRANCIS J. RONDONI is a partner and shareholder at Chestnut Cambronne PA. He has been a litigator for more than 40 years and concentrates his practice in the areas of estate and trust litigation. Mr. Rondoni is a frequent lecturer on topics such as estate litigation, fiduciary liability, and trial tactics.

• **Setting realistic expectations:** Clients must have realistic expectations regarding the mediation process. Mediation will provide an opportunity for them to express their views, explain their positions, and air family slights. But success requires that the client also understand the necessity for compromise.

• **Full financial transparency:** Complete transparency regarding financial matters is imperative. It is often perplexing to discover that parties may be unaware of the nature and extent of the assets, their valuations, or their locations. Prior to mediation, all relevant financial information should be meticulously identified and shared among the parties to ensure that everyone operates with the same set of facts.

• **Minimizing emotional influence:** Efforts should be made to minimize emotional factors during mediation. Mediators expect counsel to assist in this regard by ensuring that clients fully understand the legal process, claims, and defenses, including the burdens of proof. Tell your story but keep your eye on the ultimate goal.

• **Avoiding inflated expectations:** Clients should be advised realistically about the potential outcomes and compromises involved.

• **Discussing fees and costs:** Counsel should discuss and clarify the likely fees and costs associated with mediation and potential litigation if the case does not settle. In a recent mediation involving a substantial trust, the beneficiaries learned for the first time that the attorneys' fees and costs to date in the litigation came nearly halfway to seven figures. Such a bombshell often derails meaningful settlement discussions.

• **Documentation:** Counsel should bring comprehensive documentation related to the assets, such as bank statements, appraisals, or asset inventories.

• **Understanding disputed assets:** Ensure that clients have a clear understanding of the assets in dispute. For example, there was a recent case where a client insisted that his brother had stolen millions of dollars from their mother. It was ultimately found that there was no substantial evidence to support this claim, and the actual amount in dispute was less than $15,000.

• **Initial caucus:** Many mediators prefer to conduct an initial caucus with all parties involved, as this can help reduce emotional tension, though this approach may not be suitable for every case.

• **Building trust:** Ultimately, the mediator's role is to build trust with each party by actively listening and carefully evaluating the strengths and weaknesses of the case.

Avoiding common mistakes

In addition to the skills required for successful mediation, be aware of common pitfalls that can undermine the process. Despite their seemingly intuitive nature, these issues are significant enough that judges have emphasized their importance.

• **Preparation for financial compromise:** A lack of preparation on the client's part can hinder the success of mediation. Clients must fully understand the nature and scope of the process, the legal issues at stake, and the specific assets in dispute.

• **Excessive advocacy:** While it is essential to advocate vigorously for clients, excessive advocacy during mediation can be counterproductive. It may exacerbate the emotional tensions that contributed to the dispute, impeding progress toward resolution.

• **Timing of mediation:** Avoid initiating mediation prematurely. Ensure that both parties have a clear understanding of the assets, liabilities, and issues involved. Mediation is less likely to be successful if there are significant unknowns. Many more complex cases require completion of discovery for a meaningful mediation. Rushing to settlement discussions with separate sets of facts is a recipe for failure.

• **Understand your weaknesses:** Few cases are perfect. We get the facts the way our clients bring them to us. Ensure that clients have realistic expectations about the mediation outcomes. If clients are unwilling to compromise, mediation is unlikely to yield a successful resolution.

• **Explain offers and demands:** Clients often hear numbers and do not focus on the whole package being presented. A thorough understanding of positions helps get the mediation off to a good start, thus emphasizing the need to make a demand or offer prior to mediation.

• **Collaborative approach:** While it is important to advocate for clients, it is equally important to work collaboratively with the mediator to facilitate a settlement that aligns with the clients' best interests. Mediators sometimes feel that counsel is unnecessarily counterproductive to resolution.

Conclusion

Effectively resolving family disputes involving estate assets necessitates skills and understanding beyond those typically applied in general business disputes. The intricacies of family history and emotional dynamics, combined with the frequent fact of less sophisticated litigants, require a nuanced strategy to achieve compromise. Understanding the emotional underpinnings of long-standing grievances is critical in crafting a resolution. Providing such resolution not only serves the clients' immediate needs but can also be a vital step toward healing and mending family relationships. ▲

NOTES

[1] *https://www.businessinsider.com/boomer-wealth-transfer-myth-dont-count-on-inheritance-estate-planning-2023-10*

[2] *https://acl.gov/news-and-events/announcements/acl-releases-2023-profile-older-americans*

[3] *https://uswealth.bmo.com/media/filer_public/cf/91/cf917165-7546-4885-957d-9919bb564576/20181207_sudden-windfall_.pdf*

[4] *https://finance.yahoo.com/news/great-wealth-transfer-baby-boomers-110047810.html*

[5] *https://bankingjournal.aba.com/2024/04/fincen-financial-institutions-reported-27-billion-in-elder-financial-exploitation/?_gl=1*vvrgmx*_gcl_au*OTU0NjQ0MjkyLjE3MTk0MTU3ODA.*_ga*MTMxMTYwNjI0OC4xNzE5NDE1Nzgw*_ga_SYPZD5B62B*MTcxOTQxNTc4MC4xLjAuMTcxOTQxNTc4MC42MC4wLjA*

[6] *See Minn. Stat. §524.3-1102 and 501C.0111*

LANDMARKS IN THE LAW

Tracking new developments in Minnesota and federal case law, administrative law, and legislation across multiple practice areas.

Criminal Law

JUDICIAL LAW

4th Amendment: No reasonable expectation of privacy in emails sent to school-owned email account and received on public school's server. Appellant was charged with fourth-degree criminal sexual conduct for exchanging emails with a 14-year-old student. His motion to suppress the emails was denied after the district court rejected his argument that the emails were discovered after a warrantless search by the student's school via its use of a protective software scan. Appellant was convicted after a stipulated facts trial.

The student in question attended a public school that provided students with school email accounts. The school district used software to screen all emails sent to and from the school emails. After an alert from the software, the district discovered the student in question was exchanging emails with an external email account that were sexual in nature and discussed drugs. The external email was found to belong to appellant, a former student at the school.

The Minnesota Court of Appeals finds that the district court did not err by concluding that the search of the emails appellant sent to the student occurred after they were received on the school district's server. The court also determines appellant did not have a reasonable expectation of privacy or a property interest in the emails he sent to the student. Appellant relinquished control of his emails when they were successfully received on the school district's server, so when the district searched the emails, they were not intruding upon private property for the purpose of obtaining information. Thus, there was no search for 4th Amendment purposes.

Appellant also did not have a reasonable expectation of privacy in the emails. First, he did not exhibit a subjective expectation that the emails would remain private, because he emailed a student at her district-provided email address. When he received emails from her, the school-provided disclaimer in the emails notified him that the emails were monitored. Next, appellant also did not have an objectively reasonable expectation that the emails would remain private. Appellant voluntarily turned over the information in the emails once he emailed them to a district-monitored email account. Appellant's conviction is affirmed. ***State v. Gaul***, A24-0555, 2025 WL 366059 (Minn. Ct. App. 2/3/2025).

6th Amendment: Restricting public from the courtroom except before the start of each day's proceedings and during breaks violates the right to a public trial. Appellant went to trial on first-degree burglary, felony domestic assault, and DANCO violation charges. After the first two days of trial, the district court expressed concerns over members of the gallery coming and going from the courtroom with lay witnesses, which was not observed when law enforcement witnesses were testifying. The court ordered that only trial counsel and testifying witnesses were permitted to enter or re-enter the courtroom except in the morning before proceedings began and during planned breaks, to prevent the distractions. The jury ultimately found appellant guilty on all charges, and he appealed, arguing the district court's order restricting access to the courtroom deprived him of his right to a public trial.

The court of appeals first finds that the district court's order constituted a true courtroom closure implicating appellant's constitutional public trial right. While closing a courtroom for discrete segments of trial does not implicate this right, the closure here was a "plenary restriction" on the entire public's access to the courtroom for half of the trial, which included much of the state's presentation, closing arguments, jury instructions, mistrial motion arguments, in-court review of evidence by the jury, and the return of the jury's verdicts. Those already present in the courtroom when the closure began at the beginning of each day's proceedings were permitted to stay, but the remainder of the public was still excluded.

The court next finds that the courtroom closure was not justified. Criminal proceedings have a presumption of openness, so the public

trial right may give way to only those overriding interests based on specific findings that a closure is essential to preserve higher values and is narrowly tailored to serve that interest. Here, the district court believed the closure was necessary to prevent distractions to the jurors and court staff. However, the court was not avoiding likely disruptions, only trying to preempt possible future distractions. Some distraction is a natural consequence of an open courtroom, so the level of disturbance needed to justify a broad courtroom closure must be more than would be expected in a public trial proceeding. The record here does not show such a level of disturbance. Even if it did, the court finds the district court's broad closure order was not sufficiently tailored to address the risk and that the district court failed to consider less restrictive alternatives. The judgment of conviction is reversed, and the case is remanded for a new trial. ***State v. Abukar***, A24-0129, 16 N.W.3d 356 (Minn. Ct. App. 2/3/2025).

■ **6th Amendment: Right to confront a witness at trial for offenses against that witness is forfeited if the witness was unavailable and the defendant intentionally procured the unavailability by wrongdoing.** Appellant was charged with first-degree criminal sexual conduct, kidnapping, first-degree burglary, second-degree assault, domestic assault by strangulation, and OFP violations. Prior to trial, appellant repeatedly called the victim, C.G., from jail, threatening her and encouraging her to ask the state to dismiss the charges against him. C.G. subsequently told the state she wanted to recant her allegations. The state subpoenaed C.G. to testify at trial but she did not appear. The district court found appellant had forfeited his right to confront C.G. and permitted the state to admit evidence regarding C.G.'s out-of-court statements. The jury found appellant guilty of all charges, and he appealed.

The Minnesota Court of Appeals notes that a criminal defendant has a constitutional right to confront the witnesses against him, but that this right may be forfeited if a defendant intentionally procures a witness's absence by wrongdoing. Hearsay is admissible under the forfeiture-by-wrongdoing exception. Minn. R. Evid. 804(b)(6). The exception requires proof by the state, by a preponderance of the evidence, that: the declarant-witness is unavailable, the defendant engaged in wrongful conduct, the wrongful conduct procured the witness's unavailability, and the defendant intended to procure the witness's unavailability.

The court finds that appellant engaged in wrongful conduct by contacting C.G. from jail, as each call was a DANCO violation and was threatening or coercive. The court also finds that C.G. was unavailable, as she did not appear pursuant to a properly served subpoena, even after the state made repeated contact with her to discuss the case and to ensure her appearance. The state also tried to make additional contact with C.G. during trial, both directly and through others. C.G. did not appear for a prior hearing, stating she was afraid to do so. Thus, it was reasonable to infer that C.G. would not appear at trial and the district court did not err in finding her unavailable.

The court also determines that the record contains ample circumstantial evidence showing C.G. failed to testify because she was afraid to do so after repeated threatening calls from appellant, who was in jail for assaulting her. C.G.'s statements were consistent until this contact from appellant. The district court did not err in finding that appellant's wrongful conduct procured C.G.'s unavailability. The same is true of the district court's finding that C.G.'s unavailability was appellant's intent. There is no reasonable interpretation of appellant's multiple calls to C.G. from jail other than that he sought to prevent C.G. from testifying against him. Therefore, appellant forfeited his right to confront C.G. at trial.

The verdicts are not disturbed, but the case is remanded to correct the district court's error in entering a conviction for the misdemeanor OFP violation, in addition to a felony OFP violation conviction, and the district court's error in ordering a conditional release term for the first-degree burglary conviction, as there is no statutory authority for the court to do so. ***State v. Bellazan***, A24-0416, 2025 WL 582797 (Minn. Ct. App. 2/24/2025).

■ **Sentencing: Prior felony points may be assigned for an out-of-state conviction only if the equivalent Minnesota offense is a felony and the sentence imposed would be a felony-level sentence in Minnesota.** When calculating appellant's sentence following his plea to aiding and abetting second-degree murder, the district court assigned a total of three criminal history points, one and one-half of which were prior felony points for a prior federal conviction. On appeal, appellant argued these one and one-half points were improperly added, as the prior federal conviction was equivalent to a Minnesota gross misdemeanor. The Minnesota Court of Appeals agrees, reversing and remanding for resentencing.

Non-Minnesota convictions may be included in calculating a defendant's criminal history score, but the sentencing guidelines note that the sentencing court should find the equivalent Minnesota offense and should only count the non-Minnesota offense as a felony "if it would both be defined as a felony in Minnesota, and the offender received a sentence that in Minnesota would be a felony-level sentence." Minn. Sent. Guidelines, §2.B.5.b.

The district court assigned the one and one-half prior felony points for a 2017 federal conviction for engaging in a conspiracy to possess a firearm as a felon. The elements of this offense are equivalent to the Minnesota offense of a violation of Minn. Stat. §624.713, subd. 1(10)(i) (possession of a firearm by a person convicted of a crime punishable for a term exceeding one year). The Minnesota offense is a gross misdemeanor, not a felony, as is the offense of engaging in a conspiracy to commit a violation of section 624.713, subd. 1(10)(i). Minn. Stat. §609.175, subd. 2(3). Thus, appellant's prior federal conviction does not qualify as a prior felony under the Minnesota Sentencing Guidelines. ***State v. Pruitt***, A24-0240, 2025 WL 440121 (Minn. Ct. App. 2/10/2025).

■ **Firearms: "Public place" includes the interior of a motor vehicle on a public roadway.** After a traffic stop and search of appellant's vehicle, police found a BB gun under the driver's seat and charged appellant with carrying a BB gun in a public place. *See* Minn. Stat. §624.7181, subd. 2. The charge was dismissed for lack of probable cause after the district court found the interior of the motor vehicle was not a "public place." The court of appeals reversed. The Supreme Court holds that "public place" includes the interior of a motor vehicle on a public roadway.

"Public place" is defined as "property owned, leased, or controlled by a governmental unit and private property that is regularly and frequently open to or made available for use by the public in sufficient numbers to give clear notice of the property's current dedication to public use." Minn. Stat. §624.7181, subd. 1(c). It does not include "a person's dwelling house or premises, the place of business owned or managed by the person, or the land possessed by the person; a gun show, gun shop, or hunting or target shooting facility; or the woods, fields, or waters of this state where the person is present lawfully for the purpose of hunting or target shooting or other lawful activities involving firearms."

The Court looks to section 624.7181, subdivision 1(b)(5), which exempts from the definition of "carry" "the transporting of a BB gun, rifle, or shotgun in compliance with section 97B.045," which contains certain requirements for transporting a firearm in a motor vehicle. If "public place" did not include the interior of a motor vehicle, this exemption would not be necessary. The inclusion of this exemption in the "carry" definition indicates that, in the absence of an exception, it may be unlawful to carry a firearm in a motor vehicle. The "public place" definition lists certain places that are not included, but the interior of a motor vehicle is not listed. Moreover, the exemptions are all immovable structures or land, indicating that "public place" generally refers to geographic, rather than spatial, location. This would make the relevant "place" in appellant's case the roadway, not appellant's vehicle, and that roadway was public. The court of appeals is affirmed. ***State v. Bee***, A23-1257, 2025 WL 542779 (Minn. Sup. Ct. 2/19/2025).


Samantha Foertsch
Bruno Law PLLC
samantha@brunolaw.com


Stephen Foertsch
Bruno Law PLLC
stephen@brunolaw.com

Employment & Labor Law

JUDICIAL LAW

EEOC pregnancy regulations; challenge revived. A challenge by a group of 17 Republican-led states to guidelines developed by the Equal Employment Opportunity Commission (EEOC) was revived by the 8th Circuit Court of Appeals. The court reversed a lower court dismissal of the case, which contests various abortion-related provisions in the agency's finalized Pregnant Workers Fairness Act (PWFA) Rule. ***State of Tennessee v. EEOC***, 2025 WL 556191 (8th Cir. 2025).

Negligent hiring; schools can be liable. Public schools may be held liable for negligent hiring of personnel who commit torts at work. Reversing the Hennepin County District Court and the Minnesota Court of Appeals, the state Supreme Court, in a lengthy 5-0 opinion written by Justice Paul Thissen, held that a charter school in north Minneapolis may incur liability for negligence for failing to conduct an adequate background check before hiring a teacher and sports instructor who went on to sexually assault several stu-

dents there after allegations of similar conduct had been made against him at his previous place of employment. The case was remanded to district court, where settlement looms likely. ***Minor Doe 601 v. Best Academy***, 2025 WL 621284 (Minn. 2025).

■ **Noncompete agreement; not enforceable after employment ends.** A noncompete agreement entered into between an employee and part-owner of a business after he sold out to another company and continued working for it was not enforceable, according to a ruling of the 8th Circuit. The restrictive covenant was not subject to a preliminary injunction because the agreement did not expressly state that the two-year, 100-mile range noncompete arrangement would extend beyond the termination of the employment relationship, which warranted upholding the denial of equitable relief by the lower court. ***Wilbur-Ellis Company, LLC v. Lacey***, 2025 WL 366823 (Minn. App. 2/3/2025) (nonprecedential).

■ **Workers' compensation; teacher entitled to benefits while engaged in recreation with students.** A teacher who was injured while playing basketball with her students was entitled to workers' compensation benefits, according to a ruling of the Minnesota Workers' Compensation Court of Appeals. Affirming a decision by a lower court, the appellate tribunal held that the activity "benefited the students" and the employer, as well, which precluded applying the bar of Minn. Stat. §176.021, subd. 9, for conduct not related to the work relationship. The court further held that the compensation judge did not err in determining that the injury occurred during the course of her employment because she was in a school gym 30 minutes after the end of the school day "while building relationships with her students and furthering the school's mission." ***Lindsay v. Minneapolis Public Schools***, WL 24-6567 (1/30/2025).

LEGISLATIVE ACTION

■ **Misclassification of workers.** A new law went into effect last month providing for stiffer penalties and stronger enforcement within the construction industry for misclassification of workers as independent contractors. Under Minn. Stat. s.171.723, enacted last year and effective in March, construction employers who improperly classify employees as independent contractors are subject to increased penalties of up to $10,000 per misclassified individual as well as compensatory damages for back pay, overtime, sick pay, workers' compensation coverage, and other benefits through stepped-up enforcement efforts by the state Department of Labor and Industry (DOLI) based upon a new 14-factor test that is derived from long-standing common law principles.

The legislation is aimed at curbing improper employment practices to minimize taxes, workers' compensation and unemployment compensation benefits, insurance premiums, and exposure to liability under various state laws, among other financial business benefits.

The construction industry has pushed back with a lawsuit by two trade associations and a Rochester-based employer against the agency, its commissioner, and Attorney General Keith Ellison in U. S. District Court, District of Minnesota. The lawsuit challenges the measure on constitutional grounds of being excessively punitive and impermissibly vague.

■ **Pay Transparency Act.** Another new workplace law went into effect earlier this year. Since January, employers with at least 30 employees have been required to indicate the starting salary range as well as a general description of benefits, including health and retirement benefits. The measure, known as the Pay Transparency Act, Minn. Stat. s.181.173, applies to all full- and part-time employees and postings for job promotions and internal transfers. It is subject to enforcement by the DOLI, but there are no provisions for noncompliance.

Marshall H. Tanick
Meyer, Njus & Tanick
mtanick@meyernjus.com

Environmental Law

JUDICIAL LAW

■ **Supreme Court rejects widely used "end-result" NPDES permit limitations.** On 3/4/2025, the United States Supreme Court issued a divided opinion with significant implications for federal and state National Pollutant Discharge Elimination System (NPDES) permit programs. By rejecting what the Court termed "end-result" permit limitations—those that make a permittee directly responsible for water quality in the body of water into which the permittee discharges—in the case of *City and County of San Francisco v. U.S. Environmental Protection Agency*, the Court has removed a key tool for regulators seeking to craft NPDES permits protective of receiving waters.

The case involved San Francisco's combined sewer system, a wastewater collection system typical of many municipalities that conveys both sewage and stormwater through shared pipes to a treatment facility. The city's facility discharges treated wastewater into the Pacific Ocean through multiple discharge points, including a primary discharge point (Point No. 001) that is more than three miles from shore. Because of this distance, Point No. 001 is under exclusive federal jurisdiction; so the city's NPDES permit for the treatment facility is issued jointly by the U.S. Environmental Protection Agency (EPA) and the California Regional Water Quality Control Board for the San Francisco Bay Region, which has delegated authority to implement the NPDES permit program. During heavy precipitation, the city's treatment facility can exceed its capacity and overflow, largely untreated, into the Pacific Ocean. Such combined sewer overflows (CSOs), which typically contain high levels of pollutants, are subject to additional scrutiny under the NPDES program, and permitted municipalities with combined sewer systems must implement extensive control measures and develop a long-term control plan (LTCP) to control CSOs.

In 2019, EPA and the Regional Water Board reissued the city's NPDES permit for its treatment facility. In addition to numeric effluent limitations—which specify maximum concentrations or loading of pollutants known to be of concern—the permit contained two non-numeric "narrative" conditions, providing that the city's discharge shall not (1) "cause or contribute to a violation of any applicable [state or federal] water quality standard," or (2) "create pollution, contamination, or nuisance" as defined by California code. The city challenged these narrative permit conditions as too vague. The city argued, among other things, that the conditions are unlawful because (1) EPA failed to meet its CWA obligation to specify the pollutant limits or operational

requirements that will achieve compliance with water quality standards (WQS), and (2) EPA failed to follow its own rules for setting numeric effluent limits based on WQS. The 9th Circuit Court of Appeals rejected these arguments and upheld the permit in *City and County of San Francisco v U.S. Environmental Protection Agency*, 75 F.4th 1074 (9th Cir. 2023), and the Supreme Court granted *certiorari* on 5/28/2024.

The Supreme Court's analysis focused on the interpretation of 33 USC §1311(b)(1)(C), which requires EPA and implementing state agencies to impose upon NPDES permittees, in addition to federal technology-based effluent limitations (TBELs), "any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations... or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter."

This section generally requires NPDES permits to include limitations based upon state water quality standards, when TBELs are insufficient to ensure the receiving water will meet applicable water quality standards. Under EPA regulations, if there is a "reasonable potential" that a discharger's effluent will cause or contribute to a violation of a WQS in the receiving water, then a permit limitation is required for the relevant pollutant. 40 CFR 122.44(d)(1)(i).

Justice Alito, writing for the majority, rejected San Francisco's argument that "any more stringent *limitation*" under section 1311(b)(1)(C) refers only to *effluent* limitations. There was no reasonable basis for assuming, Justice Alito opined, that Congress mistakenly omitted "effluent" from the phrase "any more stringent limitation"; rather, Congress envisioned a broader concept of "limitation." Plus, the city's proposed narrow interpretation would exclude widely used "narrative" NPDES permit conditions, which are non-numeric directives requiring permittees to, e.g., follow "best management practices" (BMPs) to reduce pollutants in their effluent. Justice Alito noted that while narrative permit provisions do not fit easily within the definition of an "effluent limitation," 33 U.S.C. §1362(11), their validity was not disputed. *See* 40 CFR 122.44(k) (authorizing the use of BMPs in NPDES permits in place of numeric effluent limitations, in certain circumstances).

However, Justice Alito agreed with San Francisco's second, alternative argument that even if Section 1311(b)(1)(C) is broader than just *effluent* limitations, it nonetheless does not authorize EPA to impose NPDES permit requirements that "condition permitholders' compliance on whether receiving waters meet applicable water quality standards." The Court referred to these types of conditions as "end-result" requirements—"permit provisions that do not spell out what a permittee must do or refrain from doing but instead make a permittee responsible for the quality of the water in the body of water into which the permittee discharges pollutants."

To support this position,

Justice Alito looked first to the language of Section 1311(b)(1)(C), which requires EPA or an authorized state agency to impose permit limitations "necessary to meet" or "required to implement" any applicable water quality standard. The most natural reading, he concluded, is that this authorizes EPA to set rules that a permittee must follow in order to achieve the water quality standards, not to simply require permittees to ensure the standards are met.

This position was supported by dictionary definition of "limitation," Justice Alito held, as referencing a restriction imposed "from without," e.g., EPA detailing the specific steps an NPDES permittee must take to ensure the water quality standards in the receiving water will be met. However, when a permit provision "tells a permittee that a particular end result must be achieved and that it is up to the permittee to figure out what it should do, the direct source of restriction or restraint is the plan that the permittee imposes on itself for the purpose of avoiding future liability." In this case, the restriction comes "from within" and thus does not fall within the meaning of "limitation."

Justice Alito also noted that the legislative history does not support the use of end-result permit provisions. Specifically, whereas the pre-1972 Water Pollution Control Act (WPCA) contained a provision that allowed direct enforcement against a permittee if the quality of the water into which they discharged failed to meet water quality standards (that is, an end-result provision) when Congress significantly amended the WPCA in 1972, Congress deliberately omitted such provisions. Instead, Justice Alito wrote, the CWA now imposes "direct restrictions" on polluters rather than working backward from pollution to assign responsibility; EPA's contrary position, he held, would "undo what Congress plainly sought to achieve when it scrapped the WPCA's backward-looking approach."

Justice Alito next emphasized that allowing end-result permit provisions would eviscerate the CWA's permit shield, 33 U.S.C. §1342(k), under which a permittee is deemed to be in compliance with the CWA (and can avoid the severe penalties for violating the Act) if it follows all the terms in its permit. A permittee cannot reasonably ensure that the water receiving its discharge will meet applicable water quality standards, Justice Alito explained, because there typically are many factors out of the permittee's control that affect the quality of a receiving water.

Finally, Justice Alito concluded that end-result provisions did not account for situations where multiple permittees discharge to the same water, making it impossible for one permittee to individually ensure the water will meet applicable standards. Accordingly, the majority reversed the 9th Circuit.

Justice Barrett, joined by Justices Sotomayor, Kagan, and Jackson, wrote a partial dissent. She agreed with the majority that the interpretation of "any more stringent limitation" should not be limited to "*effluent* limitations." However, she disagreed that the CWA prohibited end-result limitations. The entire function of Section 1311(b)(1)(C), she wrote, is to ensure that permitted discharges do not violate state water quality standards, so why would that broad authority not allow EPA to tell permittees that they must not cause or contribute to a violation of those same standards? Justice Barrett found the majority's interpretation of "limitation" too narrow, pointing out that an airline could impose a "limitation" on the weight of checked bags, i.e., an "end result," even though it does not tell passengers what items to pack. As for the majority's arguments about the CWA's permit shield or the issue of multiple dischargers to the same water, Justice Barrett contended that these relate to the broader policy concern that it may be difficult for regulated entities to comply with end-result limitations and they may lack adequate notice of a violation. But this is ultimately a question of whether a particular end-result permit limitation is rational or arbitrary and capricious—an issue that can be challenged in court; it is not necessary to eliminate end-result limitations altogether.

The primary ramification of the Supreme Court's decision in this case is that EPA, as well as authorized state agencies such as the Minnesota Pollution Control Agency, are now precluded from including in NPDES permits the types of narrative conditions frequently found in many current NPDES permits, such as those prohibiting the permittee from creating nuisance conditions or causing or contributing to a violation of water quality standards in the receiving water body. What this will mean in practice is less clear. Being unable to use these types of conditions could result in agencies issuing less-protective permits. Conversely, if agencies take the time to develop specific steps permittees must take to protect the receiving water to the same extent as the former "end-result" limitations did, this could result in more work for the agencies and a delay in the permitting process. Finally, a benefit for permittees from not having end-result limitations may be a stronger permit shield. This is because a permit shield is only effective if the permittee is in compliance with their permit; the vagueness of some end-result permit conditions—for example, not creating "pollution" or "nuisance" in the receiving water—can make it difficult to demonstrate compliance. ***City and County of San Francisco v. U.S. Environmental Protection Agency***, 3/4/2025 604 U.S. — (2025).

Minnesota federal court rejects cookware group's arguments that Minnesota's PFAS ban is unconstitutional. In February, Judge Tunheim of the United States District Court for the District of Minnesota issued an order denying the Cookware Sustainability Alliance's motion for a preliminary injunction. The injunction would have stopped enforcement of Minnesota's ban on the use of PFAS in a variety of products sold in Minnesota, which was enacted as part of "Amara's Law." The Alliance argued that the ban on producing cookware with intentionally added PFAS violated the dormant commerce clause, and asked Judge Tunheim to enjoin enforcement of the law while litigation over its constitutionality proceeded.

Amara's Law, Minn. Stat. §116.943, was passed in 2023. It includes several PFAS pollution prevention measures, including a ban on intentionally added PFAS in certain consumer products. Under the PFAS ban, "a person may not sell, offer for sale, or distribute for sale" in Minnesota, the following products if the product contains intentionally added PFAS: (1) carpets or rugs; (2) cleaning products; (3) cookware; (4) cosmetics; (5) dental floss; (6) fabric treatments; (7) juvenile products; (8) menstruation products; (9) textile furnishings; (10) ski wax; or (11) upholstered furniture.

The PFAS ban went into effect on 1/1/2025. The Alliance filed its case challenging the ban on 1/6/2025

and moved for a preliminary injunction on the next day, 1/7/2025.

The Alliance sought to enjoin enforcement of the PFAS ban, arguing that its members—cookware manufacturers outside of Minnesota—would be irreparably harmed if the ban were enforced because the law would lead to injury to its members' reputations, consumer goodwill, and brand loyalty. The Alliance further argued that it was likely to succeed on the merits of its dormant commerce clause challenge to the PFAS ban, and that the balance of the harms and public interest favored a preliminary injunction.

The court disagreed. The court ruled that the Alliance was unlikely to succeed on the merits of their dormant commerce clause claim. In doing so, the court rejected the Alliance's arguments that the law is discriminatory in effect because it only applies to out-of-state manufacturers. It noted that, "[w]hen Amara's Law was signed into law, at least one manufacturer in Minnesota, Nordic Ware, used PFAS in its cookware. Rather than fighting the Statute in court, Nordic Ware chose to comply and eventually ceased production of PFAS-laden cookware in 2024."

The court also rejected arguments that the ban imposed an undue burden on interstate commerce because the burdens imposed outweigh the benefits. While the Alliance argued that Minnesota is single-handedly regulating the entire U.S. cookware industry by banning PFAS in cookware manufacturing, the court concluded that the state's interest in well-documented environmental and health benefits clearly outweighed the burden on manufacturers.

As to irreparable harm, the court concluded that because no manufacturer will be allowed to sell cookware that contains PFAS in Minnesota, the burdens would be felt evenly across cookware manufacturers. The court recognized that there may be short-term harm to Alliance members, who "will certainly need to either change the composition of its products for Minnesota consumers or exit the market completely." But, it added, that harm is not irreparable.

Finally, the court ruled that the balance of the harms and public interest did not favor a preliminary injunction on enforcement. He rejected the Alliance's arguments that a preliminary injunction would preserve the status quo because the law had been adopted over 18 months previously, but the Alliance waited until after the effective date to file suit. Accordingly, the court concluded that a preliminary injunction would upend the status quo, not preserve it.

So the PFAS ban remains in effect in Minnesota. And while a preliminary injunction is technically not a decision on the merits of the claim, this decision is a good indication that Judge Tunheim will ultimately uphold the PFAS ban.

This decision did not implicate the Alliance's challenge to the future requirement to report PFAS, which the Alliance has alleged violates the 1st Amendment and the supremacy clause. ***Cookware Sustainability Alliance v. Kessler***, CASE 0:25-cv-00041-JRT-DTS (D. Minn. 2/25/2025).

ADMINISTRATIVE ACTION

MPCA issues legislative report on paying for PFAS removal from drinking water and wastewater. In January 2025, the Minnesota Pollution Control Agency (MPCA) and the Minnesota Department of Health (MDH)

released the "PFAS removal report," which focuses on strategies to manage per- and polyfluoroalkyl substances (PFAS) contamination in drinking water and wastewater in Minnesota. (The report, which was mandated by 202 4 Session Law, Chapter 116, Article 2, Sec. 29, expands on the work described in the published report, "Fee collection options for PFAS manufacturers in Minnesota" (2024).)

The 2025 report recommends identifying a fee revenue target, either a specific dollar amount or a list of recommended strategies to be covered by the fee revenue, then developing a process to assign a fee by splitting it up amongst the universe of fee payers (PFAS manufacturers, users, and releasers), rather than setting a specific fee structure in statute. The fee could be paid equally regardless of how much PFAS is manufactured, used, or released; or paid *pro rata* based on the amount of PFAS each company manufactures, uses, or releases.

The report focuses on two primary objectives in fee collection: 1) funding safe drinking water and 2) preventing PFAS in wastewater.

Funding safe drinking water. Because fee collection may not cover both drinking water and wastewater treatment, the report recommends focusing on addressing contamination in drinking water first by implementing strategies or fee mechanisms to require companies that manufacture, use, or release PFAS to pay for the cost of providing safe drinking water to individuals affected by PFAS contamination. This approach aims to hold responsible companies financially responsible for contamination mitigation, rather than the public or local governments. Immediate action recommendations include private well sampling and delivering bottled water, while more long-term solutions would be private well monitoring, installing in-home treatment (point-of-entry treatment systems and point-of-use systems), treatment at water treatment systems, hooking up private well users into community water systems where possible, and regionalization of drinking water treatment or delivery. The minimum funding goal would cover costs of infrastructure at community water systems with known PFAS contamination (approximately $163.3 million) with any additional fees put towards wastewater treatment.

Preventing PFAS in wastewater. The report suggests pretreatment to prevent PFAS from entering municipal wastewater facilities, which includes requiring companies to either prevent or remove PFAS from influent waters before they reach these facilities, thereby reducing the need for costly treatment processes. Alternatively, companies could be mandated to cover the expenses associated with treating and disposing of PFAS from municipal wastewater effluent.

The overarching goal is to hold PFAS-related companies accountable for contamination and to protect public health and the environment. More detailed information, and the full report, are available on the MPCA's website at *https://www.pca.state.mn.us/sites/default/files/lrc-pfc-4sy25.pdf*.

Jeremy P. Greenhouse, Cody Bauer, Ryan Cox, Vanessa Johnson, Molly Leisen, Shantal Pai, and Elizabeth Schenfisch are attorneys at Fredrikson & Byron P.A. Jake Beckstrom is a 2015 graduate of Vermont Law School.

Federal Practice
JUDICIAL LAW

Fed. R. Civ. P. 9(a)(1)(A); reversal of "clear statement rule." The 8th Circuit, sitting *en banc*, reversed its long-standing "clear statement rule," which required plaintiffs to allege the capacity in which government defendants are being sued, finding that it conflicted with Fed. R. Civ. P. 9(a)(1)(A) and that it also conflicted with pleading requirements in every other circuit.

Judge Shepherd dissented, joined by Judge Loken, arguing that the "clear statement rule" met the "short and plain statement" requirement of Fed. R. Civ. P. 8(a)(2), and that the rule was "grounded in the sound policy behind the doctrine of qualified immunity." ***S.A.A. v. Geisler***, 127 F.4th 1133 (8th Cir. 2025).

Fed. R. App. P. 10; motion to supplement the record on appeal denied. Affirming Judge Nelson's grant of summary judgment to the defendants, the 8th Circuit denied plaintiffs' motion to supplement the record on appeal to add their discovery responses to the record, where plaintiffs offered "no real explanation" why they failed to include the documents in their submissions in the district court, which in turn suggested their "lack of diligence." ***Allan v. Minn. Dept. of Human Servs.***, 127 F.4th 717 (8th Cir. 2025).

Federal officer and CAFA-based removal; remand affirmed. The 8th Circuit affirmed a district court's remand of an action removed on the basis of federal officer removal and under CAFA, finding that previous 8th Circuit decisions foreclosed federal officer removal, and that the plaintiff's limitation of the proposed class to "Missouri citizens" precluded removal under CAFA. ***Doe v. SSM Health Care Corp.***, 126 F.4th 1329 (8th Cir. 2025).

Federal officer removal; alleged untimely removal; remand reversed. Where new defendants received courtesy copies of a state court complaint, the parties agreed to an Acknowledgment and Waiver of Service of Process and a date when service would be deemed effective, defendants removed the action less than 30 days after the agreed effective date of service but more than 30 days after the acknowledgment

was signed, plaintiffs moved to remand, that motion was granted, and defendants appealed, the 8th Circuit found that service was effective on the date the parties had agreed to, meaning that the removal was timely.

A vigorous dissent by Judge Smith argued that the removal clock began to run when defendants received the complaint "through service or otherwise," meaning that the removal was untimely where it occurred more than 30 days after the acknowledgment was signed. ***Monsanto Co. v. Magnetek, Inc.***, 126 F.4th 1324 (8th Cir. 2025).

■ **Mootness; *vacatur*; "normal practice."** Finding that an appeal had been mooted by subsequent legislative action, the 8th Circuit followed its "normal practice" and remanded the action to the district court with instructions to vacate its underlying decisions despite the plaintiffs' objections to the *vacatur*. ***Mille Lacs Band of Ojibwe v. Madore***, ___ F.4th ___ (8th Cir. 2025).

■ **Denial of request for continuance affirmed; no abuse of discretion.** The 8th Circuit found no abuse of discretion in a district court's denial of a motion for a continuance premised on the plaintiff's addition of counsel two weeks prior to trial, where plaintiff's other counsel had been involved in the case for "over five years." ***Temple v. Mercier***, 127 F.4th 709 (8th Cir. 2025).

■ **Fed. R. Civ. P. 702; *Daubert*; expert's legal conclusions excluded.** While rejecting the plaintiff's motion to exclude the opinions of defendants' expert, a law professor, in their entirety, Judge Tostrud did exclude the expert's opinions "to the extent she offers legal argument labeled as expert opinions." ***Minn. Chamber of Commerce v. Choi***, 2025 WL 437276 (D. Minn. 2/7/2025).

■ **Arbitration; dispute over location to be decided by arbitrator.** Having granted a motion to compel arbitration and stayed the action, Judge Menendez denied the defendant's request for an "emergency" Rule 16 status conference to address questions regarding the proper location for the arbitration, finding that the question of "where the arbitration should take place" is a "question of arbitrability" to be resolved by the arbitrator. ***A Better Way to Buy, Inc. v. Ashley Furniture Indus., LLC***, 2025 WL 392446 (D. Minn. 2/4/2025).

■ **Fed. R. Civ. P. 30(b)(6); questions on basis for discovery responses overbroad.** Magistrate Judge Docherty found that a proposed Fed. R. Civ. P. 30(b)(6) deposition topic seeking "the factual bases" for multiple discovery responses was overbroad and "insufficiently particularized," and ordered the topic stricken. ***Rouse v. H.B. Fuller Co.***, 2025 WL 368804 (D. Minn. 2/3/2025).

■ **28 U.S.C. §1292(b); motion to certify order for interlocutory appeal denied.** Judge Menendez denied the defendant's motion to certify her order for interlocutory appeal, rejecting the defendant's argument that her ruling involved a "controlling question of law," meaning that there was no need to address the remaining prongs of the controlling three-part test. ***Boyd v. Target Corp.***, 2025 WL 342093 (D. Minn. 1/30/2025).

■ **"Bad faith" refusal to recognize arbitration award; award of attorney's fees.** Granting the petitioner's motion to confirm an arbitration award, Judge Provinzino found that the petitioner had met the "high bar" for an award of attorney's fees and costs where the respondent's "obstinance" required the petitioner to bring the motion to confirm, and the respondent's opposition to the motion was premised on a "misrepresentation" of Minnesota law and a "plainly forfeited" argument. ***Glass Inspiration GMBH Design & Eng'g v. M.G. McGrath, Inc. Glass & Glazing***, 2025 WL 303946 (D. Minn. 1/27/2025).

■ **28 U.S.C §1404(a); motions to transfer granted.** Finding that a forum-selection clause was entitled to "controlling weight in all but the most exceptional cases," and rejecting the plaintiff's arguments that the public interest weighed against enforcement of the clause, Judge Blackwell granted the defendant's motion to transfer the action to the District of Arizona. ***Harris v. My Credit Guy, L.L.C.***, 2025 WL 274371 (D. Minn. 1/21/2025).

After a motion to transfer a first-filed Central District of California action had been denied, and finding no "compelling circumstances" for disregarding the first-filed rule, Judge Bryan granted the Minnesota defendant's motion to transfer the later-filed action to the Central District of California. ***Phila. Indem. Ins. Co. v. Cambria Co.***, 2025 WL 253388 (D. Minn. 1/21/2025).

■ **Motion for review of taxation of costs denied; indigency claim rejected.** While acknowledging his "substantial discretion" in awarding costs to a prevailing party, Judge Doty found that the plaintiff failed to establish that she was "indigent," that her case was of "substantial public importance," or that the case was "close," and denied her motion for review of taxation of costs. ***Elsharkawy v. Chisago Lakes School. Dist. Bd. of Educ.***, 2025 WL 303942 (D. Minn. 1/27/2025).

■ **Motions for sanctions granted and denied.** Chief Judge Schiltz denied the defendant's motion for Rule 11 sanctions, finding that while the plaintiff's claims had been dismissed, she had offered a "nonfrivolous" argument to support her claims. ***Driscoll v. Cmty. Loan Serv. LLC***,

2025 WL 339334 (D. Minn. 1/30/2025).

Magistrate Judge Docherty ordered plaintiff's counsel to pay more than $9,750 in attorney's fees incurred by the defendant in connection with its successful motion to compel pursuant to Fed. R. Civ. P. 37(a)(5)(A), and issued a report and recommendation that the plaintiff's claims be dismissed with prejudice and that plaintiff's counsel be required to pay $10,000.00 in fees and costs as a sanction under Fed. R. Civ. P. 11. ***Pettit v. Allina Health Sys.***, 2025 WL 339275 (D. Minn. 1/30/2025).

Judge Menendez denied the defendant's motion for Rule 11 sanctions where it failed to comply with the rule's safe harbor requirements, while also finding that the conduct at issue was not sanctionable in any event. ***Owners Ins. Co. v. Midwest Lifts, LLC***, 2025 WL 303931 (D. Minn. 1/27/2025).

Josh Jacobson
Law Office of Josh Jacobson
joshjacobsonlaw@gmail.com

Intellectual Property

JUDICIAL LAW

Trademark: SCOTUS vacates disgorgement award against defendant's nonparty affiliates. The Supreme Court of the United States recently vacated a disgorgement award that included profits of the defendant's affiliates. Dewberry Engineers provides real estate development services for commercial entities across the country. Dewberry Group is a commercial real estate company owned by John Dewberry that provides services to the approximately 30 separately incorporated companies in Mr. Dewberry's portfolio. Of importance, Dewberry Group income is reported on the affiliates' books, and the Dewberry Group receives only agreed-upon fees. The Dewberry Group historically operated at a loss while the affiliates reported tens of millions of dollars of profit. Dewberry Engineers sued Dewberry Group—but not any affiliates—for trademark infringement under the Lanham Act. The District Court found Dewberry Group liable on all counts. Under §1117(a) of the Lanham Act, a prevailing plaintiff may recover the "defendant's profits" derived from a trademark violation. Despite Dewberry Group being the sole named defendant, the district court treated Dewberry Group and its affiliates as a single corporate entity for calculating the award of profits. The district court reasoned that considering the companies together would prevent the unjust enrichment that the Lanham Act was meant to target. Dewberry Group appealed, and a divided panel of the 4th Circuit affirmed. The Supreme Court granted *certiorari*. The Supreme Court held that the statutory text of the Lanham Act offers no support to award a trademark owner the profits of a nonparty. Citing *Black's Law Dictionary*, the term "defendant" is "the party against whom relief or recovery is sought in an action or suit." Principles of corporate law do not convert the affiliates into one corporate entity. Dewberry Engineers argued that it was not arguing that the affiliates' profits were Dewberry Group's profits but that the Lanham Act allows the court to increase or decrease the amount of recovery to fit the circumstances (i.e. the "just-sum provision"). The Supreme Court held that the district court did not rely on the just-sum provision or suggest that it was departing from a calculation of Dewberry Group's reported profits and that the 4th Circuit also did not rely on the just-sum provision. The Supreme Court concluded it was improper for the district court to treat Dewberry Group and its affiliates as a single corporate entity and to ignore corporate formalities. In remanding the case for further proceedings, the Supreme Court expressed no view on Dewberry Engineers' reliance on the just-sum provision, concluding only that the lower courts did not rely on that provision. ***Dewberry Group, Inc. v. Dewberry Engineers, Inc.***, No. 23-900 (U.S. 2/26/2025).

Copyright: Use of floorplans in resale listings of homes constitutes copyright fair use. A panel of the United States Court of Appeals for the 8th Circuit recently held the use of floorplans in resale listings of homes constituted copyright fair use and does not infringe a copyright owner's copyrights in the home designs. Charles James is a home designer who designed a home featuring a triangular atrium and stairs nearly 30 years ago. In 2010 and 2017, real estate agents listed James's triangular atrium homes for sale by creating floorplans of the properties. James and his company, Designworks Homes, Inc., sued the real estate agents and affiliated individuals and entities. On remand from a prior 8th Circuit reversal, defendants moved for summary judgment on their fair use defense. The district court granted summary judgment in favor of defendants. Designworks Homes appealed. Under §107 of the Copyright Act, fair use of a copyrighted work is not infringement. To determine whether a use is fair use, courts consider (1) "the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes," (2) "the nature of the copyrighted work," (3) "the amount and substantiality of the portion used in relation to the copyrighted work as a whole," (4) and "the effect of the use upon the potential market for or value of the copyrighted work." The panel held that the use of the copyrighted designs to make and share floorplans was transformative because the floorplans had an informational purpose that the designs lacked. The copyrighted designs facilitated the construction of the homes, which yielded functional and aesthetic benefits. Use of the floorplans identified and advertised those benefits. This informational purpose went beyond the original purpose of the designs. The panel was not persuaded that the commercial use or public dissemination of the floorplans weighed against fair use. Accordingly, the panel affirmed the district court's summary judgment ruling. ***Designworks Homes, Inc. v. Columbia House of Brokers Realty, Inc.***, No. 23-3402, No. 23-3403, 2025 U.S. App. LEXIS 846 (8th Cir. 1/14/2025).

Joe Dubis
Merchant & Gould
jdubis@merchantgould.com

Probate & Trust

LEGISLATIVE ACTION

Proposed legislation providing for portability of the estate tax exclusion. On 1/16/2025, legislation relating to estate taxes was introduced in the Minnesota Senate. Said legislation proposed amending Minn. Stat. §289A.10 in several ways. First, the amendment provides that an estate tax return would only be required to be filed in the event that a federal estate tax return is required to be filed *or* "the sum of the federal gross estate and federal adjusted taxable gifts... made within three years of the date of the

decedent's death exceeds $3,000,000." Second, the amendment gives a personal representative the ability to elect, on any required tax return, to allow a decedent's surviving spouse to take into account the decedent's deceased spousal unused exclusion amount. However, any such election would be irrevocable. If a return is filed, the personal representative would be deemed to have elected portability unless the opposite is affirmatively stated. Third, even if a personal representative is not required to file an estate tax return, the proposed legislation would allow the personal representative to file a return to allow the decedent's surviving spouse to take into account the decedent's deceased spousal unused exclusion amount. The proposed legislation was referred to the Taxes Committee, where it was laid over. ***S.F. 30.*** *https://www.revisor.mn.gov/bills/bill.php?b=Senate&f=SF0030&ssn=0&y=2025*

■ **Proposed legislation changing the definition of "resident trust."** On 1/16/2025, a bill was introduced in the Minnesota Senate that proposes a change to the definition of the term "resident trust" as it relates to trusts that became irrevocable, or were first administered, after 12/31/1995. If a trust, other than a grantor type trust, became irrevocable, or was first administered, after 12/31/1995, it is only a resident trust if either it (1) was created by a will of a decedent who was domiciled in Minnesota on his or her death or (2) is an irrevocable trust whose grantor was domiciled in Minnesota at the time the trust became irrevocable *and* satisfies two of the following conditions: (1) a majority of the discretionary decisions of the trustees relating to the investment of trust assets are made in Minnesota; (2) a majority of discretionary decisions of the trustees relating to distributions of trust income and principal are made in Minnesota; or (3) the official books and records of the trust are located in Minnesota. The proposed legislation was referred to the Taxes Committee where it was laid over. ***S.F. 6.*** *https://www.revisor.mn.gov/bills/bill.php?b=Senate&f=SF0006&ssn=0&y=2025*

■ **Numerous proposed changes to the Minnesota Trust Code.** On 1/23/2025, a bill was introduced that proposes numerous changes to the Minnesota Trust Code. One such change involves the modification of termination of a noncharitable irrevocable trust. Currently, a settlor's power to consent to a trust's modification or termination may be exercised by an attorney-in-fact only to the extent authorized by the power of attorney *or* the terms of the trust. The proposed legislation would change that standard. Specifically, such power must be expressly authorized by the terms of the trust. If the trust is silent with respect to this issue, an attorney-in-fact may exercise this power if the power of attorney "expressly authorizes the agent to consent to a trust's modification..." Notably, such power of attorney *cannot* be a statutory short form power of attorney. The same change is proposed as it relates to an attorney-in-fact's powers with respect to revocation, amendment, or distribution of trust property.

Another proposed change relates to the limitation on actions contesting the validity of a revocable trust. Specifically, under the proposed legislation, if a trustee wishes to limit a trust contest by sending a notice of the trust's existence, trustee's name and address, and the time allowed for commencing a proceeding, it must also send a notice of the settlor's death under the same time parameters.

Additionally, it is proposed to place a time limitation on a designated trustee's ability to accept the trusteeship. Currently, a designated trustee who does not accept the trusteeship within a "reasonable time after knowing of the designation" is deemed to have rejected the trusteeship. If the legislation passes, that "reasonable time" cannot exceed 120 days.

Powers of trust protectors are also subject to amendment. Specifically, the proposed legislation takes away a trust protector's power to terminate the trust and the power to veto or direct trust distributions.

Finally, among numerous other changes not discussed here, the proposed legislation provides an additional circumstance under which a parent would be barred from inheriting from their child who died after reaching 18 years of age—if there is clear and convincing evidence that: (1) the parental rights of the parent could have been terminated on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child during the child's minority; and (2) in the year prior to the child's death, the parent and the child were estranged.

The proposed legislation was referred to the Judiciary and Public Safety Committee, which recommended that the bill pass with amendments. After amendments, the bill passed unanimously and was referred to the House. ***S.F. 571.*** *https://www.revisor.mn.gov/bills/bill.php?b=Senate&f=SF0571&ssn=0&y=2025*

■ **Proposed phaseout of estate tax.** On 2/10/2025, a bill was introduced in the Minnesota House of Representatives that proposes to phase out Minnesota's estate tax over a period of 10 years. Importantly, the proposed phaseout would only apply to estates of decedents dying after 6/30/2025. The proposed legislation was referred to the Taxes Committee, where it was laid over for possible inclusion in the Tax Omnibus Bill. ***H.F. 170.*** *https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF0170&ssn=0&y=2025*

Jessica L. Kometz
Bassford Remele
jkometz@bassford.com

Real Property

JUDICIAL LAW

Town has implied authority to impose appropriate conditions on the construction, opening, and use of cartway, and may include attorney fees as damages when establishing mandatory cartway. After unsuccessfully negotiating an easement across neighboring lands, the Holstads, owners of real property only accessible by foot across adjacent lands, petitioned a town board to establish a mandatory cartway pursuant to Minn. Stat. §164.08, subd. 2. Three cartway routes were proposed to the town board: (1) one by the Holstads; (2) one made by adjacent property owners who objected to the cartway; and (3) one by an engineer hired by the town. The town board held two public hearings on the issue, receiving statements and documents from interested parties on the three proposals, and inspected the at-issue real property.

At the second public hearing, the town board granted the cartway, selected the engineer's proposed route for the cartway, and adopted a resolution explaining its decision and the conditions upon which the cartway was granted. The resolution provided, in relevant part, that before the construction, opening, or use of the cartway, the Holstads must obtain "[a]ll related and necessary regulatory and grading approvals from any regulatory agency having jurisdiction" and that all work must be done in accordance with those approvals. The resolution also awarded damages, including attorney fees, as part of the "professional and other services" incurred by the town, and required payment of the damages before the construction, opening, or use of the cartway. The Holstads timely appealed the resolution to the district court, which affirmed the town board. The Holstads then timely appealed to the Minnesota Court of Appeals, raising three bases for why the town acted contrary to law or arbitrarily by: "(1) including conditions when it established the cartway, (2) selecting an alternative route rather than the Holstads' proposed route, and (3) awarding damages to the town for future attorney and engineer fees."

The court of appeals affirmed. The court held that the town conditioning approval of the cartway on being (1) approved by third-party regulatory bodies, (2) constructed and improved (at the Holstads' expense), (3) at least two rods in width, and (4) in compliance with standards for rural residential streets and shared driveways and standards specified by the town engineer, was within the town's explicit or implicit powers under Section 164.08 and thus, the town's actions were neither contrary to law or arbitrary. The court also held that the town did not act contrary to law or arbitrarily when it selected an alternative route for the cartway because, *inter alia*, the alternative route was determined by the town to be less disruptive and damaging to neighbors and in the public's best interest. In reaching its determination, the town found that the route proposed by the Holstads was unsafe, as the proposed unimproved cartway traversed through heavily wooded areas and had steep ravines on both sides, creating a safety hazard if two cars were to attempt to pass by each other and concluding it would not accommodate emergency vehicles. By contrast, the town's chosen route would, *inter alia*, avoid the steep slopes and require less clear-cutting of trees to construct the cartway. Finally, the court affirmed that engineering costs for overseeing the construction of the cartway and attorney fees associated with appealing the town's resolution were appropriately included as damages under the mandatory cartway statute. ***Holstad v. Town of May***, A24-1113 (Minn. App. 2/18/2025).

Damages for misrepresentation or nondisclosure in the sale of property cannot be proved by repair costs alone. The parties entered into a purchase agreement for a residential real property in June 2021, wherein buyers waived a home inspection. Buyers alleged that their offer and inspection waiver were based on sellers' disclosure statement, which described the property's condition and stated that sellers were not in possession of any past seller's disclosure statements. Immediately after moving in, buyers observed water intrusion and leakage issues, which buyers alleged were omitted from the disclosure statement. One month after moving in, buyers received a copy of a prior seller's disclosure statement, which seller received 16 months prior when seller purchased the property from a prior seller. Said disclosure statement disclosed many of the issues experienced by buyers. Buyers sued sellers on theories of fraud/intentional misrepresentation, negligent misrepresentation, and failure to disclose under the seller's disclosure statute, seeking damages and rescission. The parties filed cross motion for summary judgment. To support their legal theories, buyers submitted evidence of the cost to repair the property only. Sellers moved for summary judgment on all buyers' theories, arguing (i) buyers' failure to introduce evidence of diminution in value damages was fatal to all its claims, and (ii) the rescission claim was untimely because buyers commenced the action more than one year after noticing the issues with the property. The district court granted the sellers' motion. The court of appeals affirmed, holding, *inter alia*, that (a) a party is entitled to out-of-pocket-loss damages on a fraud and misrepresentation theory in this context, which is the difference between the actual value of the property and the price paid for it, and repair

costs alone are insufficient to support this damage theory; (b) the out-of-pocket-loss damages rule extends to all claims for statutory nondisclosure; and (c) waiting 13 months between the time of inspection and filing suit was unreasonable as a matter of law. ***Bhatia v. Anderson***, A24-0489 (Minn. App. 2/10/2025) (unpublished).

Zachary Armstrong
DeWitt LLP
zpa@dewittllp.com

Tax Law

JUDICIAL LAW

"Merely circumstantial evidence of theft" fails to meet petitioners' burden of proof in Section 165 deduction claim. In a consolidated matter, the court determined that petitioners failed to meet their burden of proof regarding their claimed deductions under either Section 162 or Section 165(c)(1), (3).

In 2017 petitioners, a married couple, failed to file their federal income tax returns, but they did request and receive an extension to complete their filings. Petitioners failed to meet that extended deadline. In 2019, respondent executed proper substitutes for returns (SFRs) for petitioners and then mailed notices of deficiency. In 2020 petitioners completed their Form 1040s, which included a claimed theft loss of roughly $2 million.

Pursuant to Rule 142(a) and *Welch v. Helvering*, the notices of deficiency sent by respondent are presumed correct, and petitioners bear the burden of proving them erroneous. *See* Rule 142(a); *Welch v. Helvering*, 290 U.S. 111, 115 (1933).

Petitioners advanced three claims, and the burden applies equally to all three. Petitioner's first claim was that they may deduct their "ordinary and necessary" business expenses under Section 162. The expenses claimed related to petitioner's involvement in house flipping and an investment made in a demolition/exaction business. While petitioners provided invoices and spreadsheets regarding these activities, such documents were not considered substantive evidence. Petitioners' own statements, including, "I am an investor," "I'm not [a house-flipping] partner," and "I'm the investor" were found to clearly show that any activity by petitioners should be properly considered investing.

In the alternative, petitioners claim their losses are deductible under Section 165(a) which allows for the "deduction [of] any loss sustained during the taxable year and not compensated for by insurance or otherwise." 26 USCA §165(a). Losses under Section 165(c)(1), as claimed by petitioners, however, are "losses incurred in a trade or business" and as the court already determined, petitioners' actions were investments rather than business activities.

Petitioner's last claim was that some of the losses incurred were the result of theft by the petitioner's partner in the house-flipping business under Section 165(c). 26 USCA §165(c). Losses under Section 165 are allowed in the year the losses are discovered unless there is "a reasonable prospect of recovery." 26 USCA §165(d)(3), (e). While petitioners challenged the validity of the regulations, the court "reiterate[d] that on the basis of a thorough analysis of caselaw (including Supreme Court precedent)..." the regulations were valid. Upon review of the facts, the court found the evidence presented by petitioners was "merely circumstantial evidence of theft," which failed to meet their burden and concluded that petitioners failed to meet their burden for any of their claims, thus denying any deductions for losses in tax year 2017. ***Weston v. Comm'r of Internal Revenue***, T.C. Memo. 2025-16 (U.S. Tax Ct., 2025).

Supreme Court's decision in *Loper Bright* warrants a grant of reconsideration but petitioners face the same outcome. In a motion for reconsideration, petitioners sought reconsideration of a grant of summary judgment "on the basis of the effect of the U.S. Supreme Court decision in *Loper Bright Enterprises*." In *Loper Bright*, the Court overruled the doctrine of *Chevron* deference and held that courts "must exercise their independent judgment in deciding whether an agency has acted within its statutory authority." (*Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).)

On 6/3/2024, the court granted the respondent's motion to dismiss for lack of jurisdiction as to penalties. At the end of that same month, the Supreme Court decided *Loper Bright*. Shortly thereafter, petitioners requested reconsideration pursuant to Rule 161. Rule 161 motions are "generally inappropriate to allow for the 'tendering [of] new legal theories.'" *Hamel* (citing *Estate of Quick v. Comm'r of Internal Revenue*, 110 T.C. Memo. 2025-32 (U.S. Tax

Ct., 1998)). However, "an intervening change in the law can warrant the granting of... a motion to reconsider." (*Intermountain Ins. Serv. of Vail, LLC v. Comm'r of Internal Revenue*, 134 T.C. 211, 216 (U.S. Tax Ct., 2010).) Here, "on the basis of intervening change in precedent by the Supreme Court found in *Loper Bright*," the court granted petitioners' motion for reconsideration.

Petitioners' motion for reconsideration raised two arguments. First, petitions asserted that the *Loper Bright* decision undermined the previous decision of the tax court in *Gaughf Properties, L.P. v. Comm'r of Internal Revenue,* 139 T.C. 219 (2012), *aff'd*, 738 F.3d 415 (D.C. Cir. 2013). The decision in *Loper Bright* overruled the longstanding *Chevron* test that "the Supreme Court adopted... to interpret statutes administered by federal agencies." Following their decision in *Loper Bright*, the Supreme Court "directed lower courts reviewing agency action to 'exercise their independent judgment in deciding whether [the] agency has acted within its statutory authority." *Loper Bright*, however, "d[id] not call into question prior cases that relied on the *Chevron* framework." *Loper Bright*, at 2273. As a result, petitioners' first argument that *Loper Bright* undermines the tax court's previous decision in *Gaughf Properties* fails.

Petitioners' second argument concerned the effect of *Gaughf Properties* as precedent in this case and the court's previous interpretation of Section 6229(e). While the court in *Gaughf Properties* did find ambiguity in Section 6229(e), the ambiguity has since been addressed by Treasury through its expressly delegated rulemaking when it promulgated Temp. Treas. Reg. §301.6223(c)-1T. Considering the regulation, the court "expressly conclude[d] that the best reading of section 6229(e) is consistent with the regulatory requirements of [Temp. Treas. Reg.] § 301.6223(c)-1T." The court therefore rejected petitioners' motion, "finding no reason to alter [their] conclusion... in this case," reaffirming their previous grant of respondent's motion to dismiss. ***Hamel v. Comm'r of Internal Revenue***, T.C. Memo. 2025-19 (U.S. Tax Ct., 2025).

Property tax; valuation and classification affirmed. A St. Paul taxpayer contested the valuation and classification of three parcels she owned on University Avenue. In January 2023, Ramsey County classified the parcels as commercial and assessed them at $507,300. The taxpayer claimed that they were only worth $100,000 because her plans to build a laundromat on the site were not approved by the City of St. Paul—but the taxpayer purchased the property in December 2022 for $575,000.

The tax court dismissed both claims, since the taxpayer did not offer any affirmative evidence to back up her claim that the property was only worth $100,000, nor that a commercial classification was improper. Noting that the property was purchased at an arm's length sale for $67,700 more than the assessment, and that the taxpayer had not overcome the presumptive validity of the government's assessment, the tax court affirmed Ramsey County's assessment and classification of the parcels. ***I Sunray Properties LLC v. County of Ramsey***, 2025 WL 285301 (Minn. Tax Regular Div., 1/21/2025).

Property tax; valuation dispute. The Dakota County Assessor's Office assigned a taxpayer couple's residential property in Lakeville an estimated market value of $820,900, a 23.63% increase from their last assessment, in which the county agreed to reduce the value from $734,900 to $664,000. The couple contacted the assessor's office, and the assessor acknowledged an error and reduced the estimated value to $745,000. That revised assessment remained unsatisfactory to the couple. The couple's appeal to the Dakota County's Special Board of Appeal and Equalization did not result in a lower assessment, and the couple appealed to the tax court.

The court acknowledged that the various assessments offered by the county, ranging from $664,000 in the immediately preceding assessment year to $820,900 in the current dispute, might lead the taxpayers to perceive "that the County is either incapable of, or unconcerned with, accurately determining 'market value.'" Nonetheless, the court upheld the assessment. The court set out a thorough explanation of appraisal methods generally. The court then explained that proving that an assessment is excessive requires either (1) affirmative evidence demonstrating that the market value of the property is lower than the assessed value, or (2) a challenge to the methodology by which the government arrived at the assessment. In this instance, the county's use of different valuation methods, both mass and single-property appraisals, at different stages of the assessment process resulted in different market values. The couple relied on their submission of seven comparable sales, but that evidence was insufficient to overcome the presumption because the comparables varied substantially from the subject property. The court affirmed the estimated market value for the property. ***Barnett v. County of Dakota,*** 19HA-CV-23-2830, 2025 WL 322709 (Minn. Tax Ct. Regular Div. 1/28/2025).

Morgan Holcomb, Leah Olm, Adam Trebesch
Mitchell Hamline School of Law

Torts & Insurance

JUDICIAL LAW

Insurance; claims made and reported policy. Defendant law firm represented clients in an underlying matter in 2019. After trial but prior to appeal, its client obtained new counsel in the action. Client, via his new counsel, sent law firm a request for his records. After substituting as counsel, client's new counsel emailed the firm attaching a letter that stated, "This law firm has been retained... to investigate and handle potential legal action which may involve your law firm in connection with your representation of the [clients] in their... action...." The letter directed the firm "to preserve all documents and records" related to its "representation of the" clients, and noted it should be considered a "litigation hold." It also asked that the firm to "notify any other persons who are likely to be material witnesses in [the] matter" that they were obligated "to preserve potential evidence." In a follow-up email in 2019, new counsel stated: "The litigation hold letter concerns a potential malpractice action against [the firm] in connection with your representation.... [I]f you haven't already, please notify your malpractice carrier of this potential claim." But the law firm did not notify its insurer in 2019. In 2022, the client retained new counsel, and sent a new demand letter to the law firm. The law firm provided that letter to its insurer. After investigating, the insurer commenced a declaratory judgment action to determine coverage issues. The district court granted summary judgment in favor of the insurer, holding that the coverage was precluded because the claim was first made in 2019 and not reported to the insurer in a timely fashion.

The Minnesota Court of Appeals affirmed. The court first rejected the law firm's contention that the claim could be made in 2019 and made again in 2022. The terms of policy provided that a claim was deemed made when "(1) a demand is communicated to an INSURED for DAMAGES resulting from the rendering of or failure to render PROFESSIONAL SERVICES; or (2) an INSURED first becomes aware of any actual or alleged act, error or omission by any INSURED which could support or lead to a CLAIM." Because the policy used the disjunctive term "or," the court held that the same claim could not be made twice. The court went on to determine that the claim was first made in 2019 given the text of the communications sent at that time. Finally, the court rejected the law firm's argument that the insurer had to establish prejudice to preclude coverage because of late notice. Because the policy at issue was a claims-made-and-reported policy, timely notice was a condition precedent to coverage. As a result, the insurer did not have to establish prejudice resulting from the late notice. ***Minn. Lawyers Mut. Ins. Co. v. Bradshaw & Bryant Law Office PLLC***, No. A24-0776 (Minn. Ct. App. 3/10/2025). *https://www.mncourts.gov/mncourtsgov/media/Appellate/Court%20of%20Appeals/Standard%20opinions/OPa240776-031025-motion-denied.pdf*

Jeff Mulder
Bassford Remele
jmulder@bassford.com

THE CHARITABLE-GIVING ARM OF THE HCBA PRESENTS

HENNEPIN COUNTY BAR FOUNDATION EST 1968

BAR BENEFIT

Our Largest Annual Fundraiser

Thursday, May 1, 2025 • 5:00–7:00 pm

MOSAIC EVENT VENUE

817 5th Ave S, Suite 300, Minneapolis

AN EXCITING NIGHT OF FUN AND FUNDRAISING!

Silent Auction – Wine Toss – Great Networking & More

FEATURING AN ALL-STAR BAND OF SENIOR LAWYERS & JUDGES

IMPROVE ACCESS TO JUSTICE

Most importantly, your attendance and contributions support the work of the Hennepin County Bar Foundation and Volunteer Lawyers Network.

Tickets available starting at $100

www.mnbars.org/bar-benefit

THANK YOU FOR SUPPORTING EQUAL ACCESS TO JUSTICE

$10,000

DORSEY
DORSEY + WHITNEY LLP

ROBINS KAPLAN LLP

$7,500

Taft/

$5,000

ANTHONY OSTLUND
LOUWAGIE · DRESSEN · BOYLAN

faegre drinker

GUSTAFSON GLUEK PLLC.

Lathrop GPM

DONOR OPPORTUITIES Contact Sabrina Sands at 612-752-6615 or ssands@mnbars.org

PEOPLE + PRACTICE

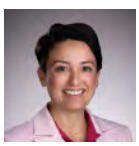
We gladly accept announcements regarding current members of the MSBA. BB@MNBARS.ORG

Samantha H. Bates has joined Maslon LLP with the litigation group, where she will focus on government and internal investigations and complex business litigation. Bates is a former federal prosecutor.

Jamal Faleel has been named U.S. head of consumer markets at Norton Rose Fulbright, stepping into a national leadership role as the sector faces increased litigation and regulatory scrutiny.

Jacob D. Levine has been chosen by the Twin Cities Cardozo Society to receive the 2025 Arthur T. Pfefer Memorial Award. Each year the award is presented to a Jewish law student or attorney under the age of 35 who has demonstrated outstanding leadership potential and commitment to serving the community. Levine will be honored at the 24th annual Cardozo Society Dinner on May 13. Levine is a senior associate at Fredrikson, where he specializes in mergers and acquisitions.

Roxanne N. Thorelli was named to the Association of Corporate Growth Minnesota's inaugural class of Rising Stars. Thorelli is an attorney at Fredrikson representing clients with mergers and acquisitions, debt and equity financing, corporate restructuring, and general corporate matters.



Lauren Rossitto has joined Erickson, Zierke, Kuderer & Madsen, PA as an associate attorney.

Anupama D. Sreekanth was named a 2025 fellow, and **Shantal M. Pai** and **Maliya G. Rattliffe** were named 2025 pathfinders, by the Leadership Council on Legal Diversity. These programs offer high-potential attorneys from diverse backgrounds the opportunity to develop leadership skills and build meaningful relationships within the legal profession. All three are attorneys at Fredrikson.

Gov. Walz appointed **Beverly Luther Quast** as a judge of the Minnesota Tax Court for a six-year term. Quast is a vice president of tax planning at U.S. Bank, where she advises on tax aspects of business transactions, mergers, and acquisitions.

Matthew P. Kostolnik and **Bryant D. Tchida** were elected to the Moss & Barnett board of directors. Kostolnik is chair of the litigation practice group and serves as the firm's general counsel. Tchida is a member of the litigation practice group and brings more than two decades of trial and appellate courtroom experience.

Shannon E. Cook has rejoined Moss & Barnett. Cook primarily focuses her practice on representing lenders.

In memoriam

CHARLES "CJ" J. FREY, age 60, passed away on February 7 in Rochester, MN. He attended Hamline University School of Law. Frey practiced criminal defense law in the Brainerd Lakes area for over 20 years, during which time he opened a law office with his wife. He also worked as a part-time public defender for the MN Board of Public Defense from 2016 to the time of his death.

EDWARD LITTLEJOHN, JR., of Winona, died on February 26. Throughout his life, Littlejohn demonstrated exceptional proficiency in various fields, pursuing careers in law, dentistry, and real estate.

TERRY C. HALLENBECK, 82, of Duluth, passed away on March 5. He worked for St. Louis County as a district court judge for 10 years.

BRIAN DOUGLAS STOFFERAHN, 66, of White Bear Lake, passed away on January 13. He earned his law degree from Hamline University School of Law. He dedicated his professional life to a career that reflected his deep passion for justice and critical thinking.

CLASSIFIED ADS

For more information about placing classified ads visit: www.mnbar.org/classifieds

ATTORNEY WANTED

ASSOCIATE ATTORNEY
Christensen, Laue, Betts & Tingum, PLLC, in Edina, Minnesota, seeks an associate attorney with one to three years of experience, to practice in the areas of real estate and business law, including transactional and litigation work, in a collegial setting. Please submit resumes and cover letters to: ch@edinalaw.com.

LABOR & EMPLOYMENT ATTORNEY
We are looking for a dedicated and driven Labor and Employment Attorney to join our expanding team. If you are passionate about assisting public and private clients with their labor and employment needs, committed to delivering exceptional service, and thrive in a collaborative environment, we want to hear from you! This role will focus on assisting public and private clients with their labor and employment needs. Must be admitted to practice in Minnesota and/or Wisconsin and in good standing. Prefer two to six years of labor and employment law experience. Serve as external general counsel for private businesses and public entities in all aspects of labor and employment law. Provide expert guidance on key federal, state, and local employment laws. Draft and review employment contracts, policies, and other legal documents. Willingness to defend employment claims through various stages of litigation. Offer clear, proactive communication and expert advice, ensuring client legal needs are met with confidence. Proven experience or strong interest in traditional labor or employment law. Strong research, writing, and communication skills. Confidence in providing sound legal advice with professionalism. Eckberg Lammers offers an inclusive work environment with opportunity for growth and development in addition to competitive compensation and benefits offerings, including 401(k), health insurance, life insurance, vacation and sick time. Pay: $90,000.00-$135,000 Detailed job description please visit our website: www.eckberglammers.com. Please send your cover letter, and resume to: HR@eckberglammers.com.

ASSISTANT CITY ATTORNEY – CRIMINAL
The City of Bemidji is hiring a full-time prosecutor. Come be a part of a great team that focuses on work/life balance. For more information, see: www.governmentjobs.com/careers/cibemidjimn.

TWO ATTORNEYS (ESTATE PLANNING & LITIGATION)
Miller & Stevens Law Firm is a general practice firm located in Forest Lake, MN. We are hiring for two attorney positions: (1) Estate Planning Attorney – Inherit an established client base from a retiring attorney. (2) General Civil Litigation Attorney – Handle family law, real estate, and civil litigation. Must be licensed in Minnesota with two plus years of experience. Send resume and cover letter to: amber@millerstevens.com.

OFFICE SPACE

WBL OFFICES – ALL INCLUSIVE
Office space available at 4525 Allendale Drive. Rent ($700 – $950/month) includes telephones, internet, scanner, fax, conference room, receptionist, kitchenette, utilities and parking. Contact Nichole at: 651-426-9980 or nichole@espelaw.com.

POSITION AVAILABLE

LCL EXECUTIVE DIRECTOR
As LCL nears 50 years of saving families, careers and lives, we are looking for the next person to serve as our Executive Director. Learn more at: www.mnlcl.org.

PROFESIONAL SERVICES

REAL ESTATE EXPERT WITNESS
Agent standards of care, fiduciary duties, disclosure, damages/lost profit analysis, forensic case analysis, and zoning/land-use issues. Analysis and distillation of complex real estate matters. Excellent credentials and experience. drtommusil@gmail.com, 612-207-7895.

PROFESSIONAL SERVICES
Attorney coach / consultant Roy S. Ginsburg provides succession planning and exit strategy services to individual lawyers and firms in Minnesota and nationwide. www.sellyourlawpractice.com, roy@royginsburg.com, 612-812-4500.

MEDIATION TRAINING
Qualify for the Supreme Court Roster. Earn 30 or 40 CLE's. Highly-rated course. St. Paul 612-824-8988 transformativemediation.com

CONTRACT SERVICES — IMMIGRATION BRIEF WRITING
Immigration attorney providing contract services to support other busy practitioners. I offer high-quality brief writing and reliable overflow support to help you manage demanding caseloads with confidence. Partner with me to provide your clients with exceptional service and seamless support. Contact The Law Office of Iris V. Anderson, PLLC to schedule a Legal Overflow Management Consultation today! Email us at: Iris@lawbyiris.com.

PLACE AN AD
Ads should be submitted online at: www.mnbars.org/classifieds

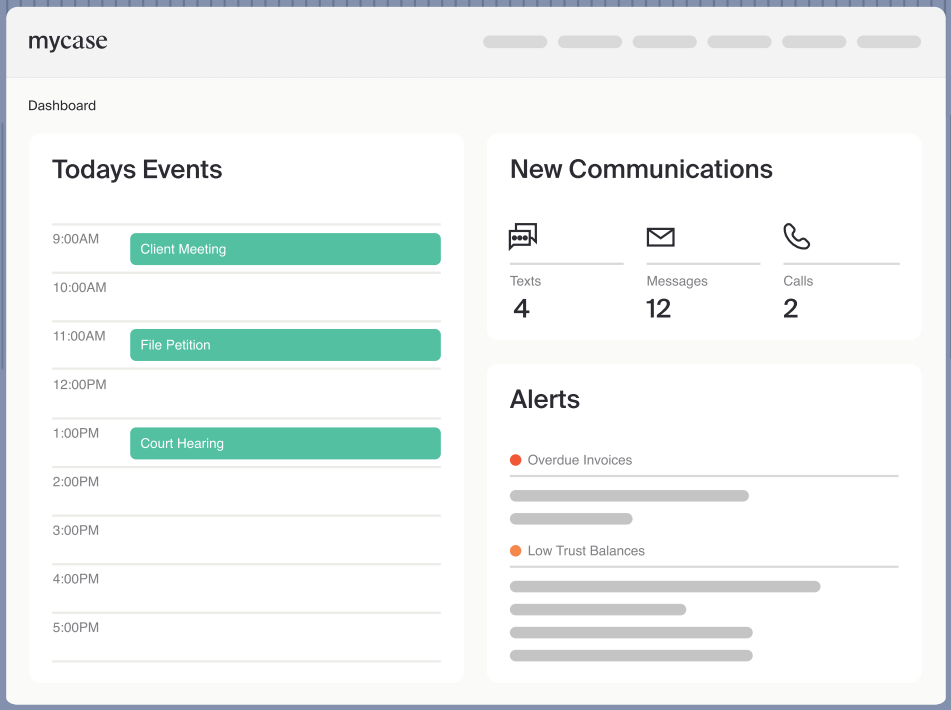
MSBA Members: $1.50 per word
Non-Members: $2.25 per word
($30 minimum charge)

Ads are posted online for 30 days and printed in the next available issue.
For details call the MSBA at: 612-333-1183.

mycase | MSBA MSBA Advantage Partner

The #1 Rated Law Practice Management Software

Streamline your cases, track more time, communicate with clients quickly, and get paid faster with MyCase



"As a business owner, the impact it has had on clients paying on time is tremendous."

Michelle Diaz
Managing Attorney, The Law Office of Michelle E. Diaz

Learn More **Visit MyCase.com** **800-571-8062**

1,800+ FIVE STAR REVIEWS | **$300,000,000+** RECOVERED FOR OUR CLIENTS | **17+** YEARS IN BUSINESS

NICOLET LAW

ACCIDENT & INJURY LAWYERS

L - R: Keaton Ostir, Ashley Rossman, Braxton Phillips, Megan Zabkowicz, Ryan Muir, Jessica Swain, Drew Epperly, Benjamin Nicolet, Russell Nicolet, Adam Nicolet, John Spiten, Arianna Meehleib, William Waltenberger, Lindsay Lien, Mike Ingvaldson, C. Anthony Gutta III, Nicholas Angel.

WE CARE. WE WIN. WE NEVER STOP GETTING BETTER.

We have been accepting injury case referrals and co-counseling with other Minnesota attorneys for over a decade. We take pride in delivering life-changing results while providing an excellent client experience. Refer your clients, friends, and family with confidence.

TO LEARN MORE, VISIT **NICOLETLAW.COM/REFERRALS** OR GIVE US A CALL AT **1-855-NICOLET**

NICOLET LAW
ACCIDENT & INJURY LAWYERS

**Fee sharing arrangements where allowed per the rules of professional conduct.*