



**Minnesota Court of Appeals**

**Significant Decisions**

**September 2007-August 2008**

**THIS DOCUMENT IS AVAILABLE ON THE COURT WEBSITE  
[WWW.COURTS.STATE.MN.US](http://WWW.COURTS.STATE.MN.US)**

## TABLE OF CONTENTS

Administrative Law .....	1
Alternative Dispute Resolution .....	1
Appellate Procedure .....	1
Attorney Fees (Primarily Trial Court Awards) .....	2
Civil Procedure .....	3
Commitment .....	5
Constitutional Law .....	5
Contracts .....	7
Criminal .....	9
Criminal Procedure .....	18
Debtor/Creditor .....	19
Driver's Licenses .....	19
Employment .....	22
Equity .....	22
Evidence (No Criminal Cases) .....	23
Family Law .....	23
Government Data Practices Act .....	26
Immunity .....	27
Indian Law .....	28
Insurance .....	28
Juvenile Delinquency .....	31
Juvenile Protection .....	31
Local Government/Municipal Law .....	31
Preemption .....	32
Probate .....	32
Real Property .....	32
School Law .....	35
Statute of Limitations .....	35
Timeliness – Civil Appeal .....	36
Torts .....	36
Unemployment Benefits .....	37

## ADMINISTRATIVE LAW

*In re Risk Level Determination of J.V.*, (A06-2286), 741 N.W.2d 612 (Minn. App. 2007), *review denied* (Minn. Feb. 19, 2008).

The request of a predatory offender for administrative review of an end-of-confinement risk-level determination under Minn. Stat. § 244.052, subd. 6, is moot when the offender is civilly committed to a residential facility and not subject to community notification and, therefore, lacks the requisite personal interest in the outcome of the litigation.

### **Utilities**

*Hoffman v. N. States Power Co.*, (A06-2275), 743 N.W.2d 751 (Minn. App. 2008), *review granted* (Minn. Apr. 15, 2008).

The filed-rate doctrine bars a claim by utility customers alleging that the utility was required but failed to provide certain services under a tariff subject to approval by the Minnesota Public Utilities Commission.

## ALTERNATIVE DISPUTE RESOLUTION

### **Arbitration**

*Auto Owners Ins. Co. v. Star Windshield Repair, Inc.*, (A07-972), 743 N.W.2d 329 (Minn. App. 2008), *review granted* (Minn. Apr. 29, 2008).

1. The Minnesota No-Fault Automobile Insurance Act, Minn. Stat. §§ 65B.41-.71 (2006 & Supp. 2007), allows the district court to determine coverage issues before compelling arbitration.

2. A nonassignment clause in an insurance policy may prohibit the assignment of postloss insurance proceeds.

## APPELLATE PROCEDURE

### **Scope of Review**

*State v. Franks*, (A06-1242), 742 N.W.2d 7 (Minn. App. 2007), *review granted* (Minn. Feb. 19, 2008).

When the district court, under Minn. Stat. § 609.035, subd. 1, is required to choose between imposing a sentence for a single conviction of a more-severe offense and imposing sentences for multiple convictions of lesser-included offenses, the decision to impose sentences for the lesser offenses will not be disturbed on appeal absent an abuse of discretion.

## **Timeliness**

*State v. Palmer*, (A08-335), 749 N.W.2d 830 (Minn. App. 2008).

The state's five-day period to appeal a pretrial order is not triggered by the announcement of the district court's ruling from the bench if the court indicates that a written order will follow.

## **ATTORNEY FEES (Primarily Trial Court Awards)**

### **Amount**

*Dorsey & Whitney LLP v. Grossman*, (A07-358), 749 N.W.2d 409 (Minn. App. 2008).

The summary proceeding set forth in Minn. Stat. § 481.13 (2006) is to establish an attorney lien. Under this provision, the district court must determine (1) the lienholder; (2) the cause of action, property, or money that is the subject of the lien; and (3) the amount of the lien. After doing so, the district court directs entry of judgment declaring the establishment of the lien.

*Brickner v. One Land Dev. Co.*, (A06-1940, A06-1957), 742 N.W.2d 706 (Minn. App. 2007), *review denied* (Minn. Mar. 19, 2008).

1. When one party to a real estate contract initiates cancellation proceedings under Minn. Stat. § 559.21 (2002), in accordance with contractual terms, the other party must bring an action opposing cancellation or seek injunctive relief before expiration of the cancellation period and may not avoid cancellation by asserting a prior breach after the cancellation period expires.
2. A party defending against an allegation of slander of title by alleging reliance on an attorney's advice bears the burden to produce specific facts showing reasonable reliance on the attorney's advice.
3. In an action for slander of title where the aggrieved party pleads attorney fees as special damages, an award of attorney fees is measured by the extent that the aggrieved party is obligated to pay them.

## CIVIL PROCEDURE

### **Declaratory Judgment**

*Hoelt v. Hennepin County*, (A07-1587), 754 N.W.2d 717 (Minn. App. 2008), *pet. for review filed* (Sept. 19, 2008).

Neither Minn. Stat. § 144.225, subd. 7(a) (Supp. 2007), nor article I, section 8 of the Minnesota Constitution provides a legal basis for a challenge in court to the accuracy of the information reflected on a death certificate. Because assertion of a legal right is one of the elements required to establish a justiciable controversy that must underlie a declaratory-judgment action, neither provision is sufficient to support a declaratory-judgment action to challenge the accuracy of a conclusion concerning manner of death on a death certificate.

### **Judgment**

*Blume Law Firm PC v. Pierce*, (A06-2311), 741 N.W.2d 921 (Minn. App. 2007), *review denied* (Minn. Feb. 19, 2008).

I. When personal jurisdiction has been waived, the Full Faith and Credit Clause does not permit challenges to foreign judgments on the basis that the foreign court lacked personal jurisdiction.

II. If a foreign judgment has been obtained through fraud, the Full Faith and Credit Clause does not require Minnesota courts to enforce the judgment.

*Simons v. Shiltz*, (A06-1999), 741 N.W.2d 907 (Minn. App. 2007), *review denied* (Minn. Feb. 19, 2008)

A judicial order that secures a monetary award with an interest in real property creates a property lien with priority over security interests that are obtained and recorded later by persons with notice of the order.

### **Jurisdiction**

*Blume Law Firm PC v. Pierce*, (A06-2311), 741 N.W.2d 921 (Minn. App. 2007), *review denied* (Minn. Feb. 19, 2008).

I. When personal jurisdiction has been waived, the Full Faith and Credit Clause does not permit challenges to foreign judgments on the basis that the foreign court lacked personal jurisdiction.

II. If a foreign judgment has been obtained through fraud, the Full Faith and Credit Clause does not require Minnesota courts to enforce the judgment.

*In re Civil Commitment of Richards*, (A07-671), 738 N.W.2d 397 (Minn. App. 2007), review denied (Minn. Nov. 21, 2007).

The fact that a person is subject to a federal deportation order does not deprive a Minnesota district court of jurisdiction to civilly commit that person under Minnesota Statutes § 253B.185, subd. 1 (2006).

### **Mootness**

*In re Risk Level Determination of J.V.*, (A06-2286), 741 N.W.2d 612 (Minn. App. 2007), review denied (Minn. Feb. 19, 2008).

The request of a predatory offender for administrative review of an end-of-confinement risk-level determination under Minn. Stat. § 244.052, subd. 6, is moot when the offender is civilly committed to a residential facility and not subject to community notification and, therefore, lacks the requisite personal interest in the outcome of the litigation.

### **Parties**

*Olson v. State*, (A06-2324), 742 N.W.2d 681 (Minn. App. 2007).

Absent evidence of an actual injury-in-fact, a taxpayer does not have standing based on his status as taxpayer to challenge the constitutionality of an economic-development program that provides tax exemptions.

### **Service**

*Ayala v. Ayala*, (A07-0657), 749 N.W.2d 817 (Minn. App. 2008).

Service of an order for protection by publication under the Minnesota Domestic Abuse Act, section 518B.01, subdivision 5(f), is ineffective unless, first, there has been an attempt at personal service by law-enforcement personnel that has failed because the respondent concealed himself and, second, either a copy of the petition and notice of hearing has been mailed to the respondent's residence or the petitioner does not know the address.

### **Stays**

*DRJ, Inc. v. City of St. Paul*, (A07-1599), 741 N.W.2d 141 (Minn. App. 2007).

A city council's refusal to stay a license revocation pending appeal does not constitute an abuse of discretion when it is supported by findings that reflect the relator's past failure to comply with conditions imposed on the license and a balancing of the potential harm to the relator against the potential harm to the public.

## COMMITMENT

### **Mentally Ill and Dangerous**

*In re Civil Commitment of Rannow*, (A07-2246), 749 N.W.2d 393 (Minn. App. 2008), review denied (Minn. Aug. 5, 2008).

A stipulation that a person is mentally ill and dangerous as defined by Minn. Stat. § 253B.02, subd. 17 (2006), is a civil stipulation and is not subject to the factual-basis requirement of a criminal *Alford* plea.

### **Sexually Dangerous Person**

*In re Civil Commitment of Richards*, (A07-671), 738 N.W.2d 397 (Minn. App. 2007), review denied (Minn. Nov. 21, 2007).

The fact that a person is subject to a federal deportation order does not deprive a Minnesota district court of jurisdiction to civilly commit that person under Minnesota Statutes § 253B.185, subd. 1 (2006).

### **Sexual Psychopathic Personality**

*In re Civil Commitment of Richards*, (A07-671), 738 N.W.2d 397 (Minn. App. 2007), review denied (Minn. Nov. 21, 2007).

The fact that a person is subject to a federal deportation order does not deprive a Minnesota district court of jurisdiction to civilly commit that person under Minnesota Statutes § 253B.185, subd. 1 (2006).

## CONSTITUTIONAL LAW

### **Due Process**

*Ayala v. Ayala*, (A07-0657), 749 N.W.2d 817 (Minn. App. 2008).

Service of an order for protection by publication under the Minnesota Domestic Abuse Act, section 518B.01, subdivision 5(f), is ineffective unless, first, there has been an attempt at personal service by law-enforcement personnel that has failed because the respondent concealed himself and, second, either a copy of the petition and notice of hearing has been mailed to the respondent's residence or the petitioner does not know the address.

## **Freedom of Association**

*Edina Cmty. Lutheran Church v. State*, (A07-0131), 745 N.W.2d 194 (Minn. App. 2008), *review denied* (Minn. Apr. 29, 2008).

1. Provisions of the Minnesota Citizens' Personal Protection Act of 2005 that effectively (a) require that before a church may order a person carrying a firearm to leave its premises, the church must (i) post at every entrance signs that conform to specific requirements, or (ii) personally inform each person that guns are prohibited and demand compliance; (b) preclude churches from prohibiting guns in parking areas on church property; and (c) preclude churches from prohibiting their tenants and the guests of tenants from having guns on church property are unconstitutional under article I, section 16, of the Minnesota Constitution.

2. The granting of an injunction that recognizes an exemption for churches that is analogous to the statutory exemption applicable to private residences under the Minnesota Citizens' Personal Protection Act of 2005 does not violate the Establishment Clause of the First Amendment to the United States Constitution.

3. Provisions of the Minnesota Citizens' Personal Protection Act of 2005 relating to the exclusion of guns from private property do not constitute "land use regulations," within the meaning of the Religious Land Use and Institutionalized Persons Act of 2000, chapter 2000cc of title 42 of the United States Code.

## **Minnesota Constitution**

*Hoefl v. Hennepin County*, (A07-1587), 754 N.W.2d 717 (Minn. App. 2008), *pet. for review filed* (Sept. 19, 2008).

Neither Minn. Stat. § 144.225, subd. 7(a) (Supp. 2007), nor article I, section 8 of the Minnesota Constitution provides a legal basis for a challenge in court to the accuracy of the information reflected on a death certificate. Because assertion of a legal right is one of the elements required to establish a justiciable controversy that must underlie a declaratory-judgment action, neither provision is sufficient to support a declaratory-judgment action to challenge the accuracy of a conclusion concerning manner of death on a death certificate.

## **Religion – Minnesota Freedom of Conscience Clause**

*Edina Cmty. Lutheran Church v. State*, (A07-0131), 745 N.W.2d 194 (Minn. App. 2008), *review denied* (Minn. Apr. 29, 2008).

1. Provisions of the Minnesota Citizens' Personal Protection Act of 2005 that effectively (a) require that before a church may order a person carrying a firearm to leave its premises, the church must (i) post at every entrance signs that conform to specific requirements, or (ii) personally inform each person that guns are prohibited and demand compliance; (b) preclude churches from prohibiting guns in parking areas on church property; and (c) preclude churches from prohibiting their tenants and the guests of



tenants from having guns on church property are unconstitutional under article I, section 16, of the Minnesota Constitution.

2. The granting of an injunction that recognizes an exemption for churches that is analogous to the statutory exemption applicable to private residences under the Minnesota Citizens' Personal Protection Act of 2005 does not violate the Establishment Clause of the First Amendment to the United States Constitution.

3. Provisions of the Minnesota Citizens' Personal Protection Act of 2005 relating to the exclusion of guns from private property do not constitute "land use regulations," within the meaning of the Religious Land Use and Institutionalized Persons Act of 2000, chapter 2000cc of title 42 of the United States Code.

### **Religion – United States Constitution**

*Edina Cmty. Lutheran Church v. State*, (A07-0131), 745 N.W.2d 194 (Minn. App. 2008), review denied (Minn. Apr. 29, 2008).

1. Provisions of the Minnesota Citizens' Personal Protection Act of 2005 that effectively (a) require that before a church may order a person carrying a firearm to leave its premises, the church must (i) post at every entrance signs that conform to specific requirements, or (ii) personally inform each person that guns are prohibited and demand compliance; (b) preclude churches from prohibiting guns in parking areas on church property; and (c) preclude churches from prohibiting their tenants and the guests of tenants from having guns on church property are unconstitutional under article I, section 16, of the Minnesota Constitution.

2. The granting of an injunction that recognizes an exemption for churches that is analogous to the statutory exemption applicable to private residences under the Minnesota Citizens' Personal Protection Act of 2005 does not violate the Establishment Clause of the First Amendment to the United States Constitution.

3. Provisions of the Minnesota Citizens' Personal Protection Act of 2005 relating to the exclusion of guns from private property do not constitute "land use regulations," within the meaning of the Religious Land Use and Institutionalized Persons Act of 2000, chapter 2000cc of title 42 of the United States Code.

## **CONTRACTS**

*Paradigm Enters., Inc. v. Westfield Nat'l Ins. Co.*, (A07-0635), 738 N.W.2d 416 (Minn. App. 2007).

1. "[P]receding calendar year" in Minn. Stat. § 176.041, subd. 1(g) (2006), refers to the calendar year preceding the insurance policy's effective date of coverage.

2. Absent an election of coverage under Minn. Stat. § 176.041, subd. 1a (2006), or a clear policy provision, a workers' compensation insurer cannot collect a premium for employees excluded by Minn. Stat. § 176.041, subd. 1(g).

*St. Paul Fire & Marine Ins. Co. v. A.P.I., Inc.*, (A06-1229), 738 N.W.2d 401 (Minn. App. 2007), *review denied* (Minn. Dec. 11, 2007).

Absent special circumstances, the insurer-insured relationship is not fiduciary before insurer assumes the duty to defend and acquires control of settlement negotiations.

### **Breach**

*Brickner v. One Land Dev. Co.*, (A06-1940, A06-1957), 742 N.W.2d 706 (Minn. App. 2007), *review denied* (Minn. Mar. 19, 2008).

1. When one party to a real estate contract initiates cancellation proceedings under Minn. Stat. § 559.21 (2002), in accordance with contractual terms, the other party must bring an action opposing cancellation or seek injunctive relief before expiration of the cancellation period and may not avoid cancellation by asserting a prior breach after the cancellation period expires.

2. A party defending against an allegation of slander of title by alleging reliance on an attorney's advice bears the burden to produce specific facts showing reasonable reliance on the attorney's advice.

3. In an action for slander of title where the aggrieved party pleads attorney fees as special damages, an award of attorney fees is measured by the extent that the aggrieved party is obligated to pay them.

### **Construction or Interpretation**

*Frey v. United Servs. Automobile Ass'n*, (A06-2445), 743 N.W.2d 337 (Minn. App. 2008).

Drop-down automobile insurance policy provisions that reduce bodily-injury coverage for resident family members to the minimum statutory amount are valid and enforceable.

### **Equitable Remedies**

*Washington Mut. Bank, F.A. v. Elfelt*, (A07-1758), 756 N.W.2d 501 (Minn. App. 2008), *pet. for review filed* (Minn. Oct. 30, 2008).

Common-interest communities, whose liens occupy a secondary priority position to first mortgages by operation of Minn. Stat. § 515B.3-116(b) (2006) of the Minnesota Common Interest Ownership Act, are afforded the protection of the Minnesota Recording Act, Minn. Stat. § 507.34 (2006). A common-interest community's lien is therefore safeguarded where the community is found to be lacking actual, constructive, or inquiry notice of a prior unrecorded or otherwise improperly recorded interest.

## CRIMINAL

### **Corrections**

*In re Risk Level Determination of J.V.*, (A06-2286), 741 N.W.2d 612 (Minn. App. 2007), *review denied* (Minn. Feb. 19, 2008).

The request of a predatory offender for administrative review of an end-of-confinement risk-level determination under Minn. Stat. § 244.052, subd. 6, is moot when the offender is civilly committed to a residential facility and not subject to community notification and, therefore, lacks the requisite personal interest in the outcome of the litigation.

### **Expungement**

*State v. V.A.J.*, (A07-71), 744 N.W.2d 674 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008).

A district court's inherent authority to expunge criminal records includes judicially created records disseminated to an executive agency that maintains custodianship over those records, including judicially created records maintained by the Bureau of Criminal Apprehension.

### **Forfeiture**

*Morgan v. 2000 Volkswagen*, (A07-1922), 754 N.W.2d 587 (Minn. App. 2008).

Minnesota lacks jurisdiction to apply the civil vehicle forfeiture law, Minn. Stat. § 169A.63 (2006), when the conduct giving rise to the forfeiture occurred on an Indian reservation and the owner of the vehicle is an enrolled member of the tribe on that reservation.

*Mastakoski v. 2003 Dodge Durango*, (A06-2396), 738 N.W.2d 411 (Minn. App. 2007), *review denied* (Minn. Nov. 21, 2007).

Under the vehicle-forfeiture statute, Minn. Stat. § 169A.63 (2006), a vehicle is subject to forfeiture if it was used in the commission of a "designated offense," even if the driver is not convicted of that offense.

### **Investigation**

*State v. Vue*, (A07-1401), 753 N.W.2d 767 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008).

When one co-tenant consents to the search of a residence, a second co-tenant who was present but did not object to the search cannot later prevail on a claim that the search violated the second co-tenant's right to be secure against unreasonable searches conferred by U.S. Const. amend. IV and Minn. Const. art. I, § 10.

*State v. Hooks*, (A07-0597), 752 N.W.2d 79 (Minn. App. 2008).

I. An undercover police officer's independent selecting and viewing of a single driver's license photograph to identify a suspect whom the officer observed commit a crime does not constitute an impermissibly suggestive photographic lineup procedure in violation of the suspect's constitutional due process rights.

II. The district court does not abuse its discretion or impair the extraordinary prerogative of jury nullification by instructing the jury that it "must" find the defendant guilty if the state has proven all elements of the charged crime beyond a reasonable doubt.

*State v. Hussong*, (A07-0785), 739 N.W.2d 922 (Minn. App. 2007).

A police officer who does not see a Type IV personal flotation device in plain sight after lawfully stopping an open watercraft has probable cause to believe that the watercraft's operator is not carrying the device as required and may ask the operator to present the required device.

*State v. Kilmer*, (A06-2052), 741 N.W.2d 607 (Minn. App. 2007).

It is not a violation of state traffic laws for a motorist to enter a controlled intersection on a yellow light, and that conduct alone cannot be the basis for an investigative stop by a law-enforcement officer.

*State v. Ortega*, (A07-0022), 749 N.W.2d 851 (Minn. App. 2008), *review granted* (Minn. Aug. 19, 2008).

A police officer has probable cause to search a vehicle being detained after a routine stop for traffic violations when the officer smells burnt marijuana in the vehicle or observes a small amount of marijuana on one occupant, despite a statutory change making possession of small amounts of marijuana only a petty misdemeanor.

### **Postconviction Relief**

*State v. Masood*, (A06-1689), 739 N.W.2d 736 (Minn. App. 2007).

1. When a defendant moves to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9, because of a *Blakely* violation, and requests that the presumptive maximum sentence be imposed, the district court is not required to hold an evidentiary hearing to determine whether a jury should be convened to decide departure factors.

2. Although the district court has the authority to impanel a jury to decide the existence of sentencing departure factors, caselaw does not mandate the court to do so.

3. When facts exist that arguably would justify an aggravated sentencing departure but caselaw arguably makes a departure inappropriate nevertheless, the district court does not abuse its discretion when it chooses to follow caselaw and declines to convene a jury to decide departure factors.

## **Pretrial**

*State v. Rucker*, (A07-773), 752 N.W.2d 538 (Minn. App. 2008), *review denied* (Minn. Sept. 23, 2008).

For the purposes of Minn. Stat. § 627.15 (2002), a victim of child abuse may be “found” in the county where he or she resided at the time the abuse occurred or at the time the abuse was reported.

*State v. Palmer*, (A08-335), 749 N.W.2d 830 (Minn. App. 2008).

The state’s five-day period to appeal a pretrial order is not triggered by the announcement of the district court’s ruling from the bench if the court indicates that a written order will follow.

*State v. Underdahl*, (A07-2293, A07-2428), 749 N.W.2d 117 (Minn. App. 2008), *review granted* (Minn. Aug. 5, 2008).

The district court’s determination that the computer source code for the Intoxilyzer 5000EN is relevant to a defendant’s guilt or innocence must be premised on a showing that an examination of the instrument’s software would show defects in its operation or at least would be necessary to determine whether defects exist.

*State v. Soukup*, (A07-1783), 746 N.W.2d 918 (Minn. App. 2008), *review denied* (Minn. Jun. 18, 2008).

For a victim to “report” sexual abuse, triggering the statute-of-limitations period set forth in Minnesota Statutes section 628.26, the victim must report the abuse to law enforcement authorities, not merely disclose it to a relative.

*State v. Ehmke*, (A07-0824), 752 N.W.2d 117 (Minn. App. 2008).

1. Charges against a predatory offender for failure to register a new primary residence under Minn. Stat. § 243.166 (Supp. 2005) may be venued in the county in which the offender last registered.

2. Because the duty to register as a predatory offender under Minn. Stat. § 243.166 is ongoing and arises each time an offender changes his or her primary residence, an offender can be prosecuted for each failure to register a change of primary residence without violating the constitutional prohibitions against double jeopardy.

3. The right to testify at trial is a fundamental right that must be personally and explicitly waived and cannot be presumed from the record in a trial on stipulated facts conducted pursuant to *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980).

## **Sentencing**

*State v. Meredyk*, (A07-1150), 754 N.W.2d 596 (Minn. App. 2008).

1. A district court has authority to modify a restitution obligation of a defendant's sentence under Minn. R. Crim. P. 27.03, subd. 9, if the sentence falls within the scope of the rule, notwithstanding the fact that the conditions of Minn. Stat. § 611A.04, subd. 1(b) (2006), are not met.

2. When a defendant and the state enter into a negotiated plea agreement the central premise of which calls for a specified restitution obligation and the defendant is sentenced in accordance with the agreement, a district court's decision to subsequently modify the terms of the restitution obligation in a significant manner over the objection of the state is an abuse of its discretion, absent some authority permitting the modification.

*State v. Pugh*, (A07-1171), 753 N.W.2d 308 (Minn. App. 2008), *review denied* (Minn. Sept. 23, 2008).

A district court does not have authority to impose a no-contact order as part of an executed sentence unless the order is expressly authorized by statute.

*State v. Loeffel*, (A07-1148), 749 N.W.2d 115 (Minn. App. 2008), *review denied* (Minn. Aug. 5, 2008).

A prior civil driver's license revocation obtained under Wisconsin law, where a person suspected of driving under the influence is not entitled to consult with an attorney before deciding whether to submit to chemical testing, may be used in Minnesota as a qualified impaired driving incident for purposes of statutorily enhancing a criminal driving while impaired charge.

*State v. Mudgett*, (A06-2440), 748 N.W.2d 921 (Minn. App. 2008).

A convicted defendant does not present a genuine pre-sentencing motion to withdraw his guilty plea when he conditions the making of that potential motion on whether the district court is inclined to deny his pending motion for a downward sentencing departure.

*State v. Jedlicka*, (A07-193), 747 N.W.2d 580 (Minn. App. 2008).

1. When the predatory offender registration statute, Minn. Stat. § 243.166 (2002), is amended to exclude an offender's conduct as an offense subject to registration, and the amendment becomes effective after the offender receives valid notice to register but before his actual registration is required upon his release from prison, the offender is not required to register as a predatory offender.

2. When a district court orders a convicted person to register as a predatory offender at the time of sentencing under Minn. Stat. § 243.166, subd. 1(a)(3) (2002), and later amendments to that statute allow only the Commissioner of Corrections to determine whether an offender should register, the district court nevertheless has the authority to modify its original registration order.

*Kachina v. State*, (A07-1400), 744 N.W.2d 407 (Minn. App. 2008).

The Minnesota Department of Corrections has authority to determine the conditions of supervised release, including assigning an offender to intensive supervised release, and such a determination does not infringe on the district court's sentencing authority.

*State v. Hughes*, (A07-37), 742 N.W.2d 460 (Minn. App. 2007), *review granted* (Minn. Mar. 18, 2008).

1. For purposes of applying retroactivity rules, the touchstone of finality is the date of the entry of the judgment of conviction.

2. If restitution is part of the criminal sentence but the amount has not been determined as of the entry of the judgment of conviction, that fact will not prevent the judgment from being deemed final for retroactivity purposes.

*State v. Franks*, (A06-1242), 742 N.W.2d 7 (Minn. App. 2007), *review granted* (Minn. Feb. 19, 2008).

When the district court, under Minn. Stat. § 609.035, subd. 1, is required to choose between imposing a sentence for a single conviction of a more-severe offense and imposing sentences for multiple convictions of lesser-included offenses, the decision to impose sentences for the lesser offenses will not be disturbed on appeal absent an abuse of discretion.

*State v. Masood*, (A06-1689), 739 N.W.2d 736 (Minn. App. 2007).

1. When a defendant moves to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9, because of a *Blakely* violation, and requests that the presumptive maximum sentence be imposed, the district court is not required to hold an evidentiary hearing to determine whether a jury should be convened to decide departure factors.

2. Although the district court has the authority to impanel a jury to decide the existence of sentencing departure factors, caselaw does not mandate the court to do so.

3. When facts exist that arguably would justify an aggravated sentencing departure but caselaw arguably makes a departure inappropriate nevertheless, the district court does not abuse its discretion when it chooses to follow caselaw and declines to convene a jury to decide departure factors.

## **Statutes**

*State v. Ehmke*, (A07-0824), 752 N.W.2d 117 (Minn. App. 2008).

1. Charges against a predatory offender for failure to register a new primary residence under Minn. Stat. § 243.166 (Supp. 2005) may be venued in the county in which the offender last registered.

2. Because the duty to register as a predatory offender under Minn. Stat. § 243.166 is ongoing and arises each time an offender changes his or her primary residence, an offender can be prosecuted for each failure to register a change of primary residence without violating the constitutional prohibitions against double jeopardy.

3. The right to testify at trial is a fundamental right that must be personally and explicitly waived and cannot be presumed from the record in a trial on stipulated facts conducted pursuant to *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980).

*State v. Fero*, (A07-353), 747 N.W.2d 596 (Minn. App. 2008), *review denied* (Minn. July 15, 2008).

Under Minn. Stat. §§ 609.344, subd. 1(e), 609.341, subd. 10 (2004), an individual in a position of authority arising from an employment relationship may maintain that position of authority when he or she engages in sexual misconduct outside of work hours and off the work premises.

*State v. Jedlicka*, (A07-193), 747 N.W.2d 580 (Minn. App. 2008).

1. When the predatory offender registration statute, Minn. Stat. § 243.166 (2002), is amended to exclude an offender's conduct as an offense subject to registration, and the amendment becomes effective after the offender receives valid notice to register but before his actual registration is required upon his release from prison, the offender is not required to register as a predatory offender.

2. When a district court orders a convicted person to register as a predatory offender at the time of sentencing under Minn. Stat. § 243.166, subd. 1(a)(3) (2002), and later amendments to that statute allow only the Commissioner of Corrections to determine whether an offender should register, the district court nevertheless has the authority to modify its original registration order.

*State v. Soukup*, (A07-1783), 746 N.W.2d 918 (Minn. App. 2008), *review denied* (Minn. Jun. 18, 2008).

For a victim to "report" sexual abuse, triggering the statute-of-limitations period set forth in Minnesota Statutes section 628.26, the victim must report the abuse to law enforcement authorities, not merely disclose it to a relative.

*State v. Netland*, (A06-1511), 742 N.W.2d 207 (Minn. App. 2007), *review granted* (Minn. Feb. 27, 2008).

1. Neither Minnesota's civil implied-consent law nor the criminal test-refusal statute conditions the driving privilege on surrendering the Fourth Amendment right to withhold consent to a warrantless search. Because the requirements for a valid test-request under Minn. Stat. § 169A.51 (2004) meet the constitutional requirements for a warrantless search based on exigent circumstances, a driver's "consent" is irrelevant for Fourth Amendment purposes.

2. When the evidence of a driver's refusal to submit to chemical testing is ambiguous and based primarily on an Intoxilyzer machine's determination of a failure to provide an adequate breath sample, rather than the driver's unwillingness to be tested, and the driver insists that she is not refusing and asks for an alternative test, which the officer declines to provide, a conviction of driving while impaired for refusal to submit to



a chemical test is contrary to fundamental fairness and deprives the driver of due process of law.

*State v. Spence*, (A06-1541), 742 N.W.2d 203 (Minn. App. 2007), *review granted* (Minn. Feb. 19, 2008).

1. When a homeowner has the lawful right to possess a home and no court order dispossesses him of that right, he may not be charged with burglary for entering the home and assaulting another co-owner.

2. Evidence that a victim of a crime recognizes the voice of her assailant is sufficient to establish the identity of the assailant.

*State v. Suhon*, (A06-1240), 742 N.W.2d 16 (Minn. App. 2007), *review denied* (Minn. Feb. 19, 2008).

Depending on the victim's age, a person commits either first-degree or third-degree criminal sexual conduct by engaging in multiple acts of sexual abuse committed over "an extended period of time" with a minor. Minn. Stat. §§ 609.342, subd. 1(h)(iii), 609.344, subd. 1(g)(iii) (2006). We hold that these sections authorize the state to prosecute a person for multiple counts of criminal sexual conduct against a victim for each "extended period," even if those individual periods, when added together, might alternatively constitute a single, longer "extended period."

*State v. Kilmer*, (A06-2052), 741 N.W.2d 607 (Minn. App. 2007).

It is not a violation of state traffic laws for a motorist to enter a controlled intersection on a yellow light, and that conduct alone cannot be the basis for an investigative stop by a law-enforcement officer.

*State v. Weber*, (A07-1218), 741 N.W.2d 402 (Minn. App. 2007).

The prohibition on the possession of firearms imposed on those convicted of a crime of violence under Minn. Stat. § 624.713, subd. 1(b) (2004), begins at conviction and lasts for life except for those whose prohibition ended prior to 1 August 2003.

*State v. Ouellette*, (A06-1727), 740 N.W.2d 355 (Minn. App. 2007), *review denied* (Minn. Dec. 19, 2007).

Minn. Stat. § 169A.20, subd. 2 (2006), criminalizing refusal to submit to chemical testing, incorporates, as elements of the crime, (1) the conditions precedent to a request to test set out in Minn. Stat. § 169A.51, subd. 1(b) (2006), and (2) that the defendant has been informed of the information set out in the implied consent advisory statute, Minn. Stat. § 169A.51, subd. 2 (2006).

*Mastakoski v. 2003 Dodge Durango*, (A06-2396), 738 N.W.2d 411 (Minn. App. 2007), *review denied* (Minn. Nov. 21, 2007).

Under the vehicle-forfeiture statute, Minn. Stat. § 169A.63 (2006), a vehicle is subject to forfeiture if it was used in the commission of a “designated offense,” even if the driver is not convicted of that offense.

### **Sufficiency of Evidence**

*State v. Spence*, (A06-1541), 742 N.W.2d 203 (Minn. App. 2007), *review granted* (Minn. Feb. 19, 2008).

1. When a homeowner has the lawful right to possess a home and no court order dispossesses him of that right, he may not be charged with burglary for entering the home and assaulting another co-owner.

2. Evidence that a victim of a crime recognizes the voice of her assailant is sufficient to establish the identity of the assailant.

### **Trial**

*State v. O’Meara*, (A07-825), 755 N.W.2d 29 (Minn. App. 2008).

Prior “similar conduct” by a defendant is inadmissible as relationship evidence under Minn. Stat. § 634.20 (2004) when the defendant previously has been acquitted of criminal charges based on that conduct.

*State v. Hooks*, (A07-0597), 752 N.W.2d 79 (Minn. App. 2008).

I. An undercover police officer’s independent selecting and viewing of a single driver’s license photograph to identify a suspect whom the officer observed commit a crime does not constitute an impermissibly suggestive photographic lineup procedure in violation of the suspect’s constitutional due process rights.

II. The district court does not abuse its discretion or impair the extraordinary prerogative of jury nullification by instructing the jury that it “must” find the defendant guilty if the state has proven all elements of the charged crime beyond a reasonable doubt.

*State v. Poetschke*, (A07-1323), 750 N.W.2d 301 (Minn. App. 2008).

A driver’s compliance with the Minnesota implied-consent law does not create a waiver of the driver’s statutory physician-patient privilege regarding an alcohol-concentration test result taken solely for medical-treatment purposes. Because Minn. Stat. § 595.02, subd. 1(d) (2004), contains no exception for alcohol-concentration test results, absent a specific waiver of the statutory physician-patient privilege, alcohol-concentration test results and medical records are not admissible in a criminal prosecution.

*State v. Smith*, (A06-2235), 749 N.W.2d 88 (Minn. App. 2008).

1. Minn. R. Evid. 404(b) allows extrinsic evidence of specific acts for relevant purposes other than to show character or propensity to commit the crime charged.

2. The permissible other acts listed illustratively in rule 404(b) are not exceptions to the character-evidence prohibitions but strictly must be nonpropensity evidence to be admissible.

3. A mere potential of other-acts evidence to suggest the defendant's propensity to commit similar acts will not require its exclusion if it meets the requirements of rule 404(b) and survives the balancing test of that rule.

4. If the probative value of other-acts evidence is outweighed by its potential for unfair prejudice, the evidence is inadmissible, and the district court abuses its discretion in admitting it.

*State v. Outlaw*, (A07-245), 748 N.W.2d 349 (Minn. App. 2008), *review denied* (Minn. July 15, 2008).

The district court did not violate appellant's right to a jury trial under *Blakely v. Washington* by determining that appellant's out-of-state convictions were felonies under Minnesota law.

## **Waivers**

*State v. Vue*, (A07-1401), 753 N.W.2d 767 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008).

When one co-tenant consents to the search of a residence, a second co-tenant who was present but did not object to the search cannot later prevail on a claim that the search violated the second co-tenant's right to be secure against unreasonable searches conferred by U.S. Const. amend. IV and Minn. Const. art. I, § 10.

*State v. Ehmke*, (A07-0824) 752 N.W.2d 117 (Minn. App. 2008)

1. Charges against a predatory offender for failure to register a new primary residence under Minn. Stat. § 243.166 (Supp. 2005) may be venued in the county in which the offender last registered.

2. Because the duty to register as a predatory offender under Minn. Stat. § 243.166 is ongoing and arises each time an offender changes his or her primary residence, an offender can be prosecuted for each failure to register a change of primary residence without violating the constitutional prohibitions against double jeopardy.

3. The right to testify at trial is a fundamental right that must be personally and explicitly waived and cannot be presumed from the record in a trial on stipulated facts conducted pursuant to *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980).

*State v. Rasmussen*, (A07-431), 749 N.W.2d 423 (Minn. App. 2008).

If an appellant successfully argues on appeal that she did not waive the right to a jury trial, she may not obtain appellate review of a pretrial suppression ruling pursuant to *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980).

*State v. Lehman*, (A06-1912), 749 N.W.2d 76 (Minn. App. 2008), *review denied* (Minn. Aug. 5, 2008).

1. A criminal defendant forfeits his right to court-appointed counsel when he assaults his court-appointed attorney.

2. The district court does not violate due process by deciding, without an evidentiary hearing, that a criminal defendant has forfeited his right to court-appointed counsel when the defendant assaults his court-appointed attorney in the presence of the court.

*State v. Mudgett*, (A06-2440), 748 N.W.2d 921 (Minn. App. 2008).

A convicted defendant does not present a genuine pre-sentencing motion to withdraw his guilty plea when he conditions the making of that potential motion on whether the district court is inclined to deny his pending motion for a downward sentencing departure.

*Anderson v. State*, (A07-0091), 746 N.W.2d 901 (Minn. App. 2008).

1. Although a criminal defendant's allegation that she followed her attorney's advice and falsely admitted her guilt under oath to secure court acceptance of her guilty plea may raise ethical concerns, it does not, as a matter of law, support a finding of prejudice under *Strickland v. Washington*.

2. If a criminal defendant informs her defense counsel that she wishes to withdraw her guilty plea before sentencing, defense counsel's advice to delay moving to withdraw the plea until after sentencing constitutes ineffective assistance of counsel if counsel fails to warn that the delay will render the motion less likely to succeed under a more challenging standard of proof.

*State v. Spraggins*, (A06-1694), 742 N.W.2d 1 (Minn. App. 2007).

A district court may not *sua sponte* vacate a defendant's guilty plea over his objection.

## **CRIMINAL PROCEDURE**

### **Appealability**

*State v. Allinder*, (A08-68), 746 N.W.2d 923 (Minn. App. 2008).

A stay of adjudication imposed for a felony offense is a sentence that the defendant may appeal as of right under Minn. R. Crim. P. 28.02, subd. 2(3).

## DEBTOR/CREDITOR

### Bankruptcy

*Evelyn I. Rechtzigel Trust ex rel Rechtzigel v. Fid. Nat'l Title Ins. Co.*, (A07-0645), 748 N.W.2d 312 (Minn. App. 2008), *review denied* (Minn. July 15, 2008).

1. Unless claims are asserted that threaten the marketability of title or other risks specified in the policy, title insurance does not cover monetary losses incurred by the insured arising out of the bankruptcy of a qualified intermediary in a 26 U.S.C. § 1031 like-kind exchange.

2. If a bankruptcy trustee's preference action against an insured does not implicate the marketability of title to real property or other risks specified in the title insurance policy, the title insurer has no duty to defend under a title insurance policy.

### Liens

*C & M Real Estate Servs. v. Thondikulam*, (A06-1459), 739 N.W.2d 725 (Minn. App. 2007), *review denied* (Minn. Dec. 19, 2007).

A purported lien creditor has no right to redeem property from foreclosure if the notice of intent to redeem is filed before the docketing of the judgment that establishes the lien.

*Simons v. Shiltz*, (A06-1999), 741 N.W.2d 907 (Minn. App. 2007), *review denied* (Minn. Feb. 19, 2008).

A judicial order that secures a monetary award with an interest in real property creates a property lien with priority over security interests that are obtained and recorded later by persons with notice of the order.

## DRIVER'S LICENSES

(Implied Consent License Revocation Unless Otherwise Specified)

*State v. Losh*, (A06-1910), 739 N.W.2d 730 (Minn. App. 2007).

When the predicate driver's license revocation is based on an alcohol-related driving offense, the offense of driving after revocation, a violation of Minn. Stat. § 171.24, subd. 2 (2004), presents heightened public policy concerns. Under such circumstances, Minn. Stat. § 171.24, subd. 2, is a criminal statute, which is enforceable by the State of Minnesota against an Indian in Indian country.

## **Discovery**

*State v. Underdahl*, (A07-2293, A07-2428), 749 N.W.2d 117 (Minn. App. 2008), *review granted* (Minn. Aug. 5, 2008).

The district court's determination that the computer source code for the Intoxilyzer 5000EN is relevant to a defendant's guilt or innocence must be premised on a showing that an examination of the instrument's software would show defects in its operation or at least would be necessary to determine whether defects exist.

## **Judicial Review**

*Riehm v. Comm'r of Public Safety*, (A06-2291), 745 N.W.2d 869 (Minn. App. 2008), *review denied* (Minn. May 20, 2008).

1. A driver whose driver's license is revoked, and whose implied-consent hearing is not held within 60 days after the filing of his petition for review, has standing to challenge a district court's scheduling policy that resulted in the hearing not being held within 60 days.

2. Because the 60-day time frame in Minn. Stat. § 169A.53. subd. 3(a) (Supp. 2005) is discretionary, not mandatory, the Ramsey County standing order that allows for disposition of an associated criminal case before an implied-consent hearing is scheduled does not violate the statute.

3. A driver's right to procedural due process is not violated when his driver's-license revocation could have been stayed pending his implied-consent hearing, but was not because he failed to avoid prejudice by availing himself of such relief under the standing order.

## **Probable Cause**

*Snyder v. Comm'r of Pub. Safety*, (A06-2435), 744 N.W.2d 19 (Minn. App. 2008).

Unlawful physical control under Minn. Stat. § 169A.52, subd. 4 (2006) does not occur when there is no evidence indicating past or future "physical control" over the vehicle as required, other than that the potential driver was in possession of car keys and had placed one foot into the vehicle before retreating and giving the keys to a third person.

## **Refusal of Testing**

*State v. Netland*, (A06-1511), 742 N.W.2d 207 (Minn. App. 2007), *review granted* (Minn. Feb. 27, 2008).

1. Neither Minnesota's civil implied-consent law nor the criminal test-refusal statute conditions the driving privilege on surrendering the Fourth Amendment right to withhold consent to a warrantless search. Because the requirements for a valid test-request under Minn. Stat. § 169A.51 (2004) meet the constitutional requirements for a

warrantless search based on exigent circumstances, a driver's "consent" is irrelevant for Fourth Amendment purposes.

2. When the evidence of a driver's refusal to submit to chemical testing is ambiguous and based primarily on an Intoxilyzer machine's determination of a failure to provide an adequate breath sample, rather than the driver's unwillingness to be tested, and the driver insists that she is not refusing and asks for an alternative test, which the officer declines to provide, a conviction of driving while impaired for refusal to submit to a chemical test is contrary to fundamental fairness and deprives the driver of due process of law.

### **Right to Counsel**

*State v. Loeffel*, (A07-1148), 749 N.W.2d 115 (Minn. App. 2008), *review denied* (Minn. Aug. 5, 2008).

A prior civil driver's license revocation obtained under Wisconsin law, where a person suspected of driving under the influence is not entitled to consult with an attorney before deciding whether to submit to chemical testing, may be used in Minnesota as a qualified impaired driving incident for purposes of statutorily enhancing a criminal driving while impaired charge.

### **Testing**

*Sands v. Comm'r of Pub. Safety*, (A07-59), 744 N.W.2d 24 (Minn. App. 2008).

Before revocation of a motorist's license is proper under Minn. Stat. § 169A.52, subd. 4(a) (2006), a peace officer must certify that probable cause existed to believe that a motorist was driving while impaired and that the motorist submitted to a test, the results of which indicated an alcohol concentration of .08 or more or the presence of one of the controlled substances enumerated in the statute. If the actual test results attached to the certification indicate an alcohol concentration of .20 or more and the motorist does not have a qualified prior impaired-driving incident within the last ten years, the commissioner shall revoke the motorist's license for a period of 180 days.

*State v. Netland*, (A06-1511), 742 N.W.2d 207 (Minn. App. 2007), *review granted* (Minn. Feb. 27, 2008).

1. Neither Minnesota's civil implied-consent law nor the criminal test-refusal statute conditions the driving privilege on surrendering the Fourth Amendment right to withhold consent to a warrantless search. Because the requirements for a valid test-request under Minn. Stat. § 169A.51 (2004) meet the constitutional requirements for a warrantless search based on exigent circumstances, a driver's "consent" is irrelevant for Fourth Amendment purposes.

2. When the evidence of a driver's refusal to submit to chemical testing is ambiguous and based primarily on an Intoxilyzer machine's determination of a failure to provide an adequate breath sample, rather than the driver's unwillingness to be tested,

and the driver insists that she is not refusing and asks for an alternative test, which the officer declines to provide, a conviction of driving while impaired for refusal to submit to a chemical test is contrary to fundamental fairness and deprives the driver of due process of law.

## **EMPLOYMENT**

### **Labor Issues**

*IBEW, Local No. 292 v. City of St. Cloud*, (A07-1388, A07-1418), 750 N.W.2d 307 (Minn. App. 2008), *review granted* (Minn. Aug. 19, 2008).

Minn. Stat. § 13.43, subd. 6 (2006) does not limit a labor union's ability to request personnel data that is classified as public under Minn. Stat. § 13.43, subd. 2 (2006).

## **EQUITY**

### **Injunctions**

*Edina Cmty. Lutheran Church v. State*, (A07-0131), 745 N.W.2d 194 (Minn. App. 2008), *review denied* (Minn. Apr. 29, 2008).

1. Provisions of the Minnesota Citizens' Personal Protection Act of 2005 that effectively (a) require that before a church may order a person carrying a firearm to leave its premises, the church must (i) post at every entrance signs that conform to specific requirements, or (ii) personally inform each person that guns are prohibited and demand compliance; (b) preclude churches from prohibiting guns in parking areas on church property; and (c) preclude churches from prohibiting their tenants and the guests of tenants from having guns on church property are unconstitutional under article I, section 16, of the Minnesota Constitution.

2. The granting of an injunction that recognizes an exemption for churches that is analogous to the statutory exemption applicable to private residences under the Minnesota Citizens' Personal Protection Act of 2005 does not violate the Establishment Clause of the First Amendment to the United States Constitution.

3. Provisions of the Minnesota Citizens' Personal Protection Act of 2005 relating to the exclusion of guns from private property do not constitute "land use regulations," within the meaning of the Religious Land Use and Institutionalized Persons Act of 2000, chapter 2000cc of title 42 of the United States Code.



## **EVIDENCE**

(No Criminal Cases)

### **Privileges**

*In re Death Investigation of Skjervold*, (A07-678), 742 N.W.2d 686 (Minn. App. 2007), *review denied* (Minn. Mar. 18, 2008).

1. The Minnesota Free Flow of Information Act, Minn. Stat. §§ 595.021-.025 (2006), provides to the news media a substantial privilege not to reveal sources of information or disclose unpublished information except as required under the statute.

2. Under Minn. Stat. § 595.024, subd. 2 (2006), an applicant seeking specific information from the news media relevant to a gross misdemeanor or felony must establish by clear and convincing evidence all three criteria of the subdivision. The third criterion requires that the applicant establish that there is a compelling and overriding interest requiring disclosure of the information to prevent an injustice.

### **Relevance**

*In re Buckmaster*, (A07-1682), 755 N.W.2d 570 (Minn. App. 2008).

An agreement for corrective action under Minn. Stat. § 214.103 (2006) between a health-related licensing board and a regulated person constitutes a settlement agreement within the meaning of Minn. R. Evid. 408. Therefore, rule 408 precludes admission of such an agreement for corrective action as substantive evidence of liability in any subsequent civil action.

## **FAMILY LAW**

### **Attorney Fees**

*Lee v. Lee*, (A07-110), 749 N.W.2d 51 (Minn. App. 2008), *review granted* (Minn. June 25, 2008).

1. Pension benefits received by a maintenance obligor representing the premarital portion of the obligor's pension constitute nonmarital property and may not be treated as "future income" available for maintenance.

2. When a dissolution decree awards a maintenance obligee one-half of a maintenance obligor's pension benefits "accumulated during the marriage" as a division of marital property, the obligor's receipt of pension benefits in excess of the amount received by the obligee is not "future income" available for maintenance until the obligor has received benefits equal to the value of the original property award.

3. When the district court found "reasonable needs" of each party in a prior dissolution proceeding and neither party in the current proceeding establishes that these

needs have changed, the district court may apply the previously established needs as the current needs of the parties.

4. The district court may not apply a modified maintenance obligation retroactive to a date that lacks a factual basis in the record.

5. The district court may not order a maintenance obligor to obtain new life insurance as security for a modified maintenance award without evidence of insurability, cost of insurance, and ability to pay.

6. The district court may award conduct-based attorney fees incurred to collect previous maintenance arrears judgments.

### **Child Support**

*Hubbard County Health & Human Servs. v. Zacher*, (A06-2228), 742 N.W.2d 223 (Minn. App. 2007).

1. Undistributed earnings of a Subchapter S corporation that have been retained for a business reason are not income to a minority shareholder for the purpose of establishing his child-support obligation.

2. Whether undistributed earnings of a Subchapter S corporation have been retained for a business reason is a fact question, which must be decided on a case-by-case basis.

3. A minority shareholder in a Subchapter S corporation who claims that undistributed earnings of a Subchapter S corporation should not be included in his income for the purpose of establishing his child-support obligation has the burden of showing that the earnings were retained for a business reason.

*Frank-Bretwisch v. Ryan*, (A06-1864), 741 N.W.2d 910 (Minn. App. 2007).

An increase in a child support obligor's income, when the obligor already enjoys the benefits of an award deviating downward from statutory guidelines, often represents a change in circumstance under the governing statute that is rebuttably presumed to justify an increase in the amount of the obligation. When this presumption arises, it requires the obligor to prove that the existing obligation remains fair and reasonable to avoid modification of that obligation. In these circumstances, the district court's findings must address the needs and resources of the parties but must also determine whether the existing award currently remains in the best interests of the child(ren) for whom the support obligation is being paid.

### **Construction of Judgment**

*Simons v. Shiltz*, (A06-1999), 741 N.W.2d 907 (Minn. App. 2007), *review denied* (Minn. Feb. 19, 2008).

A judicial order that secures a monetary award with an interest in real property creates a property lien with priority over security interests that are obtained and recorded later by persons with notice of the order.

## **Domestic Abuse**

*Ayala v. Ayala*, (A07-0657), 749 N.W.2d 817 (Minn. App. 2008).

Service of an order for protection by publication under the Minnesota Domestic Abuse Act, section 518B.01, subdivision 5(f), is ineffective unless, first, there has been an attempt at personal service by law-enforcement personnel that has failed because the respondent concealed himself and, second, either a copy of the petition and notice of hearing has been mailed to the respondent's residence or the petitioner does not know the address.

*McIntosh v. McIntosh*, (A06-1432, A06-1444), 740 N.W.2d 1 (Minn. App. 2007).

1. A petitioner does not need to show the existence of current domestic abuse in order to obtain an extension of an existing order for protection under Minn. Stat. § 518B.01, subd. 6a (2006), when the subject of the order stipulated to the original order for protection.

2. The district court did not abuse its discretion by extending an existing order for protection under Minn. Stat. § 518B.01, subd. 6a (2006), when the record evidence sufficiently supports the conclusion that the petitioner is reasonably in fear of physical harm.

## **Property Division**

*Lee v. Lee*, (A07-110), 749 N.W.2d 51 (Minn. App. 2008), *review granted* (Minn. June 25, 2008).

1. Pension benefits received by a maintenance obligor representing the premarital portion of the obligor's pension constitute nonmarital property and may not be treated as "future income" available for maintenance.

2. When a dissolution decree awards a maintenance obligee one-half of a maintenance obligor's pension benefits "accumulated during the marriage" as a division of marital property, the obligor's receipt of pension benefits in excess of the amount received by the obligee is not "future income" available for maintenance until the obligor has received benefits equal to the value of the original property award.

3. When the district court found "reasonable needs" of each party in a prior dissolution proceeding and neither party in the current proceeding establishes that these needs have changed, the district court may apply the previously established needs as the current needs of the parties.

4. The district court may not apply a modified maintenance obligation retroactive to a date that lacks a factual basis in the record.

5. The district court may not order a maintenance obligor to obtain new life insurance as security for a modified maintenance award without evidence of insurability, cost of insurance, and ability to pay.

6. The district court may award conduct-based attorney fees incurred to collect previous maintenance arrears judgments.

*Simons v. Shiltz*, (A06-1999), 741 N.W.2d 907 (Minn. App. 2007), *review denied* (Minn. Feb. 19, 2008).

A judicial order that secures a monetary award with an interest in real property creates a property lien with priority over security interests that are obtained and recorded later by persons with notice of the order.

### **Reopening Judgment**

*Frank-Bretwisch v. Ryan*, (A06-1864), 741 N.W.2d 910 (Minn. App. 2007).

An increase in a child support obligor's income, when the obligor already enjoys the benefits of an award deviating downward from statutory guidelines, often represents a change in circumstance under the governing statute that is rebuttably presumed to justify an increase in the amount of the obligation. When this presumption arises, it requires the obligor to prove that the existing obligation remains fair and reasonable to avoid modification of that obligation. In these circumstances, the district court's findings must address the needs and resources of the parties but must also determine whether the existing award currently remains in the best interests of the child(ren) for whom the support obligation is being paid.

### **Spousal Maintenance**

*Grachek v. Grachek*, (A07-1226), 750 N.W.2d 328 (Minn. App. 2008), *review denied* (Minn. Aug. 19, 2008).

Parties' agreement to waive the right to receive a cost-of-living adjustment to a spousal-maintenance award under Minn. Stat. § 518A.75 (2006) must be expressed in the dissolution judgment in clear and express language.

## **GOVERNMENT DATA PRACTICES ACT**

### **Data on Individuals**

*IBEW, Local No. 292 v. City of St. Cloud*, (A07-1388, A07-1418), 750 N.W.2d 307 (Minn. App. 2008), *review granted* (Minn. Aug. 19, 2008).

Minn. Stat. § 13.43, subd. 6 (2006) does not limit a labor union's ability to request personnel data that is classified as public under Minn. Stat. § 13.43, subd. 2 (2006).

## IMMUNITY

### **Judicial or Quasi-Judicial**

*Peterka v. Dennis*, (A07-0165), 744 N.W.2d 28 (Minn. App. 2008), *review granted* (Minn. Apr. 15, 2008).

1. An order based on a stipulation of parties to a dissolution action requiring the parties to select an independent neutral and cooperate with the independent neutral's evaluation of the parties' business assets does not confer quasi-judicial immunity on the independent neutral.

2. Public policy does not require that accountants retained by the parties to a dissolution action to perform an independent neutral evaluation of business assets be granted quasi-judicial immunity.

*Simmons v. Fabian*, (A06-2308), 743 N.W.2d 281 (Minn. App. 2007).

1. Absolute quasi-judicial immunity from damages does not bar injunctive relief in actions under 42 U.S.C. § 1983.

2. The commissioner of corrections is not a "judicial officer" within the meaning of 42 U.S.C. § 1983, as amended by the Federal Courts Improvement Act of 1996.

### **Police-Nonpursuit**

*Semler v. Klang*, (A06-1852), 743 N.W.2d 273 (Minn. App. 2007), *review denied* (Minn. Feb. 19, 2008).

Minn. Stat. § 244.052, subd. 7(c) (2006), does not preclude official immunity for law enforcement agencies and officers who disclose information about a sex offender that is not "consistent with the offender's conviction history."

### **Statutory**

*Prokop v. Indep. Sch. Dist. No. 625*, (A07-1716), 754 N.W.2d 709 (Minn. App. 2008).

1. Recreational-use immunity from claims based on the construction, operation, or maintenance of recreational property includes immunity from claims based on movable equipment and safety equipment provided to facilitate the use of recreational property.

2. An openly visible condition is not hidden for purposes of the trespasser-liability exception to recreational-use immunity when the condition is readily observable, regardless of whether the plaintiff actually sees the condition or perceives its danger.

3. A landowner has no duty to protect trespassers from conditions that are obviously dangerous.

## INDIAN LAW

*State v. Losh*, (A06-1910), 739 N.W.2d 730 (Minn. App. 2007), *aff'd*, 755 N.W.2d 736 (Minn. 2008).

When the predicate driver's license revocation is based on an alcohol-related driving offense, the offense of driving after revocation, a violation of Minn. Stat. § 171.24, subd. 2 (2004), presents heightened public policy concerns. Under such circumstances, Minn. Stat. § 171.24, subd. 2, is a criminal statute, which is enforceable by the State of Minnesota against an Indian in Indian country.

### **State Jurisdiction-Criminal**

*Morgan v. 2000 Volkswagen*, (A07-1922), 754 N.W.2d 587 (Minn. App. Aug. 12, 2008).

Minnesota lacks jurisdiction to apply the civil vehicle forfeiture law, Minn. Stat. § 169A.63 (2006), when the conduct giving rise to the forfeiture occurred on an Indian reservation and the owner of the vehicle is an enrolled member of the tribe on that reservation.

## INSURANCE

### **Agents or Policy**

*Star Windshield Repair, Inc. v. W. Nat'l Ins. Co.*, (A07-216, A07-217, A07-830), 744 N.W.2d 237 (Minn. App. 2008), *review granted* (Minn. Apr. 29, 2008).

Anti-assignment clauses in comprehensive automobile insurance policies that by their plain language preclude assignment of rights and duties or change of interest extend to post-loss assignments of auto-glass claims.

*Frey v. United Servs. Auto. Ass'n*, (A06-2445), 743 N.W.2d 337 (Minn. App. 2008).

Drop-down automobile insurance policy provisions that reduce bodily-injury coverage for resident family members to the minimum statutory amount are valid and enforceable.

*Auto Owners Ins. Co. v. Star Windshield Repair, Inc.*, (A07-972), 743 N.W.2d 329 (Minn. App. 2008), *review granted* (Minn. Apr. 29, 2008).

1. The Minnesota No-Fault Automobile Insurance Act, Minn. Stat. §§ 65B.41-.71 (2006 & Supp. 2007), allows the district court to determine coverage issues before compelling arbitration.

2. A nonassignment clause in an insurance policy may prohibit the assignment of postloss insurance proceeds.

*Paradigm Enters., Inc. v. Westfield Nat'l Ins. Co.*, (A07-635), 738 N.W.2d 416 (Minn. App. 2007).

1. “[P]receding calendar year” in Minn. Stat. § 176.041, subd. 1(g) (2006), refers to the calendar year preceding the insurance policy’s effective date of coverage.

2. Absent an election of coverage under Minn. Stat. § 176.041, subd. 1a (2006), or a clear policy provision, a workers’ compensation insurer cannot collect a premium for employees excluded by Minn. Stat. § 176.041, subd. 1(g).

### **Arbitration**

*Auto Owners Ins. Co. v. Star Windshield Repair, Inc.*, (A07-972), 743 N.W.2d 329 (Minn. App. 2008), *review granted* (Minn. Apr. 29, 2008).

1. The Minnesota No-Fault Automobile Insurance Act, Minn. Stat. §§ 65B.41-.71 (2006 & Supp. 2007), allows the district court to determine coverage issues before compelling arbitration.

2. A nonassignment clause in an insurance policy may prohibit the assignment of postloss insurance proceeds.

### **Collateral Sources**

*Do v. Am. Family Ins. Co.*, (A07-1461), 752 N.W.2d 109 (Minn. App. 2008), *review granted* (Minn. Sept. 23, 2008).

Pursuant to the collateral-source rule of Minn. Stat. § 548.36 (2006), an injured party’s prior settlement with a tortfeasor’s automobile-insurance carrier for unspecified general damages offsets an ultimate jury award that encompasses no-fault damages.

### **Duty to Defend**

*St. Paul Fire & Marine Ins. Co. v. A.P.I., Inc.*, (A06-1229), 738 N.W.2d 401 (Minn. App. 2007), *review denied* (Minn. Dec. 11, 2007).

Absent special circumstances, the insurer-insured relationship is not fiduciary before insurer assumes the duty to defend and acquires control of settlement negotiations.

### **Homeowners**

*State Farm Fire & Cas. Co. v. Schwich*, (A07-1093), 749 N.W.2d 108 (Minn. App. 2008).

1. When an insured knowingly provides an injured party with methamphetamine by preparing a syringe and encourages the injured party to inject the drug, intent to injure is inferred as a matter of law, precluding coverage under an intentional act exclusion contained in a general liability insurance policy.

2. An insured who knowingly and with deliberate indifference to the risk of injury provides an injured party with a syringe of methamphetamine and encourages the

injured party to inject the drug commits a willful and malicious act as a matter of law, precluding coverage under a willful and malicious act exclusion contained in a general liability insurance policy.

3. As a matter of public policy, serious violations of criminal law are not within the coverage provided by a general liability insurance policy.

### **No-Fault**

*Bundul v. Travelers Indem. Co.*, (A07-1627), 753 N.W.2d 761 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008).

The Minnesota No-Fault Automobile Insurance Act does not preclude a “household exclusion” in a personal liability umbrella insurance policy so long as an underlying primary insurance policy provides the coverage mandated by the act.

*Marchio v. W. Nat’l Mut. Ins. Co.*, (A07-477), 747 N.W.2d 376 (Minn. App. 2008).

An insurance policy’s duplicate payments exclusion that seeks to limit the amount payable for uninsured motorist benefits by the amount paid for liability coverage under the same policy is unenforceable as contrary to the Minnesota No-Fault Automobile Insurance Act, when an insured in a multi-vehicle accident sought uninsured motorist benefits based only on the fault of an uninsured driver.

*Auto Owners Ins. Co. v. Star Windshield Repair, Inc.*, (A07-972), 743 N.W.2d 329 (Minn. App. 2008), *review granted* (Minn. Apr. 29, 2008).

1. The Minnesota No-Fault Automobile Insurance Act, Minn. Stat. §§ 65B.41-.71 (2006 & Supp. 2007), allows the district court to determine coverage issues before compelling arbitration.

2. A nonassignment clause in an insurance policy may prohibit the assignment of postloss insurance proceeds.

### **Subrogation**

*Van Kampen v. Waseca Mut. Ins. Co.*, (A07-1457), 754 N.W.2d 578 (Minn. App. 2008).

Under the *Schmidt-Clothier* procedure, if an underinsured-motorist insurer fails to assert its subrogation rights, an insured does not forfeit underinsured-motorist benefits by settling claims against the tortfeasor without receiving payment.

### **UM (Uninsured Motorist)**

*Van Kampen v. Waseca Mut. Ins. Co.*, (A07-1457), 754 N.W.2d 578 (Minn. App. 2008).

Under the *Schmidt-Clothier* procedure, if an underinsured-motorist insurer fails to assert its subrogation rights, an insured does not forfeit underinsured-motorist benefits by settling claims against the tortfeasor without receiving payment.



*Marchio v. W. Nat'l Mut. Ins. Co.*, (A07-477), 747 N.W.2d 376 (Minn. App. 2008).

An insurance policy's duplicate payments exclusion that seeks to limit the amount payable for uninsured motorist benefits by the amount paid for liability coverage under the same policy is unenforceable as contrary to the Minnesota No-Fault Automobile Insurance Act, when an insured in a multi-vehicle accident sought uninsured motorist benefits based only on the fault of an uninsured driver.

## **JUVENILE DELINQUENCY**

### **Adjudication**

*In re Welfare of S.H.H.*, (A06-2098), 741 N.W.2d 917 (Minn. App. 2007).

Under Minn. Stat. § 634.04 (2004), an adjudication of delinquency may not be based on uncorroborated testimony of an accomplice. In a trial to the bench, a district court must determine whether a witness could reasonably be considered to be an accomplice, and, if so, must find corroborative evidence on the record in addition to relying on the witness's testimony to convict.

## **JUVENILE PROTECTION**

### **Stayed Adjudication or Disposition**

*In re Welfare of Children of B.J.B.*, (A07-2124), 747 N.W.2d 605 (Minn. App. 2008).

The district court's use of a stayed termination order in a termination-of-parental-rights proceeding does not inherently violate a parent's right to due process.

### **Termination of Parental Rights**

*In re Welfare of Children of B.J.B.*, (A07-2124), 747 N.W.2d 605 (Minn. App. 2008).

The district court's use of a stayed termination order in a termination-of-parental-rights proceeding does not inherently violate a parent's right to due process.

## **LOCAL GOVERNMENT/MUNICIPAL LAW**

### **Ordinances**

*C & R Stacy, LLC v. County of Chisago*, (A06-2302), 742 N.W.2d 447 (Minn. App. 2007).

1. Road authorities may regulate access to public roads through the exercise of their police power and the codification of that power in Minn. Stat. § 160.18 (2006).
2. Public-road-access regulations under Minn. Stat. § 160.18 do not require adoption of an enabling ordinance and are not "official controls" as defined by Minn. Stat. §§ 394.22-.26 (2006).

3. Regulation of an abutting landowner's right of access to a public road by a road authority is a taking if the landowner's remaining access is unreasonable.

## **PREEMPTION**

*In re Civil Commitment of Richards*, (A07-671), 738 N.W.2d 397 (Minn. App. 2007), *review denied* (Minn. Nov. 21, 2007).

The fact that a person is subject to a federal deportation order does not deprive a Minnesota district court of jurisdiction to civilly commit that person under Minnesota Statutes § 253B.185, subd. 1 (2006).

## **PROBATE**

### **Guardianship**

*In re Guardianship of Autio*, (A07-595), 747 N.W.2d 600 (Minn. App. 2008).

1. Pursuant to Minn. Stat. §§ 252A.21, subd. 1, 525.712 (2006), the time for appeal from public-guardianship proceedings conducted under Minn. Stat. § 252A.101, subd. 6 (2006), is the earlier of six months from filing a final order or 60 days after service by a party of notice of filing of that order.

2. District courts have discretion to appoint the Commissioner of the Minnesota Department of Human Services to serve as public guardian of a developmentally disabled ward following a determination that: (a) it is in the best interests of the ward to do so; (b) it is not in the best interests of the ward to appoint a family member; and (c) there is not an appropriate, less-restrictive alternative to a public guardianship.

## **REAL PROPERTY**

*Evelyn I. Rechtzigel Trust ex rel Rechtzigel v. Fid. Nat'l Title Ins. Co.*, (A07-0645), 748 N.W.2d 312 (Minn. App. 2008), *review denied* (Minn. July 15, 2008).

1. Unless claims are asserted that threaten the marketability of title or other risks specified in the policy, title insurance does not cover monetary losses incurred by the insured arising out of the bankruptcy of a qualified intermediary in a 26 U.S.C. § 1031 like-kind exchange.

2. If a bankruptcy trustee's preference action against an insured does not implicate the marketability of title to real property or other risks specified in the title insurance policy, the title insurer has no duty to defend under a title insurance policy.

*Brickner v. One Land Dev. Co.*, (A06-1940, A06-1957), 742 N.W.2d 706 (Minn. App. 2007), *review denied* (Minn. Mar. 19, 2008).

1. When one party to a real estate contract initiates cancellation proceedings under Minn. Stat. § 559.21 (2002), in accordance with contractual terms, the other party must bring an action opposing cancellation or seek injunctive relief before expiration of the cancellation period and may not avoid cancellation by asserting a prior breach after the cancellation period expires.

2. A party defending against an allegation of slander of title by alleging reliance on an attorney's advice bears the burden to produce specific facts showing reasonable reliance on the attorney's advice.

3. In an action for slander of title where the aggrieved party pleads attorney fees as special damages, an award of attorney fees is measured by the extent that the aggrieved party is obligated to pay them.

*Simons v. Shiltz*, (A06-1999), 741 N.W.2d 907 (Minn. App. 2007), *review denied* (Minn. Feb. 19, 2008).

A judicial order that secures a monetary award with an interest in real property creates a property lien with priority over security interests that are obtained and recorded later by persons with notice of the order.

### **Condemnation-Eminent Domain**

*C & R Stacy, LLC v. County of Chisago*, (A06-2302), 742 N.W.2d 447 (Minn. App. 2007).

1. Road authorities may regulate access to public roads through the exercise of their police power and the codification of that power in Minn. Stat. § 160.18 (2006).

2. Public-road-access regulations under Minn. Stat. § 160.18 do not require adoption of an enabling ordinance and are not "official controls" as defined by Minn. Stat. §§ 394.22-.26 (2006).

3. Regulation of an abutting landowner's right of access to a public road by a road authority is a taking if the landowner's remaining access is unreasonable.

### **Deeds**

*City of St. Paul v. State, Dep't of Rev.*, (A07-1763, A07-1764, A07-1765, A07-1766, A07-1767), 754 N.W.2d 386 (Minn. App. 2008).

When the state conveys tax-forfeited land to a municipality pursuant to Minn. Stat. § 282.01, subd. 1a (2006), the municipality must use the land in accordance with the restricted-use deed. If the municipality's use of the land changes from the original purpose, the land must revert to the state.

## **Improvements to Real Property**

*U.S. Home Corp. v. Zimmerman Stucco & Plaster, Inc.*, (A07-889), 749 N.W.2d 98 (Minn. App. 2008), *review denied* (Minn. Aug. 5, 2008).

The language of Minn. Stat. § 541.051 (Supp. 2007) manifests a clear legislative intent that the statute have retroactive application. Following the 2007 amendment, Minn. Stat. § 541.051 addresses indemnification and contribution claims separately from direct claims of injury to property or of personal injury arising out of an improvement to real property. Pursuant to Minn. Stat. § 541.051, subd. 1(a), (b) (Supp. 2007), claims for contribution and indemnity are subject to a two-year statute of limitations but are no longer potentially barred by the ten-year statute of repose.

## **Mortgages**

*C & M Real Estate Servs. v. Thondikulam*, (A06-1459), 739 N.W.2d 725 (Minn. App. 2007), *review denied* (Minn. Dec. 19, 2007).

A purported lien creditor has no right to redeem property from foreclosure if the notice of intent to redeem is filed before the docketing of the judgment that establishes the lien.

## **Priority of Liens**

*Washington Mut. Bank, F.A. v. Elfelt*, (A07-1758), 756 N.W.2d 501 (Minn. App. 2008), *pet. for review filed* (Minn. Oct. 30, 2008).

Common-interest communities, whose liens occupy a secondary priority position to first mortgages by operation of Minn. Stat. § 515B.3-116(b) (2006) of the Minnesota Common Interest Ownership Act, are afforded the protection of the Minnesota Recording Act, Minn. Stat. § 507.34 (2006). A common-interest community's lien is therefore safeguarded where the community is found to be lacking actual, constructive, or inquiry notice of a prior unrecorded or otherwise improperly recorded interest.

## **Roads or Alleys**

*C & R Stacy, LLC v. County of Chisago*, (A06-2302), 742 N.W.2d 447 (Minn. App. 2007).

1. Road authorities may regulate access to public roads through the exercise of their police power and the codification of that power in Minn. Stat. § 160.18 (2006).

2. Public-road-access regulations under Minn. Stat. § 160.18 do not require adoption of an enabling ordinance and are not "official controls" as defined by Minn. Stat. §§ 394.22-.26 (2006).

3. Regulation of an abutting landowner's right of access to a public road by a road authority is a taking if the landowner's remaining access is unreasonable.

## **Title Insurance**

*Evelyn I. Rechtzigel Trust ex rel Rechtzigel v. Fid. Nat'l Title Ins. Co.*, (A07-0645), 748 N.W.2d 312 (Minn. App. 2008), *review denied* (Minn. July 15, 2008).

1. Unless claims are asserted that threaten the marketability of title or other risks specified in the policy, title insurance does not cover monetary losses incurred by the insured arising out of the bankruptcy of a qualified intermediary in a 26 U.S.C. § 1031 like-kind exchange.

2. If a bankruptcy trustee's preference action against an insured does not implicate the marketability of title to real property or other risks specified in the title insurance policy, the title insurer has no duty to defend under a title insurance policy.

## **Zoning**

*Eagle Lake of Becker County Lake Ass'n v. Becker County Bd. Of Comm'rs*, (A07-0112), 738 N.W.2d 788 (Minn. App. 2007).

In considering an application for a conditional use permit, a county may follow an informal policy of basing its decision on the ordinance in effect when the application for the permit is filed.

## **SCHOOL LAW**

### **Teachers**

*Sauk Centre Educ. Ass'n v. Seagren*, (A06-2173), 741 N.W.2d 398 (Minn. App. 2007), *review denied* (Minn. Jan. 29, 2008).

The decision of the commissioner of the Minnesota Department of Education is within the scope of her authority and is neither arbitrary nor capricious when, interpreting the relevant statute, she requires as a condition for salary-reform funding the alteration of a school district's salary schedule in such a manner that no teacher is free to enjoy time-in-service or educational advancement without meeting performance standards.

## **STATUTE OF LIMITATIONS**

### **Specific Actions**

*U.S. Home Corp. v. Zimmerman Stucco & Plaster, Inc.*, (A07-889), 749 N.W.2d 98 (Minn. App. 2008), *review denied* (Minn. Aug. 5, 2008).

The language of Minn. Stat. § 541.051 (Supp. 2007) manifests a clear legislative intent that the statute have retroactive application. Following the 2007 amendment, Minn. Stat. § 541.051 addresses indemnification and contribution claims separately from direct claims of injury to property or of personal injury arising out of an improvement to

real property. Pursuant to Minn. Stat. § 541.051, subd. 1(a), (b) (Supp. 2007), claims for contribution and indemnity are subject to a two-year statute of limitations but are no longer potentially barred by the ten-year statute of repose.

*State v. Soukup*, (A07-1783), 746 N.W.2d 918 (Minn. App. 2008), *review denied* (Minn. Jun. 18, 2008).

For a victim to “report” sexual abuse, triggering the statute-of-limitations period set forth in Minnesota Statutes section 628.26, the victim must report the abuse to law enforcement authorities, not merely disclose it to a relative.

*Hempel v. Creek House Trust*, (A06-2473), 743 N.W.2d 305 (Minn. App. 2007).

In an action alleging a breach of a right-of-first-refusal agreement, the statute of limitations begins to run at the time of the alleged breach, even if the holder of the right has no notice of an offer to buy that activates the right.

## **TIMELINESS – CIVIL APPEAL**

### **Direct Appeal**

*Clifford v. Bundy*, (A07-2300), 747 N.W.2d 363 (Minn. App. 2008), *review denied* (Minn. Mar. 26 & June 18, 2008).

1. A proper post-decision motion must be both timely served and filed to extend the appeal period under Minn. R. Civ. App. P. 104.01, subd. 2.

2. Providing courtesy copies of a post-decision motion to the district court judge does not constitute filing with the court, unless the judge expressly authorizes filing in this manner.

3. A post-decision motion that is filed with the court after the time to appeal the underlying order or judgment expired is untimely, and the motion neither tolls the appeal time nor results in an independently appealable order.

## **TORTS**

### **Damages**

*Do v. Am. Family Mut. Ins. Co.*, (A07-1461), 752 N.W.2d 109 (Minn. App. 2008), *review granted* (Minn. Sept. 23, 2008).

Pursuant to the collateral-source rule of Minn. Stat. § 548.36 (2006), an injured party’s prior settlement with a tortfeasor’s automobile-insurance carrier for unspecified general damages offsets an ultimate jury award that encompasses no-fault damages.

## **Dram Shop**

*Clark v. Peterson*, (A06-2006), 741 N.W.2d 136 (Minn. App. 2007).

A sale of liquor that violates the compact-and-contiguous building requirement in Minn. Stat. § 340A.410, subd. 7 (2006), subjects the liquor vendor to liability under the Minnesota Civil Damages Act, Minn. Stat. § 340A.801, subd. 1 (2006).

## **Negligence**

*Foss v. Kincade*, (A07-313), 746 N.W.2d 912 (Minn. App. 2008), *review granted* (Minn. June 18, 2008).

1. The heightened duty of care owed to child trespassers does not apply to a child visiting a private residence in the company of a parent.

2. The duty of reasonable care owed by landowners to entrants on their land does not require homeowners to protect a child visiting in the company of a parent from the dangers posed by ordinary household objects.

# **UNEMPLOYMENT BENEFITS**

## **Benefits**

*Abdi v. Dep't of Employment & Econ. Dev.*, (A07-945), 749 N.W.2d 812 (Minn. App. 2008).

An applicant for extended trade readjustment allowances (TRA) benefits need not be engaged in full-time remedial training in order to be eligible for extended TRA benefits.

## **Discharge for Misconduct**

*Frank v. Heartland Auto. Servs., Inc.*, (A06-2217), 743 N.W.2d 626 (Minn. App. 2008).

When an employee on one occasion intentionally charges one of his employer's customers for a service that the employee knows was not performed, the employee's fraudulent charge does not qualify as a single-incident exception to employee misconduct in Minnesota Statutes section 268.095, subdivision 6.

## **Eligibility Requirements**

*Carlson v. Dep't of Employment & Econ. Dev.*, (A07-28), 747 N.W.2d 367 (Minn. App. 2008).

Under Minn. Stat. § 268.085, subd. 2(3) (2006), an applicant who is incarcerated or performing court-ordered community service is not eligible for unemployment benefits. An applicant who is serving a statutory minimum sentence of "one year of

incarceration” under Minn. Stat. § 169A.275, subd. 4 (2006), after a fifth conviction for alcohol-related driving offenses, is “incarcerated” and not eligible for unemployment benefits while serving time (a) in a local correctional facility and (b) under house arrest and subject to electronic home monitoring, even if the applicant is eligible for work-release privileges.

*Work Connection, Inc. v. Bui*, (A07-348), 749 N.W.2d 63 (Minn. App. 2008), *review granted* (Minn. June 18, 2008).

1. In reviewing the decision of an unemployment law judge (ULJ), the court of appeals may consider an issue first raised by a party and determined by the ULJ on reconsideration.

2. An applicant for unemployment benefits who relies on public transit may meet the requirement of having “transportation throughout the labor market area” to be available for suitable employment in accordance with Minn. Stat. § 268.085, subd. 15(e) (2006).

3. An applicant’s eligibility under the transportation requirement of Minn. Stat. § 268.085, subd. 15(e), is determined by examining an applicant’s particular circumstances and whether the applicant has access to transportation such that he/she is available for work.