



**Minnesota Court of Appeals**

**Significant Decisions**

**September 2008-August 2009**

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## **ADMINISTRATIVE LAW**

### **BMS (Bureau of Mediation Services)**

*Alexandria Hous. & Redevelopment Auth. v. Rost*, (A07-1620), 756 N.W.2d 896 (Minn. App. 2008).

A person who has been terminated from public-sector employment is entitled to independent review of the termination under Minn. Stat. § 179A.25 if he or she has a contractual right to not be terminated except for cause. When determining whether a person has a contractual right to not be terminated except for cause for purposes of Minn. Stat. § 179A.25, it is appropriate to consider whether the employer's employment handbook has created a unilateral contract of employment that confers on the employee a contractual right to not be terminated except for cause.

### **Contested Cases**

*In re Risk Level Determination of G.G.*, (A09-7), 771 N.W.2d 64 (Minn. App. 2009), review denied (Minn. Nov. 17, 2009).

1. Minn. Stat. § 243.166, subd. 1b(b)(2) (2008), which provides that a predatory offender who "enters this state and remains for 14 days or longer" must register, does not require that the offender's entry into Minnesota be volitional.

2. An end-of-confinement review committee has no authority under Minn. Stat. § 244.052, subd. 3(a) (2008), to assign a risk level to a predatory offender who was never incarcerated in a Minnesota correctional facility or treatment center.

### **Federal and State Regulatory Interplay**

*In re On-Sale Liquor License*, (A08-681), 763 N.W.2d 359 (Minn. App. 2009).

1. Absent a valid ground to suspend or revoke relator's liquor license, respondent city's reliance on the "good cause" standard in the Minneapolis Code of Ordinances § 259.250(9) to support adverse action against the license violated relator's due process rights because the standard failed to provide relator with adequate notice that the off-premises conduct of its patrons could result in adverse action.

2. The city exceeded its express and implied legal authority by imposing conditions on relator's previously issued liquor license because no statute or ordinance authorizes the city to condition a license when the city had no valid ground to suspend or revoke the license.

3. Because this court's review on writ of certiorari is strictly limited to the city council's findings and decision, and because relator's additional constitutional and Minnesota Human Rights Act claims can be litigated in another forum, these additional claims are outside the scope of our review.

## **Human Services**

*Smith v. Dep't of Human Servs.*, (A08-1243), 764 N.W.2d 388 (Minn. App. 2009).

1. A person denied permission to work in a direct-contact position in a facility licensed by the Department of Human Services by virtue of Minn. Stat. § 245C.14, subd. 1(a)(2) (2008), must appeal the department's determination in a timely fashion; if the aggrieved party fails to do so, his or her permanent disqualification is conclusive under Minn. Stat. § 245C.29, subd. 2(a)(2)(iii) (2008).

2. A person aggrieved by a decision of the department who has the right to a hearing, but who fails to request a hearing in a timely fashion, has not been deprived of constitutional due process rights.

*Obara v. Dep't of Health*, (A08-85), 758 N.W.2d 873 (Minn. App. 2008).

The constitutional right to due process does not require an evidentiary hearing on the factual question of whether a health care worker being disqualified for certain employment committed disqualifying criminal offenses when the worker has been duly convicted of such offenses.

## **Judicial Review**

*Coal. of Greater Minn. Cites v. Pollution Control Agency*, (A08-1198), 765 N.W.2d 159 (Minn. App. 2009), *review denied* (Minn. Aug. 11, 2009).

1. A petitioner has standing to bring a pre-enforcement challenge to an administrative rule under Minn. Stat. § 14.44 (2008) if the petitioner can show that the rule or its threatened application interferes with or threatens to interfere with its legal rights or privileges.

2. The use of the term "may" in Minn. R. 7053.0255, subp. 4 (Supp. II 2008), permits the Minnesota Pollution Control Agency to exercise its lawful discretion in deciding whether to grant or deny an application for an exemption.

*Siewert v. N. States Power Co.*, (A07-1975, A07-2070), 757 N.W.2d 909 (Minn. App. 2008), *review granted* (Minn. Feb. 17, 2009).

1. Tort claims for compensatory damages arising from the delivery of electrical service are not barred by the filed-rate doctrine.

2. The district court is not barred by the primary-jurisdiction doctrine from considering common-law damages for tort claims arising from the delivery of electrical service.

3. The statute of repose for improvements to real property, Minn. Stat. § 541.051 (Supp. 2007), does not bar tort claims arising from the delivery of electrical service when the allegations are based solely on the method of service and not on component parts of the electrical-power-distribution system.

## **Office of Administrative Hearings**

*City of Waite Park v. Office of Admin. Hearings*, (A07-2438), 758 N.W.2d 347 (Minn. App. 2008), *review denied* (Minn. Feb. 25, 2009).

Where a final mandamus judgment that contains no reservation of issues to be determined is appealed and decided on the merits without any remand to the district court, any potential claim for damages that was not previously pleaded is extinguished.

## **Professional Licenses**

*Mertins v. Comm'r of Natural Res.*, (A07-1492), 755 N.W.2d 329 (Minn. App. 2008).

1. Minn. Stat. § 97A.420, subd. 4(c) (2006), which limits the scope of a judicial-review hearing of a license seizure under Minn. Stat. § 97A.420, subd. 1 (2006) to the issue of probable cause, does not preclude Minnesota district courts from considering constitutional issues inherent in the action pending before them.

2. An appeal raising procedural-due-process questions incident to seizure of a commercial fishing license arising out of a judicial-review hearing and determination under Minn. Stat. § 97A.420, subsd. 3, 4 (2006), is not rendered moot by a criminal conviction of violating Minnesota fish and game laws.

3. Commercial fishing licenses represent property interests within the meaning of the Due Process Clauses of the United States and Minnesota Constitutions, and license holders are entitled to due process of law within a reasonable period of time after the state seizes those licenses.

4. The temporary release provision in Minn. Stat. § 97A.420, subd. 5 (2006), provides facially adequate procedural due process for license seizures pursuant to section 97A.420, subdivision 1.

## **Public Housing**

*Wilhite v. Housing & Redevelopment Auth.*, (A07-2103), 759 N.W.2d 252 (Minn. App. 2009).

Failure to vacate a leased residential premises upon the expiration of the lease constitutes a serious lease violation under 24 C.F.R. § 982.552(b)(2) (2008), mandating the termination of Section 8 Rental Assistance.

## **Rulemaking**

*Coal. of Greater Minn. Cites v. Pollution Control Agency*, (A08-1198), 765 N.W.2d 159 (Minn. App. 2009), *review denied* (Minn. Aug. 11, 2009).

1. A petitioner has standing to bring a pre-enforcement challenge to an administrative rule under Minn. Stat. § 14.44 (2008) if the petitioner can show that the rule or its threatened application interferes with or threatens to interfere with its legal rights or privileges.

2. The use of the term “may” in Minn. R. 7053.0255, subp. 4 (Supp. II 2008), permits the Minnesota Pollution Control Agency to exercise its lawful discretion in deciding whether to grant or deny an application for an exemption.

### **Separation of Powers**

*Coal. of Greater Minn. Cites v. Pollution Control Agency*, (A08-1198), 765 N.W.2d 159 (Minn. App. 2009), *review denied* (Minn. Aug. 11, 2009).

1. A petitioner has standing to bring a pre-enforcement challenge to an administrative rule under Minn. Stat. § 14.44 (2008) if the petitioner can show that the rule or its threatened application interferes with or threatens to interfere with its legal rights or privileges.

2. The use of the term “may” in Minn. R. 7053.0255, subp. 4 (Supp. II 2008), permits the Minnesota Pollution Control Agency to exercise its lawful discretion in deciding whether to grant or deny an application for an exemption.

### **Transportation or Trucking**

*Sayer v. Dep’t of Transp.*, (A08-1584, A08-1994), 769 N.W.2d 305 (Minn. App. 2009), *review granted* (Minn. Oct. 20, 2009).

When the commissioner of transportation elects to award a construction contract using the design-build best-value method described in Minn. Stat. §§ 161.3410-3428 (2008), the commissioner’s technical review committee has discretion to determine whether proposals are responsive to the specifications described in the request for proposals.

### **Utilities**

*In re. Dep’t of Commerce for Comm’n Action Against AT&T*, (A08-382), 759 N.W.2d 242 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009).

1. A statute empowering a state agency to impose penalties is not saved by the general saving statute when the statute expired by its own terms rather than having been repealed.

2. A telecommunications carrier’s switched-access services are “local services” under Minn. Stat. §§ 237.01-.81 (2008), and thus such services are not exempt from the provisions of chapter 237 covering local services.

3. Unique pricing contracts and rates are not exempt from the filing requirements of chapter 237 and accompanying regulations.

*Siewert v. N. States Power Co.*, (A07-1975, A07-2070), 757 N.W.2d 909 (Minn. App. 2008), *review granted* (Minn. Feb. 17, 2009).

1. Tort claims for compensatory damages arising from the delivery of electrical service are not barred by the filed-rate doctrine.

2. The district court is not barred by the primary-jurisdiction doctrine from considering common-law damages for tort claims arising from the delivery of electrical service.

3. The statute of repose for improvements to real property, Minn. Stat. § 541.051 (Supp. 2007), does not bar tort claims arising from the delivery of electrical service when the allegations are based solely on the method of service and not on component parts of the electrical-power-distribution system.

*In re Application of City of Redwood Falls*, (A07-1957), 756 N.W.2d 133 (Minn. App. 2008).

The plain language of the Minnesota Public Utilities Act, Minn. Stat. § 216B.40 (2006), precludes the Minnesota Public Utilities Commission from giving effect to an unwritten agreement between two utilities altering the exclusive electric service areas that have been lawfully designated by the commission.

### **Other**

*In re Denial of Certification of the Variance Granted to Haslund*, (A08-427), 759 N.W.2d 680 (Minn. App. 2009), *review granted* (Minn. Apr. 21, 2009).

When a municipality's zoning ordinances conflict with Minnesota Department of Natural Resources (DNR) rules enacted under the Lower St. Croix Wild and Scenic River Act, DNR's rules control.

## **ALTERNATIVE DISPUTE RESOLUTION**

### **Arbitration**

*State Farm Mut. Auto. Ins. Co. v. Frelix*, (A08-1045), 764 N.W.2d 581 (Minn. App. 2009).

By statute, mandatory no-fault arbitration is appropriate if expenses incurred by the claimant at the commencement of arbitration are less than or equal to \$10,000. If no-fault expenses are incurred by the claimant on the same day that the petition for arbitration is filed, and those expenses bring the total expenses submitted substantially over the jurisdictional limit, mandatory arbitration is inappropriate.

## APPELLATE PROCEDURE

### Appealable Orders and Judgments

*Hous. & Redevelopment Auth. v. Main St. Fridley Props.*, (A08-880), 755 N.W.2d 789 (Minn. App. 2008).

The time to appeal a court order approving the public use or public purpose, necessity, and authority for the taking in a condemnation proceeding under Minn. Stat. § 117.075, subd. 1(c) (2006), is not tolled by a postdecision motion under Minn. R. Civ. App. P. 104.01, subd. 2.

### Timeliness

*Hous. & Redevelopment Auth. v. Main St. Fridley Props.*, (A08-880), 755 N.W.2d 789 (Minn. App. 2008).

The time to appeal a court order approving the public use or public purpose, necessity, and authority for the taking in a condemnation proceeding under Minn. Stat. § 117.075, subd. 1(c) (2006), is not tolled by a postdecision motion under Minn. R. Civ. App. P. 104.01, subd. 2.

## ATTORNEY FEES (Primarily Trial Court Awards)

### American Rule or No Authority

*Gellert v. Eginton*, (A08-1696), 770 N.W.2d 190 (Minn. App. 2009), *review denied* (Minn. Oct. 10, 2009).

An award of attorney fees under Minn. Stat. § 524.3-720 (2008), is not limited to probate proceedings and may be proper when an interested person prosecutes or pursues a claim that contributes to the benefit of an estate.

### Amount

*Buscher v. Montag Devel., Inc.*, (A08-1803, A08-2036), 770 N.W.2d 199 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

1. The two-year statute of limitations of Minn. Stat. § 541.051, subd. 1(a) (2008) begins to run when the injured party discovers or should have discovered an actionable injury, regardless of whether the injured party can identify the defect causing the injury.

2. Pursuant to Minn. R. Civ. P. 56.07, the district court may order sanctions, including reasonable costs and attorney fees, against a party who opposes summary judgment by submitting an affidavit in bad faith or for purposes of delay.

3. Pursuant to Minn. R. Civ. P. 11.03, the district court may order sanctions against a lawyer or law firm, including payment of a penalty into the court, when the lawyer or law firm asserts claims or defenses that are (1) not warranted by existing law; (2) frivolous; (3) unsupported by factual evidence; or (4) made to harass, delay, or needlessly increase the cost of litigation.

### **Findings**

*Buscher v. Montag Devel., Inc.*, (A08-1803, A08-2036), 770 N.W.2d 199 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

1. The two-year statute of limitations of Minn. Stat. § 541.051, subd. 1(a) (2008) begins to run when the injured party discovers or should have discovered an actionable injury, regardless of whether the injured party can identify the defect causing the injury.

2. Pursuant to Minn. R. Civ. P. 56.07, the district court may order sanctions, including reasonable costs and attorney fees, against a party who opposes summary judgment by submitting an affidavit in bad faith or for purposes of delay.

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### **Other**

*Buscher v. Montag Devel., Inc.*, (A08-1803, A08-2036), 770 N.W.2d 199 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

1. The two-year statute of limitations of Minn. Stat. § 541.051, subd. 1(a) (2008) begins to run when the injured party discovers or should have discovered an actionable injury, regardless of whether the injured party can identify the defect causing the injury.

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*Hornberger v. Wendel*, (A08-903), 764 N.W.2d 371 (Minn. App. 2009).

An attorney-client relationship exists between an insured and defense counsel retained by a liability insurer on the insured's behalf, and this relationship is not nullified

because the insurer and defense counsel have not had contact with the insured regarding the defense of a claim.

### **Sanctions**

*Buscher v. Montag Devel., Inc.*, (A08-1803, A08-2036), 770 N.W.2d 199 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

1. The two-year statute of limitations of Minn. Stat. § 541.051, subd. 1(a) (2008) begins to run when the injured party discovers or should have discovered an actionable injury, regardless of whether the injured party can identify the defect causing the injury.

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### **Statute Based**

*Metro Gold, Inc. v. Coin*, (A07-2117), 757 N.W.2d 924 (Minn. App. 2008).

1. In an action pursuant to Minn. Stat. § 604.113 (2006), the issuer of a dishonored check must receive actual notice that the check was dishonored before civil penalties may attach for failure to honor the check within the statutory time period.

2. The district court has the discretion to apply the defense of impossibility to a claim for penalties under Minn. Stat. § 604.113.

## **ATTORNEYS**

*Rucker v. Schmidt*, (A08-1730), 768 N.W.2d 408 (Minn. App. 2009), *review granted* (Minn. Sept. 29, 2009).

A party and his attorney who are each alleged to have committed fraud in an action are not in privity for purposes of res judicata based solely on their attorney-client relationship. Therefore, a successful action against the party for fraud on the court in a district court action does not necessarily, by application of the doctrine of res judicata, bar a separate action by the same plaintiff against the party's attorney for the attorney's alleged individual fraud in the dissolution action.

*Hornberger v. Wendel*, (A08-903), 764 N.W.2d 371 (Minn. App. 2009).

An attorney-client relationship exists between an insured and defense counsel retained by a liability insurer on the insured's behalf, and this relationship is not nullified because the insurer and defense counsel have not had contact with the insured regarding the defense of a claim.

### **Conflicts**

*Niemi v. Girl Scouts of Minn. & Wis. Lakes & Pines*, (A08-1791), 768 N.W.2d 385 (Minn. App. 2009).

The district court erred by disqualifying an attorney and his law firm from representing appellant on the ground that the attorney represented respondent in a different lawsuit more than 25 years earlier. The two lawsuits are not "substantially related matters" for purposes of rule 1.9(a) of the Minnesota Rules of Professional Conduct because the confidential factual information respondent presumably shared with the attorney during the pendency of the prior lawsuit now is obsolete.

## **BUSINESS ORGANIZATIONS**

### **Corporations**

*Equity Trust Co. Custodian v. Cole*, (A08-1681), 766 N.W.2d 334 (Minn. App. 2009).

The equitable remedy of piercing the corporate veil is not limited to shareholders and members of corporate entities, but may be applied to impose personal liability against any parties to a lawsuit who disregard the corporate form.

*Blohm v. Kelly*, (A08-1157), 765 N.W.2d 147 (Minn. App. 2009).

1. When reviewing the procedural adequacy of an investigation by a special litigation committee, a court may consider only the appropriateness and sufficiency of the investigative procedures chosen and pursued by the committee but may not inquire into the substance of the committee's decisionmaking or the relative weight that the committee gave to the relevant factors when exercising its business judgment.

2. If the investigation and report of a special litigation committee does not address a claim asserted by a shareholder, the district court may not rely on the committee's investigation and report to enter summary judgment against the shareholder on that claim.

## CIVIL PROCEDURE

*State Farm Mut. Auto. Ins. Co. v. Frelix*, (A08-1045), 764 N.W.2d 581 (Minn. App. 2009).

By statute, mandatory no-fault arbitration is appropriate if expenses incurred by the claimant at the commencement of arbitration are less than or equal to \$10,000. If no-fault expenses are incurred by the claimant on the same day that the petition for arbitration is filed, and those expenses bring the total expenses submitted substantially over the jurisdictional limit, mandatory arbitration is inappropriate.

*A & L Potato Co. v. Aggregate Indus.*, (A08-242), 759 N.W.2d 57 (Minn. App. 2009).

An offer of settlement made solely under Minn. R. Civ. P. 68 is deemed withdrawn if not accepted within ten days, and cannot, therefore, constitute a valid settlement offer under Minn. Stat. § 549.09, subd. 1(b), which provides for acceptance or a counteroffer within 30 days of receipt of the offer.

*Wallboard, Inc. v. St. Cloud Mall, LLC*, (A08-319), 758 N.W.2d 356 (Minn. App. 2008).

The prelien-notice exception in Minn. Stat. § 514.011, subd. 4c (2006), does not apply to a tenant who improves lease premises of less than 5,000 usable square feet of space, even if the landlord's entire property exceeds 5,000 square feet.

*Siewert v. N. States Power Co.*, (A07-1975, A07-2070), 757 N.W.2d 909 (Minn. App. 2008), *review granted* (Minn. Feb. 17, 2009).

1. Tort claims for compensatory damages arising from the delivery of electrical service are not barred by the filed-rate doctrine.

2. The district court is not barred by the primary-jurisdiction doctrine from considering common-law damages for tort claims arising from the delivery of electrical service.

3. The statute of repose for improvements to real property, Minn. Stat. § 541.051 (Supp. 2007), does not bar tort claims arising from the delivery of electrical service when the allegations are based solely on the method of service and not on component parts of the electrical-power-distribution system.

### **Class Actions**

*Whitaker v. 3M Co.*, (A08-816), 764 N.W.2d 631 (Minn. App. 2009), *review denied* (Minn. July 22, 2009).

1. This court reviews a district court's decision granting or denying class certification for abuse of discretion; an erroneous application of Minn. R. Civ. P. 23 constitutes an abuse of discretion.

2. Parties moving for certification of a class pursuant to Minn. R. Civ. P. 23 have the burden of proving, by a preponderance of the evidence, that the certification requirements of rule 23 have been met.

3. A district court deciding a motion for class certification under Minn. R. Civ. P. 23 must resolve factual disputes relevant to class-certification requirements, including relevant expert disputes, but factual findings by the district court on class certification are not binding on the ultimate trier of fact.

### **Costs and Disbursements**

*Buscher v. Montag Devel., Inc.*, (A08-1803, A08-2036), 770 N.W.2d 199 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

1. The two-year statute of limitations of Minn. Stat. § 541.051, subd. 1(a) (2008) begins to run when the injured party discovers or should have discovered an actionable injury, regardless of whether the injured party can identify the defect causing the injury.

2. Pursuant to Minn. R. Civ. P. 56.07, the district court may order sanctions, including reasonable costs and attorney fees, against a party who opposes summary judgment by submitting an affidavit in bad faith or for purposes of delay.

3. Pursuant to Minn. R. Civ. P. 11.03, the district court may order sanctions against a lawyer or law firm, including payment of a penalty into the court, when the lawyer or law firm asserts claims or defenses that are (1) not warranted by existing law; (2) frivolous; (3) unsupported by factual evidence; or (4) made to harass, delay, or needlessly increase the cost of litigation.

### **Default Judgment**

*Equity Trust Co. Custodian v. Cole*, (A08-1681), 766 N.W.2d 334 (Minn. App. 2009).

The equitable remedy of piercing the corporate veil is not limited to shareholders and members of corporate entities, but may be applied to impose personal liability against any parties to a lawsuit who disregard the corporate form.

*Hornberger v. Wendel*, (A08-903), 764 N.W.2d 371 (Minn. App. 2009).

An attorney-client relationship exists between an insured and defense counsel retained by a liability insurer on the insured's behalf, and this relationship is not nullified because the insurer and defense counsel have not had contact with the insured regarding the defense of a claim.

*Langston v. Wilson McShane Corp.*, (A07-2034), 758 N.W.2d 583 (Minn. App. 2008), *review granted* (Minn. Feb. 25, 2009).

Whether a domestic relations order can be deemed a "qualified" domestic relations order for purposes of the Employee Retirement Income Security Act is a federal question over which state courts do not have concurrent subject-matter jurisdiction.

## **Discovery**

*Krummenacher v. City of Minnetonka*, (A08-1988), 768 N.W.2d 377 (Minn. App. 2009), *review granted* (Minn. Sept. 29, 2009).

1. Minn. Stat. § 462.357, subd. 1e(a) (2008), does not limit a municipality's authority to grant a variance to allow an expansion of a nonconforming property.

2. A municipality's approval of a variance to allow an expansion of a nonconforming accessory building was not unreasonable, arbitrary, or capricious when the reasons articulated by the municipality factually supported the three required factors of undue hardship and the conclusion that the proposed alterations are consistent with the spirit and intent of the ordinance.

3. The district court did not err in refusing to compel discovery when the record was sufficient to allow review of whether a municipality's approval was unreasonable, arbitrary, or capricious.

*Yath v. Fairview Clinics, N.P.*, (A08-1556), 767 N.W.2d 34 (Minn. App. 2009).

1. Posting private information on a publicly accessible Internet website satisfies the publicity element of an invasion-of-privacy claim.

2. The Health Insurance Portability and Accountability Act does not preempt Minnesota Statutes section 144.335 (2006), which gives patients a private right of action for improper disclosure of their medical records.

## **Dismissal of Actions**

*Bahr v. Capella Univ.*, (A08-1367), 765 N.W.2d 428 (Minn. App. 2009), *review granted* (Minn. Aug. 11, 2009).

The Minnesota Human Rights Act requires that a plaintiff claiming reprisal allege sufficient facts to support a claim of a good-faith, reasonable belief that the employment practice opposed was discriminatory. The plaintiff need not establish that the conduct opposed was in fact a violation of the law.

## **Judgment**

*Halla Nursery, Inc. v. City of Chanhassen*, (A08-233), 763 N.W.2d 42 (Minn. App. 2009), *review granted* (Minn. June 16, 2009).

A permit applicant does not obtain vested rights in a substantially completed construction project when the applicant was aware upon submission of the permit application that the construction sought is prohibited by a prior judgment or relevant city ordinances.

## **Jurisdiction**

*In re Welfare of Children of R.A.J.*, (A09-140), 769 N.W.2d 297 (Minn. App. 2009).

The district court had jurisdiction to vacate its order transferring a child-welfare proceeding to tribal court before tribal court proceedings commenced, when the district court found that “misrepresentations were intentionally and wrongfully advanced [to the district court] to gain [its] agreement to transfer” the proceeding.

*Williams v. Bd. of Regents*, (A08-765), 763 N.W.2d 646 (Minn. App. 2009).

If an alleged employee’s negligent-misrepresentation claim against a public entity can be determined without evaluating whether the entity wrongfully discharged the alleged employee, judicial consideration of the claim is not limited to certiorari review by the court of appeals.

*Langston v. Wilson McShane Corp.*, (A07-2034), 758 N.W.2d 583 (Minn. App. 2008), *review granted* (Minn. Feb. 25, 2009).

Whether a domestic relations order can be deemed a “qualified” domestic relations order for purposes of the Employee Retirement Income Security Act is a federal question over which state courts do not have concurrent subject-matter jurisdiction.

*City of Waite Park v. Office of Admin. Hearings*, (A07-2438), 758 N.W.2d 347 (Minn. App. 2008), *review denied* (Minn. Feb. 25, 2009).

Where a final mandamus judgment that contains no reservation of issues to be determined is appealed and decided on the merits without any remand to the district court, any potential claim for damages that was not previously pleaded is extinguished.

*In re Welfare of S.R.S.*, (A07-1725), 756 N.W.2d 123 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008).

1. Minnesota courts do not have subject matter jurisdiction under the Uniform Interstate Family Support Act to modify a Colorado child support order when all of the parties do not reside in Minnesota and the order has not been registered in Minnesota.

2. The full faith and credit clause of the United States Constitution does not require Minnesota to accept subject matter jurisdiction in violation of Minnesota law.

## **Other**

*Buscher v. Montag Devel., Inc.*, (A08-1803, A08-2036), 770 N.W.2d 199 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

1. The two-year statute of limitations of Minn. Stat. § 541.051, subd. 1(a) (2008) begins to run when the injured party discovers or should have discovered an actionable injury, regardless of whether the injured party can identify the defect causing the injury.

2. Pursuant to Minn. R. Civ. P. 56.07, the district court may order sanctions, including reasonable costs and attorney fees, against a party who opposes summary judgment by submitting an affidavit in bad faith or for purposes of delay.

3. Pursuant to Minn. R. Civ. P. 11.03, the district court may order sanctions against a lawyer or law firm, including payment of a penalty into the court, when the lawyer or law firm asserts claims or defenses that are (1) not warranted by existing law; (2) frivolous; (3) unsupported by factual evidence; or (4) made to harass, delay, or needlessly increase the cost of litigation.

*Sayer v. Dep't of Transp.*, (A08-1584, A08-1994), 769 N.W.2d 305 (Minn. App. 2009), *review granted* (Minn. Oct. 20, 2009).

When the commissioner of transportation elects to award a construction contract using the design-build best-value method described in Minn. Stat. §§ 161.3410-.3428 (2008), the commissioner's technical review committee has discretion to determine whether proposals are responsive to the specifications described in the request for proposals.

*Swenson v. Bender*, (A08-576), 764 N.W.2d 596 (Minn. App. 2009), *review denied* (Minn. July 22, 2009).

1. The advisor-student relationship between a doctoral candidate and a university faculty member is not per se fiduciary.

2. The advisor-student relationship does not become fiduciary merely because the candidate and faculty member discuss a potential business relationship arising from ideas in the candidate's dissertation, and it imposes no duty on the faculty member to withhold merited accusations of plagiarism.

*Oliver v. State*, (A08-646), 760 N.W.2d 912 (Minn. App. 2009), *review dismissed* (Minn. Nov. 16, 2009).

Whether there has been a taking of real property based on the right of access requires courts to analyze whether reasonably convenient and suitable access exists from the public roadway to the perimeter of the private property, not whether the access point may be conveniently reached from some internal location on the property.

*City of Waite Park v. Office of Admin. Hearings*, (A07-2438), 758 N.W.2d 347 (Minn. App. 2008), *review denied* (Minn. Feb. 25, 2009).

Where a final mandamus judgment that contains no reservation of issues to be determined is appealed and decided on the merits without any remand to the district court, any potential claim for damages that was not previously pleaded is extinguished.

## **Parties**

*Glenwood Inv. Prop. v. Britton Family Trust*, (A08-788), 765 N.W.2d 112 (Minn. App. 2009).

An order for partition under Minn. Stat. § 558.04 (2008) is not reviewable unless appealed within 30 days of the filing of the order pursuant to Minn. Stat. § 558.215 (2008).

*JEM Acres, LLC v. Bruno*, (A08-735), 764 N.W.2d 77 (Minn. App. 2009).

A seller, who represents to a buyer that a septic system complies with applicable laws and rules governing sewage-treatment systems and who has reason to know that the representations are false, is not shielded from liability under Minn. Stat. § 115.55, subd. 6 (2008), based on the existence of a septic-system certificate of compliance.

*Zentz v. Graber*, (A08-141), 760 N.W.2d 1 (Minn. App. 2009), *review denied* (Minn. Mar. 31, 2009).

A man may establish that he is a presumed father under Minn. Stat. § 257.55, subd. 1(d), by alleging that he has received a child into his home and held the child out as his biological child. These allegations need not be proven by clear and convincing evidence to establish this presumption of paternity.

## **Summary Judgment Procedure**

*Buscher v. Montag Devel., Inc.*, (A08-1803, A08-2036), 770 N.W.2d 199 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

1. The two-year statute of limitations of Minn. Stat. § 541.051, subd. 1(a) (2008) begins to run when the injured party discovers or should have discovered an actionable injury, regardless of whether the injured party can identify the defect causing the injury.

2. Pursuant to Minn. R. Civ. P. 56.07, the district court may order sanctions, including reasonable costs and attorney fees, against a party who opposes summary judgment by submitting an affidavit in bad faith or for purposes of delay.

3. Pursuant to Minn. R. Civ. P. 11.03, the district court may order sanctions against a lawyer or law firm, including payment of a penalty into the court, when the lawyer or law firm asserts claims or defenses that are (1) not warranted by existing law; (2) frivolous; (3) unsupported by factual evidence; or (4) made to harass, delay, or needlessly increase the cost of litigation.

*Sayer v. Dep't of Transp.*, (A08-1584, A08-1994), 769 N.W.2d 305 (Minn. App. 2009), *review granted* (Minn. Oct. 20, 2009).

When the commissioner of transportation elects to award a construction contract using the design-build best-value method described in Minn. Stat. §§ 161.3410-.3428 (2008), the commissioner's technical review committee has discretion to determine

whether proposals are responsive to the specifications described in the request for proposals.

*Southcross Commerce Ctr., LLP v. Tupy Props., LLC*, (A08-1324), 766 N.W.2d 704 (Minn. App. 2009).

When a nonmoving party to a summary-judgment motion presents undisputed evidence that conclusively establishes a rebuttable presumption in its favor, the moving party is precluded from obtaining summary judgment.

*Barth v. Stenwick*, (A08-317), 761 N.W.2d 502 (Minn. App. 2009).

The doctrine of collateral estoppel does not preclude a municipality from defending its interests in land in a registration action when the land is not the same land that was the subject of previous registration actions brought by adjoining landowners.

*Oliver v. State*, (A08-646), 760 N.W.2d 912 (Minn. App. 2009), *review dismissed* (Minn. Nov. 16, 2009).

Whether there has been a taking of real property based on the right of access requires courts to analyze whether reasonably convenient and suitable access exists from the public roadway to the perimeter of the private property, not whether the access point may be conveniently reached from some internal location on the property.

### **Trial or Hearing**

*RAM Mut. Ins. Co. v. Meyer*, (A08-864), 768 N.W.2d 399 (Minn. App. 2009), *review denied* (Minn. Oct. 20, 2009).

An intentional-act exclusion in a liability-insurance policy only excludes coverage for those occurrences in which the act is so willful and egregious or the anticipated injury is so obvious that the injury is not accidental.

*Stewart v. Koenig*, (A08-1209), 767 N.W.2d 497 (Minn. App. 2009), *review granted* (Minn. Sept. 16, 2009).

The driver of a motor vehicle operating on a private driveway that crosses a state recreational trail is a “trail user” and is subject to the rules governing state recreational trails.

*JEM Acres, LLC v. Bruno*, (A08-735), 764 N.W.2d 77 (Minn. App. 2009).

A seller, who represents to a buyer that a septic system complies with applicable laws and rules governing sewage-treatment systems and who has reason to know that the representations are false, is not shielded from liability under Minn. Stat. § 115.55, subd. 6 (2008), based on the existence of a septic-system certificate of compliance.

*Donnelly Bros. v. State Auto Prop. & Cas. Ins. Co.*, (A08-457), 759 N.W.2d 651 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009).

1. The insurer, under an occurrence-liability-insurance policy, has a presumptive duty to defend an insured contractor against a negligence action for damages caused by water intrusion that occurred during the policy period.

2. Summary judgment determining that an insurer has no duty to defend a construction contractor against claims for damages caused by water intrusion that occurred during the policy period of an occurrence-liability policy is proper only if the record clearly and convincingly establishes that initial water-intrusion damage attributable to that contractor occurred prior to the effective policy date and that allocation is not applicable.

## CIVIL RIGHTS

### **Discrimination**

*Krueger v. Zeman Constr. Co.*, (A08-206), 758 N.W.2d 881 (Minn. App. 2008), *review granted* (Minn. Mar. 17, 2009).

A person who is not a party to a contract may not sue for discrimination in the performance of that contract under Minn. Stat. § 363A.17(3) (2006).

### **Enforcement**

*Friend v. Gopher Co.*, (A08-1810), 771 N.W.2d 33 (Minn. App. 2009).

1. Employment-discrimination claims based on allegations of disparate treatment may be proved using one of two evidentiary frameworks: direct evidence of discriminatory motive or the shifting-burdens analysis of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973).

2. A discrimination claim may be proved under the direct-evidence framework using direct or circumstantial evidence, or a combination of direct and circumstantial evidence.

*Baer v. J.D. Donovan, Inc.*, (A08-1203), 763 N.W.2d 681 (Minn. App. 2009), *review denied* (Minn. June 16, 2009).

An applicant for employment is not an “aggrieved party” within the meaning of the Minnesota Human Rights Act if the applicant is merely requested but not required to provide information pertaining to a protected-class status.

### **Section 1983**

*In re On-Sale Liquor License*, (A08-681), 763 N.W.2d 359 (Minn. App. 2009).

1. Absent a valid ground to suspend or revoke relator's liquor license, respondent city's reliance on the "good cause" standard in the Minneapolis Code of Ordinances § 259.250(9) to support adverse action against the license violated relator's due process rights because the standard failed to provide relator with adequate notice that the off-premises conduct of its patrons could result in adverse action.

2. The city exceeded its express and implied legal authority by imposing conditions on relator's previously issued liquor license because no statute or ordinance authorizes the city to condition a license when the city had no valid ground to suspend or revoke the license.

3. Because this court's review on writ of certiorari is strictly limited to the city council's findings and decision, and because relator's additional constitutional and Minnesota Human Rights Act claims can be litigated in another forum, these additional claims are outside the scope of our review.

### **COMMITMENT**

*In re the Risk Level Determination of D.W.*, (A08-1247), 766 N.W.2d 365 (Minn. App. 2009), *review denied* (Minn. Aug. 11, 2009).

The requirement in Minn. Stat. § 244.052 (2008) that an end-of-confinement review committee assess the public risk posed by a predatory offender who is "about to be released from confinement" permits assignment of a risk level to a civilly committed offender confined in a state treatment facility who is about to transition to a treatment phase that involves contact with the community.

### **CONSTITUTIONAL LAW**

*Roth v. Comm'r of Corr.*, (A08-269), 759 N.W.2d 224 (Minn. App. 2008).

Once a direct appeal has concluded, an offender no longer retains the Fifth Amendment privilege to refuse to participate in sex-offender treatment when there is no real and appreciable risk of perjury prosecution based on the offender's statements for the purpose of treatment.

*State v. Johnson*, (A07-1189), 756 N.W.2d 883 (Minn. App. 2008), *review denied* (Minn. Dec. 23, 2008).

1. An autopsy report is “testimonial” in nature, and therefore implicates a defendant’s right to confrontation under *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004).

2. Attempted offenses, other than attempted first-degree murder, are not listed in section VI of the Minnesota Sentencing Guidelines, and, therefore, are not offenses for which permissive consecutive sentences may be imposed.

### **Due Process – Minnesota Constitution**

*State v. Stockwell*, (A08-1900), 770 N.W.2d 533 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

1. Although the stalking provision in Minn. Stat. § 609.749, subd. 2(a)(2) (2006) is broad and in limited circumstances may extend to expression-related conduct, because it focuses on wrongful conduct, protects rights of the victim, and is subject to limiting construction, the statute is not unconstitutionally void for facial overbreadth.

2. Because the provision in Minn. Stat. § 609.749, subd. 2(a)(2) provides sufficient notice that specific conduct is criminal, the statute is not unconstitutionally void for vagueness.

*State v. Turnbull*, (A08-532), 766 N.W.2d 78 (Minn. App. 2009).

The Second Amendment to the United States Constitution is not incorporated in the Due Process Clause so as to be enforceable against the states; thus, Minn. Stat. § 624.713 (2006), Minnesota’s ineligible-person-in-possession-of-a-firearm statute, does not infringe upon Second-Amendment rights.

A juvenile adjudicated delinquent of a violent offense is ineligible to possess a firearm even though the adjudication occurred without a jury trial because a juvenile does not have a constitutional right to a jury trial and, under Minn. Stat. § 624.713, subd. 1(b), persons adjudicated delinquent of a violent offense are ineligible to possess a firearm.

*Smith v. Dep’t of Human Servs.*, (A08-1243), 764 N.W.2d 388 (Minn. App. 2009).

1. A person denied permission to work in a direct-contact position in a facility licensed by the Department of Human Services by virtue of Minn. Stat. § 245C.14, subd. 1(a)(2) (2008), must appeal the department’s determination in a timely fashion; if the aggrieved party fails to do so, his or her permanent disqualification is conclusive under Minn. Stat. § 245C.29, subd. 2(a)(2)(iii) (2008).

2. A person aggrieved by a decision of the department who has the right to a hearing, but who fails to request a hearing in a timely fashion, has not been deprived of constitutional due process rights.

*Williams v. Bd. of Regents*, (A08-765), 763 N.W.2d 646 (Minn. App. 2009).

If an alleged employee's negligent-misrepresentation claim against a public entity can be determined without evaluating whether the entity wrongfully discharged the alleged employee, judicial consideration of the claim is not limited to certiorari review by the court of appeals.

*Zentz v. Graber*, (A08-141), 760 N.W.2d 1 (Minn. App. 2009), *review denied* (Minn. Mar. 31, 2009).

A man may establish that he is a presumed father under Minn. Stat. § 257.55, subd. 1(d), by alleging that he has received a child into his home and held the child out as his biological child. These allegations need not be proven by clear and convincing evidence to establish this presumption of paternity.

*State v. Campbell*, (A08-218), 756 N.W.2d 263 (Minn. App. 2008), *review denied* (Minn. Dec. 23, 2008).

Minn. Stat. § 609.2335, subd. 1(1) (2002), criminalizing financial exploitation of a vulnerable adult, is not unconstitutionally vague as applied to a defendant holding joint bank accounts with a vulnerable adult if circumstances indicate the existence of a fiduciary relationship.

*Johnson v. Comm'r of Pub. Safety*, (A07-2413), 756 N.W.2d 140 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008).

In an implied-consent-law case, a peace officer may satisfy the test-result-certification requirement in Minn. Stat. § 169A.52, subd. 4(a) (2006), despite an erroneously completed Peace Officer's Certificate, so long as the officer forwards to the Commissioner of Public Safety other documents signed by the officer that verify the test results.

*Obara v. Dep't of Health*, (A08-85), 758 N.W.2d 873 (Minn. App. 2008).

The constitutional right to due process does not require an evidentiary hearing on the factual question of whether a health care worker being disqualified for certain employment committed disqualifying criminal offenses when the worker has been duly convicted of such offenses.

*Mertins v. Comm'r of Natural Res.*, (A07-1492), 755 N.W.2d 329 (Minn. App. 2008).

1. Minn. Stat. § 97A.420, subd. 4(c) (2006), which limits the scope of a judicial-review hearing of a license seizure under Minn. Stat. § 97A.420, subd. 1 (2006) to the issue of probable cause, does not preclude Minnesota district courts from considering constitutional issues inherent in the action pending before them.

2. An appeal raising procedural-due-process questions incident to seizure of a commercial fishing license arising out of a judicial-review hearing and determination under Minn. Stat. § 97A.420, subs. 3, 4 (2006), is not rendered moot by a criminal conviction of violating Minnesota fish and game laws.

3. Commercial fishing licenses represent property interests within the meaning of the Due Process Clauses of the United States and Minnesota Constitutions, and license holders are entitled to due process of law within a reasonable period of time after the state seizes those licenses.

4. The temporary release provision in Minn. Stat. § 97A.420, subd. 5 (2006), provides facially adequate procedural due process for license seizures pursuant to section 97A.420, subdivision 1.

### **Due Process – United States Constitution**

*State v. Stockwell*, (A08-1900), 770 N.W.2d 533 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

1. Although the stalking provision in Minn. Stat. § 609.749, subd. 2(a)(2) (2006) is broad and in limited circumstances may extend to expression-related conduct, because it focuses on wrongful conduct, protects rights of the victim, and is subject to limiting construction, the statute is not unconstitutionally void for facial overbreadth.

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2. The city exceeded its express and implied legal authority by imposing conditions on relator's previously issued liquor license because no statute or ordinance authorizes the city to condition a license when the city had no valid ground to suspend or revoke the license.

3. Because this court's review on writ of certiorari is strictly limited to the city council's findings and decision, and because relator's additional constitutional and Minnesota Human Rights Act claims can be litigated in another forum, these additional claims are outside the scope of our review.

*Heino v. One 2003 Cadillac*, (A08-536), 762 N.W.2d 257 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009).

It is not a violation of due process to use a prior administrative license revocation as an aggravating factor to subject a vehicle to forfeiture pursuant to Minn. Stat. § 169A.63, subd. 6 (2008), when that revocation was once the subject of a petition for judicial review but where there was no judicial hearing on the petition because of the petitioner's voluntary decision to withdraw it prior to commencement of the trial on the forfeiture action.

*Zentz v. Graber*, (A08-141), 760 N.W.2d 1 (Minn. App. 2009), *review denied* (Minn. Mar. 31, 2009).

A man may establish that he is a presumed father under Minn. Stat. § 257.55, subd. 1(d), by alleging that he has received a child into his home and held the child out as his biological child. These allegations need not be proven by clear and convincing evidence to establish this presumption of paternity.

*Wilhite v. Housing & Redevelopment Auth.*, (A07-2103), 759 N.W.2d 252 (Minn. App. 2009).

Failure to vacate a leased residential premises upon the expiration of the lease constitutes a serious lease violation under 24 C.F.R. § 982.552(b)(2) (2008), mandating the termination of Section 8 Rental Assistance.

*Obara v. Dep't of Health*, (A08-85), 758 N.W.2d 873 (Minn. App. 2008).

The constitutional right to due process does not require an evidentiary hearing on the factual question of whether a health care worker being disqualified for certain

employment committed disqualifying criminal offenses when the worker has been duly convicted of such offenses.

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Minnesota statute section 609.2335, subdivision 1(1) (2002), criminalizing financial exploitation of a vulnerable adult, is not unconstitutionally vague as applied to a defendant holding joint bank accounts with a vulnerable adult if circumstances indicate the existence of a fiduciary relationship.

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In an implied-consent-law case, a peace officer may satisfy the test-result-certification requirement in Minn. Stat. § 169A.52, subd. 4(a) (2006), despite an erroneously completed Peace Officer’s Certificate, so long as the officer forwards to the Commissioner of Public Safety other documents signed by the officer that verify the test results.

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1. Minn. Stat. § 97A.420, subd. 4(c) (2006), which limits the scope of a judicial-review hearing of a license seizure under Minn. Stat. § 97A.420, subd. 1 (2006) to the issue of probable cause, does not preclude Minnesota district courts from considering constitutional issues inherent in the action pending before them.

2. An appeal raising procedural-due-process questions incident to seizure of a commercial fishing license arising out of a judicial-review hearing and determination under Minn. Stat. § 97A.420, subs. 3, 4 (2006), is not rendered moot by a criminal conviction of violating Minnesota fish and game laws.

3. Commercial fishing licenses represent property interests within the meaning of the Due Process Clauses of the United States and Minnesota Constitutions, and license holders are entitled to due process of law within a reasonable period of time after the state seizes those licenses.

4. The temporary release provision in Minn. Stat. § 97A.420, subd. 5 (2006), provides facially adequate procedural due process for license seizures pursuant to section 97A.420, subdivision 1.

### **Equal Protection – Minnesota Constitution**

*Buscher v. Montag Devel., Inc.*, (A08-1803, A08-2036), 770 N.W.2d 199 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

1. The two-year statute of limitations of Minn. Stat. § 541.051, subd. 1(a) (2008) begins to run when the injured party discovers or should have discovered an actionable injury, regardless of whether the injured party can identify the defect causing the injury.

2. Pursuant to Minn. R. Civ. P. 56.07, the district court may order sanctions, including reasonable costs and attorney fees, against a party who opposes summary judgment by submitting an affidavit in bad faith or for purposes of delay.

3. Pursuant to Minn. R. Civ. P. 11.03, the district court may order sanctions against a lawyer or law firm, including payment of a penalty into the court, when the lawyer or law firm asserts claims or defenses that are (1) not warranted by existing law; (2) frivolous; (3) unsupported by factual evidence; or (4) made to harass, delay, or needlessly increase the cost of litigation.

### **First Amendment or Freedom of Speech**

*State v. Stockwell*, (A08-1900), 770 N.W.2d 533 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

1. Although the stalking provision in Minn. Stat. § 609.749, subd. 2(a)(2) (2006) is broad and in limited circumstances may extend to expression-related conduct, because it focuses on wrongful conduct, protects rights of the victim, and is subject to limiting construction, the statute is not unconstitutionally void for facial overbreadth.

2. Because the provision in Minn. Stat. § 609.749, subd. 2(a)(2) provides sufficient notice that specific conduct is criminal, the statute is not unconstitutionally void for vagueness.

### **Fourth Amendment**

*State v. Stephenson*, (A07-2312), 760 N.W.2d 22 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009).

An individual does not have a reasonable expectation of privacy in a home from which he or she is excluded by a valid court order.

### **Minnesota Constitution**

*Citizens for Rule of Law v. Senate Comm. on Rules & Admin.*, (A08-1343), 770 N.W.2d 169 (Minn. App. 2009), *review denied* (Minn. Oct. 20, 2009).

Because legislative per diem payments are not compensation within the meaning of Article IV, Section 9 of the Minnesota Constitution, an increase to legislative per diem payments, effective immediately, does not violate that section's prohibition against same-term increases to compensation.

*Heino v. One 2003 Cadillac*, (A08-536), 762 N.W.2d 257 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009).

It is not a violation of due process to use a prior administrative license revocation as an aggravating factor to subject a vehicle to forfeiture pursuant to Minn. Stat. § 169A.63, subd. 6 (2008), when that revocation was once the subject of a petition for judicial review but where there was no judicial hearing on the petition because of the

petitioner's voluntary decision to withdraw it prior to commencement of the trial on the forfeiture action.

*In re Welfare of S.R.S.*, (A07-1725), 756 N.W.2d 123 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008).

1. Minnesota courts do not have subject matter jurisdiction under the Uniform Interstate Family Support Act to modify a Colorado child support order when all of the parties do not reside in Minnesota and the order has not been registered in Minnesota.

2. The full faith and credit clause of the United States Constitution does not require Minnesota to accept subject matter jurisdiction in violation of Minnesota law.

### **Other**

*In re Welfare of Children of R.A.J.*, (A09-140), 769 N.W.2d 297 (Minn. App. 2009).

The district court had jurisdiction to vacate its order transferring a child-welfare proceeding to tribal court before tribal court proceedings commenced, when the district court found that “misrepresentations were intentionally and wrongfully advanced [to the district court] to gain [its] agreement to transfer” the proceeding.

*State v. Hakala*, (A08-215), 763 N.W.2d 346 (Minn. App. 2009), *review granted* (Minn. June 16, 2009).

In a case involving the alleged sexual abuse of children, a district court abuses its discretion by excluding expert witness testimony offered for the limited purpose of challenging the validity of the interview techniques and protocols utilized to conduct the interviews of the alleged victims.

### **Retroactive Laws**

*Odegard v. State*, (A08-2012), 767 N.W.2d 472 (Minn. App. 2009).

*State v. Wiltgen*, 737 N.W.2d 561 (Minn. 2007), stated a new rule of constitutional criminal procedure precluding use of an unreviewed license revocation to enhance a driving-while-impaired offense. But *Wiltgen* is not a “watershed” rule that applies retroactively on collateral review.

### **Separation of Powers**

*Citizens for Rule of Law v. Senate Comm. on Rules & Admin.*, (A08-1343), 770 N.W.2d 169 (Minn. App. 2009), *review denied* (Minn. Oct. 20, 2009).

Because legislative per diem payments are not compensation within the meaning of Article IV, Section 9 of the Minnesota Constitution, an increase to legislative per diem payments, effective immediately, does not violate that section's prohibition against same-term increases to compensation.

*Sayer v. Dep't of Transp.*, (A08-1584, A08-1994), 769 N.W.2d 305 (Minn. App. 2009), *review granted* (Minn. Oct. 20, 2009).

When the commissioner of transportation elects to award a construction contract using the design-build best-value method described in Minn. Stat. §§ 161.3410-.3428 (2008), the commissioner's technical review committee has discretion to determine whether proposals are responsive to the specifications described in the request for proposals.

*Coal. of Greater Minn. Cites v. Pollution Control Agency*, (A08-1198), 765 N.W.2d 159 (Minn. App. 2009), *review denied* (Minn. Aug. 11, 2009).

1. A petitioner has standing to bring a pre-enforcement challenge to an administrative rule under Minn. Stat. § 14.44 (2008) if the petitioner can show that the rule or its threatened application interferes with or threatens to interfere with its legal rights or privileges.

2. The use of the term "may" in Minn. R. 7053.0255, subp. 4 (Supp. II 2008), permits the Minnesota Pollution Control Agency to exercise its lawful discretion in deciding whether to grant or deny an application for an exemption.

## CONTEMPT

### **Procedure and Findings**

*Buscher v. Montag Devel., Inc.*, (A08-1803, A08-2036), 770 N.W.2d 199 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

1. The two-year statute of limitations of Minn. Stat. § 541.051, subd. 1(a) (2008) begins to run when the injured party discovers or should have discovered an actionable injury, regardless of whether the injured party can identify the defect causing the injury.

2. Pursuant to Minn. R. Civ. P. 56.07, the district court may order sanctions, including reasonable costs and attorney fees, against a party who opposes summary judgment by submitting an affidavit in bad faith or for purposes of delay.

3. Pursuant to Minn. R. Civ. P. 11.03, the district court may order sanctions against a lawyer or law firm, including payment of a penalty into the court, when the lawyer or law firm asserts claims or defenses that are (1) not warranted by existing law; (2) frivolous; (3) unsupported by factual evidence; or (4) made to harass, delay, or needlessly increase the cost of litigation.

## **Remedies and Sanctions**

*Buscher v. Montag Devel., Inc.*, (A08-1803, A08-2036), 770 N.W.2d 199 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

1. The two-year statute of limitations of Minn. Stat. § 541.051, subd. 1(a) (2008) begins to run when the injured party discovers or should have discovered an actionable injury, regardless of whether the injured party can identify the defect causing the injury.

2. Pursuant to Minn. R. Civ. P. 56.07, the district court may order sanctions, including reasonable costs and attorney fees, against a party who opposes summary judgment by submitting an affidavit in bad faith or for purposes of delay.

3. Pursuant to Minn. R. Civ. P. 11.03, the district court may order sanctions against a lawyer or law firm, including payment of a penalty into the court, when the lawyer or law firm asserts claims or defenses that are (1) not warranted by existing law; (2) frivolous; (3) unsupported by factual evidence; or (4) made to harass, delay, or needlessly increase the cost of litigation.

## **CONTRACTS**

### **Breach**

*JEM Acres, LLC v. Bruno*, (A08-735), 764 N.W.2d 77 (Minn. App. 2009).

A seller, who represents to a buyer that a septic system complies with applicable laws and rules governing sewage-treatment systems and who has reason to know that the representations are false, is not shielded from liability under Minn. Stat. § 115.55, subd. 6 (2008), based on the existence of a septic-system certificate of compliance.

### **Construction/Interpretation**

*SECURA Supreme Ins. Co. v. Larson*, (A07-1736), 755 N.W.2d 320 (Minn. App. 2008), *review denied* (Minn. Nov. 18, 2008).

1. The phrase “results from” is identical in meaning to the phrase “arises out of” when used to describe the scope of the injuries for which a criminal-act exclusion contained in a homeowners’ insurance policy precludes coverage.

2. The inclusion of a severability clause in a homeowners’ insurance policy stating that the policy must be applied separately to each insured does not render ambiguous an otherwise unambiguous criminal-act exclusion that bars coverage for “any insured” for injuries resulting from the criminal conduct of a single insured.

## **Damages or Remedies**

*In re Crablex*, (A08-458), 762 N.W.2d 247 (Minn. App. 2009), *review denied* (Minn. Apr. 29, 2009).

1. A valid foreclosure of a mortgage terminates all easement interests in the foreclosed real estate that are junior to the mortgage being foreclosed and whose holders are properly joined or notified in the foreclosure action.

2. A mortgage, by a declaration of its mortgagee, may be made subordinate in priority to an easement on the mortgaged real estate.

## **Defenses**

*JEM Acres, LLC v. Bruno*, (A08-735), 764 N.W.2d 77 (Minn. App. 2009).

A seller, who represents to a buyer that a septic system complies with applicable laws and rules governing sewage-treatment systems and who has reason to know that the representations are false, is not shielded from liability under Minn. Stat. § 115.55, subd. 6 (2008), based on the existence of a septic-system certificate of compliance.

## **Formation**

*Glacial Plains Coop. v. Lindgren*, (A08-279), 759 N.W.2d 662 (Minn. App. 2009).

An admission exception under the Uniform Commercial Code, Minn. Stat. §§ 336.1-101 to .10-105 (2008) (UCC), removes a contract from the code's statute of frauds requirement where a farmer admitted to entering into an oral agreement for the sale and delivery of grain. The Minnesota UCC statute of frauds that governs a contract for the sale of goods supersedes the general statute of frauds under Minn. Stat. § 513.01 (2008).

*Olson & Assocs. v. Leffert, Jay & Polglaze, P.A.*, (A07-2165), 756 N.W.2d 907 (Minn. App. 2008), *review denied* (Minn. Jan. 20, 2009).

1. A client's instructions to an attorney to deposit settlement proceeds into the attorney's trust account for safekeeping pending resolution of a third party's lien against the settlement proceeds may create a trust that imposes fiduciary duties on the attorney toward the third party for whose benefit the trust was established.

2. Communications between an attorney and third party who has asserted a lien on settlement proceeds made payable to the attorney's client may give rise to an enforceable contract that obligates the attorney to retain settlement proceeds until the resolution of the third party's lien against the settlement proceeds.

*In re Application of City of Redwood Falls*, (A07-1957), 756 N.W.2d 133 (Minn. App. 2008).

The plain language of the Minnesota Public Utilities Act, Minn. Stat. § 216B.40 (2006), precludes the Minnesota Public Utilities Commission from giving effect to an

unwritten agreement between two utilities altering the exclusive electric service areas that have been lawfully designated by the commission.

### **Oral Contracts**

*Glacial Plains Coop. v. Lindgren*, (A08-279), 759 N.W.2d 662 (Minn. App. 2009).

An admission exception under the Uniform Commercial Code, Minn. Stat. §§ 336.1-101 to .10-105 (2008) (UCC), removes a contract from the code's statute of frauds requirement where a farmer admitted to entering into an oral agreement for the sale and delivery of grain. The Minnesota UCC statute of frauds that governs a contract for the sale of goods supersedes the general statute of frauds under Minn. Stat. § 513.01 (2008).

### **Other**

*JEM Acres, LLC v. Bruno*, (A08-735), 764 N.W.2d 77 (Minn. App. 2009).

A seller, who represents to a buyer that a septic system complies with applicable laws and rules governing sewage-treatment systems and who has reason to know that the representations are false, is not shielded from liability under Minn. Stat. § 115.55, subd. 6 (2008), based on the existence of a septic-system certificate of compliance.

### **Reformation**

*Premier Bank v. Becker Dev., LLC*, (A08-1252), 767 N.W.2d 691 (Minn. App. 2009), *review granted* (Minn. Sept. 16, 2009).

A contractor may foreclose a perfected blanket mechanic's lien on less than all the property subject to the lien, provided that the equities demonstrate that the foreclosure does not unfairly burden the property foreclosed on.

### **Settlements**

*In re Crablex*, (A08-458), 762 N.W.2d 247 (Minn. App. 2009), *review denied* (Minn. Apr. 29, 2009).

1. A valid foreclosure of a mortgage terminates all easement interests in the foreclosed real estate that are junior to the mortgage being foreclosed and whose holders are properly joined or notified in the foreclosure action.

2. A mortgage, by a declaration of its mortgagee, may be made subordinate in priority to an easement on the mortgaged real estate.

*Dykes v. Superior, Inc.*, (A08-583), 761 N.W.2d 892 (Minn. App. 2009), *review granted* (Minn. May 27, 2009).

A settlement agreement that releases one or more joint tortfeasors, and does not expressly reserve the right to pursue claims against other joint tortfeasors, releases the

other tortfeasors from joint and several liability only if the parties to the settlement agreement manifested such an intent, or if the injured party received full compensation for the damages sought against the other tortfeasors.

### **U.C.C.**

*Glacial Plains Coop. v. Lindgren*, (A08-279), 759 N.W.2d 662 (Minn. App. 2009).

An admission exception under the Uniform Commercial Code, Minn. Stat. §§ 336.1-101 to .10-105 (2008) (UCC), removes a contract from the code's statute of frauds requirement where a farmer admitted to entering into an oral agreement for the sale and delivery of grain. The Minnesota UCC statute of frauds that governs a contract for the sale of goods supersedes the general statute of frauds under Minn. Stat. § 513.01 (2008).

## **CRIMINAL**

### **Corrections**

*In re Risk Level Determination of G.G.*, (A09-7), 771 N.W.2d 64 (Minn. App. 2009), *review denied* (Minn. Nov. 17, 2009).

1. Minn. Stat. § 243.166, subd. 1b(b)(2) (2008), which provides that a predatory offender who “enters this state and remains for 14 days or longer” must register, does not require that the offender’s entry into Minnesota be volitional.

2. An end-of-confinement review committee has no authority under Minn. Stat. § 244.052, subd. 3(a) (2008), to assign a risk level to a predatory offender who was never incarcerated in a Minnesota correctional facility or treatment center.

*In re the Risk Level Determination of D.W.*, (A08-1247), 766 N.W.2d 365 (Minn. App. 2009), *review denied* (Minn. Aug. 11, 2009).

The requirement in Minn. Stat. § 244.052 (2008) that an end-of-confinement review committee assess the public risk posed by a predatory offender who is “about to be released from confinement” permits assignment of a risk level to a civilly committed offender confined in a state treatment facility who is about to transition to a treatment phase that involves contact with the community.

*R.G.C. v. Dep’t of Corrections*, (A08-669), 760 N.W.2d 329 (Minn. App. 2009).

Interpretation of the statute governing statutory end-of-confinement classification for sex offenders is appropriately decided administratively and reviewed de novo by writ of certiorari to this court.

*State ex rel. Marlowe v. Fabian*, (A08-927), 755 N.W.2d 792 (Minn. App. 2008).

When an offender's release plan proves impossible to satisfy because the offender, through no fault of his or her own, is unable to find an approved residence, the department of corrections must consider a restructuring of the release plan to include viable housing options.

### **Expungement**

*State v. N.G.K.*, (A08-1437), 770 N.W.2d 177 (Minn. App. 2009).

The district court erred by ordering the expungement of records of appellant's conviction that are possessed by offices of the executive branch.

### **Forfeiture**

*Heino v. One 2003 Cadillac*, (A08-536), 762 N.W.2d 257 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009).

It is not a violation of due process to use a prior administrative license revocation as an aggravating factor to subject a vehicle to forfeiture pursuant to Minn. Stat. § 169A.63, subd. 6 (2008), when that revocation was once the subject of a petition for judicial review but where there was no judicial hearing on the petition because of the petitioner's voluntary decision to withdraw it prior to commencement of the trial on the forfeiture action.

*State v. Romine*, (A07-1244), 757 N.W.2d 884 (Minn. App. 2008), *review denied* (Minn. Feb. 17, 2009).

1. A person may not challenge the constitutionality of an order for protection issued pursuant to chapter 518B of the Minnesota Statutes, or the constitutionality of the statute on which the order was based, in a subsequent criminal prosecution for a violation of the order.

2. Subdivisions 14(j), 14(l), and 14(m) of Minnesota Statutes section 518B.01 do not authorize a district court to order the forfeiture and destruction of firearms belonging to a person who has been found guilty of a violation of subdivision 14(b).

### **Habeas Corpus**

*R.G.C. v. Dep't of Corrections*, (A08-669), 760 N.W.2d 329 (Minn. App. 2009).

Interpretation of the statute governing statutory end-of-confinement classification for sex offenders is appropriately decided administratively and reviewed de novo by writ of certiorari to this court.

## **Investigation**

*State v. Dressel*, (A08-2130), 765 N.W.2d 419 (Minn. App. 2009), *review denied* (Minn. Aug. 11, 2009).

Statements made to law enforcement officers following a polygraph examination are admissible in a subsequent criminal prosecution so long as the statements were voluntarily given and are admitted into evidence without any reference to the results of the polygraph examination or the fact that the defendant submitted to a polygraph examination.

*State v. Stephenson*, (A07-2312), 760 N.W.2d 22 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009).

An individual does not have a reasonable expectation of privacy in a home from which he or she is excluded by a valid court order.

*State v. Kail*, (A08-1081), 760 N.W.2d 16 (Minn. App. 2009).

1. Whether a deaf person qualifies as a “person disabled in communication” as defined in Minnesota Statutes section 611.31 (2006), obliging the state to assign an interpreter for a proceeding, depends on the communication method used during the proceeding.

2. A person who fully understands and communicates in writing during an arrest and subsequent implied consent proceeding is not a “person disabled in communication,” despite being unable to hear and speak, and is therefore not entitled to a sign-language interpreter under Minnesota Statutes section 611.32 (2006).

*State v. White*, (A08-12), 759 N.W.2d 667 (Minn. App. 2009).

Under Minn. Stat. § 169.79, subd. 7 (2006), it is illegal to cover assigned letters, numbers, and a state of origin on a license plate with any material.

*Mell v. Comm’r of Pub. Safety*, (A07-2372), 757 N.W.2d 702 (Minn. App. 2008).

Routine administration of preliminary breath tests during jail booking for non-alcohol related offenses and use of the results to invoke the implied-consent law is not unconstitutional.

## **Postconviction Relief**

*State v. Johnson*, (A08-1112), 770 N.W.2d 564 (Minn. App. 2009).

The Minn. Sent. Guidelines II.F requirement that a criminal history score of zero be used to calculate the duration of a permissive consecutive sentence applies to a permissive consecutive felony driving-while-impaired sentence imposed under Minn. Stat. § 169A.28, subd. 3 (2008).

*Odegard v. State*, (A08-2012), 767 N.W.2d 472 (Minn. App. 2009).

*State v. Wiltgen*, 737 N.W.2d 561 (Minn. 2007), stated a new rule of constitutional criminal procedure precluding use of an unreviewed license revocation to enhance a driving-while-impaired offense. But *Wiltgen* is not a “watershed” rule that applies retroactively on collateral review.

*Oldenburg v. State*, (A08-601), 763 N.W.2d 655 (Minn. App. 2009).

The addition of a conditional-release term to a sentence for felony driving while impaired does not violate a plea agreement when the plea agreement did not include a guaranteed durational time limit on prison time and the defendant had notice of the conditional-release term at the time of the plea.

*Williams v. State*, (A07-2447), 760 N.W.2d 8 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009).

An adequate factual basis for a *Norgaard* plea exists if the record provides a strong factual basis for the plea, and the defendant acknowledges that the evidence is sufficient to support his or her conviction.

*Jama v. State*, (A07-1864), 756 N.W.2d 107 (Minn. App. 2008).

The bar against raising issues in postconviction proceedings that were known at the time of a direct appeal does not apply to ineffective-assistance-of-trial-counsel claims when counsel on direct appeal was also trial counsel.

## **Pretrial**

*State v. Crane*, (A08-377), 766 N.W.2d 68 (Minn. App. 2009), *review denied* (Minn. Aug. 26, 2009).

Absent further developments in the ongoing litigation between the state and CMI, the manufacturer of the Intoxilyzer 5000EN, a district court’s finding that the state does not possess the Intoxilyzer source code is clearly erroneous under the supreme court’s ruling in *State v. Underdahl*.

*State v. Daniels*, (A08-504) 765 N.W.2d 645 (Minn. App. 2009), *review denied* (Minn. Aug. 11, 2009).

1. When there is a course of criminal conduct that involves separate crimes committed in more than one county, venue is proper in a county in which an operative or triggering event occurred.

2. When a person commits both a sex crime under Minn. Stat. §§ 609.342 to .345 and another crime, Minn. Stat. § 609.035, subd. 6 (2006), permits consecutive sentences and provides that consecutive sentencing does not constitute a departure from the sentencing guidelines.

*State v. Dressel*, (A08-2130), 765 N.W.2d 419 (Minn. App. 2009), *review denied* (Minn. Aug. 11, 2009).

Statements made to law enforcement officers following a polygraph examination are admissible in a subsequent criminal prosecution so long as the statements were voluntarily given and are admitted into evidence without any reference to the results of the polygraph examination or the fact that the defendant submitted to a polygraph examination.

*State v. Williams*, (A08-1658), 762 N.W.2d 583 (Minn. App. 2009), *review denied* (Minn. May 27, 2009).

The term “brother” in Minn. Stat. § 609.341, subd. 15(2) (2006), includes half-brothers or brothers of the half blood.

*State v. Kail*, (A08-1081), 760 N.W.2d 16 (Minn. App. 2009).

1. Whether a deaf person qualifies as a “person disabled in communication” as defined in Minnesota Statutes section 611.31 (2006), obliging the state to assign an interpreter for a proceeding, depends on the communication method used during the proceeding.

2. A person who fully understands and communicates in writing during an arrest and subsequent implied consent proceeding is not a “person disabled in communication,” despite being unable to hear and speak, and is therefore not entitled to a sign-language interpreter under Minnesota Statutes section 611.32 (2006).

*State v. DeWalt*, (A07-1610), 757 N.W.2d 282 (Minn. App. 2008).

1. A district court does not err by proceeding at trial with the defendant absent from the courtroom when the record demonstrates that the defendant’s absence is voluntary.

2. The state must charge an offense by indictment, in accordance with Minn. R. Crim. P. 17.01, in order for a district court to have authority to impose an enhanced criminal sentence of life imprisonment.

*State v. Jones*, (A07-1168), 755 N.W.2d 341 (Minn. App. 2008), *aff’d*, 772 N.W.2d. 496 (Minn. 2009).

A criminal defendant who is ineligible for a public defender and fails to hire a private attorney, despite multiple warnings from the district court, has validly waived his right to counsel and may be required to proceed pro se.

*State v. Linville*, (A07-2323), 755 N.W.2d 314 (Minn. App. 2008), *review denied* (Minn. Nov. 18, 2008), *cert. denied*, 129 S. Ct. 2779 (2009).

If an individual arraigned on a charge of possession of firearms by an ineligible person moves successfully for dismissal of that charge under *Whitten v. State*, 690 N.W.2d 561 (Minn. App. 2005), the arraignment on the first charge precludes the

dismissal of any subsequent charges of possession of firearms by an ineligible person under *Whitten*.

### **Probation Revocation**

*State v. Bradley*, (A07-1847), 756 N.W.2d 129 (Minn. App. 2008).

A district court does not improperly delegate sentencing authority when it requires, as a condition of probation, that an offender complete a chemical-health assessment and follow its recommendations.

### **Sentencing**

*State v. Johnson*, (A08-1112), 770 N.W.2d 564 (Minn. App. 2009).

The Minn. Sent. Guidelines II.F requirement that a criminal history score of zero be used to calculate the duration of a permissive consecutive sentence applies to a permissive consecutive felony driving-while-impaired sentence imposed under Minn. Stat. § 169A.28, subd. 3 (2008).

*Odegard v. State*, (A08-2012), 767 N.W.2d 472 (Minn. App. 2009).

*State v. Wiltgen*, 737 N.W.2d 561 (Minn. 2007), stated a new rule of constitutional criminal procedure precluding use of an unreviewed license revocation to enhance a driving-while-impaired offense. But *Wiltgen* is not a “watershed” rule that applies retroactively on collateral review.

*State v. Jiles*, (A08-1466), 767 N.W.2d 27 (Minn. App. 2009), *review denied* (Minn. Aug. 26, 2009).

An extended-jurisdiction juvenile adjudication is considered a conviction for purposes of the mandatory-minimum-sentence provisions set forth in Minn. Stat. § 609.11, subds. 5(b), 8(b) (2006).

*State v. Grampre*, (A08-454), 766 N.W.2d 347 (Minn. App. 2009), *review denied* (Minn. Aug. 26, 2009).

Pursuant to Minn. Stat. § 609.035, subd. 6 (2006), if a defendant is convicted of committing criminal sexual conduct with force or violence, the district court may impose an upward departure based on evidence that also supports a conviction of another offense, notwithstanding the restrictions of *State v. Jones*, 745 N.W.2d 845 (Minn. 2008).

*State v. Baynes*, (A08-1914), 766 N.W.2d 343 (Minn. App. 2009).

The state may not raise issues of inconsistent verdicts and insufficiency of the evidence supporting those verdicts in a post-trial sentencing appeal because, consistent with Minn. R. Crim. P. 28.05, subd. 2, those issues exceed the scope of appellate review available in a sentencing appeal, and the remedies appellant seeks are not provided for by law.

*State v. Daniels*, (A08-504) 765 N.W.2d 645 (Minn. App. 2009), *review denied* (Minn. Aug. 11, 2009)

1. When there is a course of criminal conduct that involves separate crimes committed in more than one county, venue is proper in a county in which an operative or triggering event occurred.

2. When a person commits both a sex crime under Minn. Stat. §§ 609.342 to .345 and another crime, Minn. Stat. § 609.035, subd. 6 (2006), permits consecutive sentences and provides that consecutive sentencing does not constitute a departure from the sentencing guidelines.

*Carey v. State*, (A08-432), 765 N.W.2d 396 (Minn. App. 2009), *review denied* (Minn. Aug. 11, 2009).

A criminal defendant is not entitled to withdraw a guilty plea on the ground that the district court, pursuant to a plea agreement, imposed sentences on two or more convictions in a non-chronological manner, contrary to section II.F. of the sentencing guidelines.

*State v. Lopez*, (A08-133), 764 N.W.2d 605, *review granted* (Minn. June 30, 2009).

Appellate review of a district court's determination that a defendant must register as a predatory offender presents a mixed question of law and fact. Such review is conducted pursuant to the established standards: factual findings for clear error and legal determinations, de novo.

*Oldenburg v. State*, (A08-601), 763 N.W.2d 655 (Minn. App. 2009).

The addition of a conditional-release term to a sentence for felony driving while impaired does not violate a plea agreement when the plea agreement did not include a guaranteed durational time limit on prison time and the defendant had notice of the conditional-release term at the time of the plea.

*Williams v. State*, (A07-2447), 760 N.W.2d 8 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009).

An adequate factual basis for a *Norgaard* plea exists if the record provides a strong factual basis for the plea, and the defendant acknowledges that the evidence is sufficient to support his or her conviction.

*State v. Abrahamson*, (A07-2143), 758 N.W.2d 332 (Minn. App. 2008), *review denied* (Minn. Mar. 31, 2009).

1. Variety in sexual acts is a valid reason for departure in the sentence for first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(h)(iii), because it shows the offense was committed in a particularly serious way and is not equivalent to the offense element of multiple acts of sexual abuse.

2. The district court properly relied on showing pornography to the child-victim of criminal sexual conduct in imposing an upward durational departure on a criminal sexual conduct sentence.

*State v. Verdon*, (A07-1811), 757 N.W.2d 879 (Minn. App. 2008), *review denied* (Minn. Feb. 25, 2009).

1. Because the assignment of a Minnesota Offense Code to a defendant's offense does not enhance the defendant's sentence beyond the presumptive guidelines sentence, the right to a jury trial recognized in *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004) is not applicable to factual determinations incident to that assignment.

2. A judicial assignment of a Minnesota Offense Code must have a basis in the record, and a reviewing court will only reverse the district court's assignment if it is clearly erroneous.

*State v. Williams*, (A07-1502), 757 N.W.2d 504 (Minn. App. 2008), *aff'd*, 771 N.W.2d 514 (Minn. 2009).

Where a defendant's multiple offenses arise from a single behavioral incident and include possession of a firearm by an ineligible person, Minn. Stat. § 609.035, subd. 3 (2006), permits separate sentencing for the convictions and, accordingly, the first occurring offense may be included in the criminal-history score to determine the presumptive sentence for the second offense.

*State v. DeWalt*, (A07-1610), 757 N.W.2d 282 (Minn. App. 2008).

1. A district court does not err by proceeding at trial with the defendant absent from the courtroom when the record demonstrates that the defendant's absence is voluntary.

2. The state must charge an offense by indictment, in accordance with Minn. R. Crim. P. 17.01, in order for a district court to have authority to impose an enhanced criminal sentence of life imprisonment.

*State v. Johnson*, (A07-1189), 756 N.W.2d 883 (Minn. App. 2008), *review denied* (Minn. Dec. 23, 2008).

1. An autopsy report is "testimonial" in nature, and therefore implicates a defendant's right to confrontation under *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004).

2. Attempted offenses, other than attempted first-degree murder, are not listed in section VI of the Minnesota Sentencing Guidelines, and, therefore, are not offenses for which permissive consecutive sentences may be imposed.

*State v. Adell*, (A07-1264), 755 N.W.2d 767 (Minn. App. 2008), *review denied* (Minn. Nov. 25, 2008).

Multiple forms of sexual penetration is a proper aggravating factor to enhance a sentence for a conviction under Minn. Stat. § 609.342, subd. 1(g) (2002) when the

conduct underlying the offense includes multiple acts of sexual abuse over an extended period of time.

### **Statutes**

*In re Risk Level Determination of G.G.*, (A09-7), 771 N.W.2d 64 (Minn. App. 2009), *review denied* (Minn. Nov. 17, 2009).

1. Minn. Stat. § 243.166, subd. 1b(b)(2) (2008), which provides that a predatory offender who “enters this state and remains for 14 days or longer” must register, does not require that the offender’s entry into Minnesota be volitional.

2. An end-of-confinement review committee has no authority under Minn. Stat. § 244.052, subd. 3(a) (2008), to assign a risk level to a predatory offender who was never incarcerated in a Minnesota correctional facility or treatment center.

*State v. McCurry*, (A08-931), 770 N.W.2d 553 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

Evidence is admissible under Minn. Stat. § 634.20 (2006) only when the charges being tried include a charge constituting domestic abuse.

*State v. Sopko*, (A08-1971), 770 N.W.2d 543 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

An individual charged with interference with the privacy of multiple victims, in violation of Minn. Stat. § 609.746, subd. 1(d) (2006), can lawfully be charged and sentenced for a separate offense for each victim.

*State v. Stockwell*, (A08-1900), 770 N.W.2d 533 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

1. Although the stalking provision in Minn. Stat. § 609.749, subd. 2(a)(2) (2006) is broad and in limited circumstances may extend to expression-related conduct, because it focuses on wrongful conduct, protects rights of the victim, and is subject to limiting construction, the statute is not unconstitutionally void for facial overbreadth.

2. Because the provision in Minn. Stat. § 609.749, subd. 2(a)(2) provides sufficient notice that specific conduct is criminal, the statute is not unconstitutionally void for vagueness.

*State v. Marinaro*, (A08-972), 768 N.W.2d 393 (Minn. App. 2009), *review denied* (Minn. Sept. 29, 2009).

The district court did not err by concluding that customers of appellant’s bar were not engaged in a “theatrical performance” while smoking in the bar on the date of the alleged offense. Accordingly, the district court did not err by finding appellant guilty of allowing smoking in a public place in violation of Minnesota Statutes section 144.417, subdivision 2(a) (Supp. 2007).

*Odegard v. State*, (A08-2012), 767 N.W.2d 472 (Minn. App. 2009).

*State v. Wiltgen*, 737 N.W.2d 561 (Minn. 2007), stated a new rule of constitutional criminal procedure precluding use of an unreviewed license revocation to enhance a driving-while-impaired offense. But *Wiltgen* is not a “watershed” rule that applies retroactively on collateral review.

*State v. Jiles*, (A08-1466), 767 N.W.2d 27 (Minn. App. 2009), *review denied* (Minn. Aug. 26, 2009).

An extended-jurisdiction juvenile adjudication is considered a conviction for purposes of the mandatory-minimum-sentence provisions set forth in Minn. Stat. § 609.11, subds. 5(b), 8(b) (2006).

*State v. Turnbull*, (A08-532), 766 N.W.2d 78 (Minn. App. 2009).

The Second Amendment to the United States Constitution is not incorporated in the Due Process Clause so as to be enforceable against the states; thus, Minn. Stat. § 624.713 (2006), Minnesota’s ineligible-person-in-possession-of-a-firearm statute, does not infringe upon Second-Amendment rights.

A juvenile adjudicated delinquent of a violent offense is ineligible to possess a firearm even though the adjudication occurred without a jury trial because a juvenile does not have a constitutional right to a jury trial and, under Minn. Stat. § 624.713, subd. 1(b), persons adjudicated delinquent of a violent offense are ineligible to possess a firearm.

*State v. Gradishar*, (A08-1754), 765 N.W.2d 901 (Minn. App. 2009).

For purposes of Minn. Stat. § 624.7142, which prohibits an individual from carrying a firearm in a public place while under the influence of alcohol, “public place” includes an individual’s place of business if the public have access to the place of business.

*State v. Lopez*, (A08-133), 764 N.W.2d 605, *review granted* (Minn. June 30, 2009).

Appellate review of a district court’s determination that a defendant must register as a predatory offender presents a mixed question of law and fact. Such review is conducted pursuant to the established standards: factual findings for clear error and legal determinations, de novo.

*State v. Basal*, (A08-5), 763 N.W.2d 328 (Minn. App. 2009).

1. Pursuant to Minnesota Statutes section 256J.20, subdivision 3, the value of loans made against a motor vehicle owned by a recipient of public-assistance benefits is not subtracted from the value of the motor vehicle when calculating the recipient’s assets for purposes of determining his or her eligibility for public-assistance benefits.

2. The 2007 amendment to Minnesota Statutes section 256J.20, subdivision 3(1), does not apply retroactively to appellant’s September 2005 recertification application for public-assistance benefits.

*State v. Fleck*, (A08-72), 763 N.W.2d 39 (Minn. App. 2009), *review granted* (Minn. June 16, 2009).

Evidence that a person was alone, intoxicated, and asleep behind the wheel of his operable motor vehicle parked in an assigned space in his apartment's parking lot at 11:30 p.m. with the keys on the center console, is sufficient to support a finding that the person was in physical control of the motor vehicle within the meaning of Minn. Stat. § 169A.20, subd. 1(1), (5) (2006).

*State v. Williams*, (A08-1658), 762 N.W.2d 583 (Minn. App. 2009), *review denied* (Minn. May 27, 2009).

The term "brother" in Minn. Stat. § 609.341, subd. 15(2) (2006), includes half-brothers or brothers of the half blood.

*State v. Kail*, (A08-1081), 760 N.W.2d 16 (Minn. App. 2009).

1. Whether a deaf person qualifies as a "person disabled in communication" as defined in Minnesota Statutes section 611.31 (2006), obliging the state to assign an interpreter for a proceeding, depends on the communication method used during the proceeding.

2. A person who fully understands and communicates in writing during an arrest and subsequent implied consent proceeding is not a "person disabled in communication," despite being unable to hear and speak, and is therefore not entitled to a sign-language interpreter under Minnesota Statutes section 611.32 (2006).

*State v. Romine*, (A07-1244), 757 N.W.2d 884 (Minn. App. 2008), *review denied* (Minn. Feb. 17, 2009).

1. A person may not challenge the constitutionality of an order for protection issued pursuant to chapter 518B of the Minnesota Statutes, or the constitutionality of the statute on which the order was based, in a subsequent criminal prosecution for a violation of the order.

2. Subdivisions 14(j), 14(l), and 14(m) of Minnesota Statutes section 518B.01 do not authorize a district court to order the forfeiture and destruction of firearms belonging to a person who has been found guilty of a violation of subdivision 14(b).

*State v. Verdon*, (A07-1811), 757 N.W.2d 879 (Minn. App. 2008), *review denied* (Minn. Feb. 25, 2009).

1. Because the assignment of a Minnesota Offense Code to a defendant's offense does not enhance the defendant's sentence beyond the presumptive guidelines sentence, the right to a jury trial recognized in *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004) is not applicable to factual determinations incident to that assignment.

2. A judicial assignment of a Minnesota Offense Code must have a basis in the record, and a reviewing court will only reverse the district court's assignment if it is clearly erroneous.

*State v. Peck*, (A08-579), 756 N.W.2d 510 (Minn. App. 2008), *rev'd*, 773 N.W.2d 768 (Minn. 2009).

Under the rules of statutory construction, the definition in Minn. Stat. § 152.01, subd. 9a (2006), of a mixture containing a controlled substance must be construed as something prepared for the purpose of drug use, sale, or manufacturing. Because the post-use by-product of a methamphetamine bong is created through drug use and not prepared for the purpose of drug use, sale, or manufacturing, the water contained in the post-use by-product is not a mixture as defined in § 152.01, subd. 9a.

*State v. Campbell*, (A08-218), 756 N.W.2d 263 (Minn. App. 2008), *review denied* (Minn. Dec. 23, 2008).

Minn. Stat. § 609.2335, subd. 1(1) (2002), criminalizing financial exploitation of a vulnerable adult, is not unconstitutionally vague as applied to a defendant holding joint bank accounts with a vulnerable adult if circumstances indicate the existence of a fiduciary relationship.

*State v. Linville*, (A07-2323), 755 N.W.2d 314 (Minn. App. 2008), *review denied* (Minn. Nov. 18, 2008), *cert. denied*, 129 S. Ct. 2779 (2009).

If an individual arraigned on a charge of possession of firearms by an ineligible person moves successfully for dismissal of that charge under *Whitten v. State*, 690 N.W.2d 561 (Minn. App. 2005), the arraignment on the first charge precludes the dismissal of any subsequent charges of possession of firearms by an ineligible person under *Whitten*.

### **Sufficiency of Evidence**

*State v. Marinaro*, (A08-972), 768 N.W.2d 393 (Minn. App. 2009), *review denied* (Minn. Sept. 29, 2009).

The district court did not err by concluding that customers of appellant's bar were not engaged in a "theatrical performance" while smoking in the bar on the date of the alleged offense. Accordingly, the district court did not err by finding appellant guilty of allowing smoking in a public place in violation of Minnesota Statutes section 144.417, subdivision 2(a) (Supp. 2007).

*State v. Baynes*, (A08-1914), 766 N.W.2d 343 (Minn. App. 2009).

The state may not raise issues of inconsistent verdicts and insufficiency of the evidence supporting those verdicts in a post-trial sentencing appeal because, consistent with Minn. R. Crim. P. 28.05, subd. 2, those issues exceed the scope of appellate review available in a sentencing appeal, and the remedies appellant seeks are not provided for by law.

*State v. Fleck*, (A08-72), 763 N.W.2d 39 (Minn. App. 2009), *review granted* (Minn. June 16, 2009).

Evidence that a person was alone, intoxicated, and asleep behind the wheel of his operable motor vehicle parked in an assigned space in his apartment's parking lot at 11:30 p.m. with the keys on the center console, is sufficient to support a finding that the person was in physical control of the motor vehicle within the meaning of Minn. Stat. § 169A.20, subd. 1(1), (5) (2006).

*In re Welfare of S.J.J.*, (A08-639), 755 N.W.2d 316 (Minn. App. 2008).

There is no fleeting-possession defense to the crime of illegal possession of a firearm in Minn. Stat. § 624.713 (2006).

### **Trial**

*State v. Bjergum*, (A08-912), 771 N.W.2d 53 (Minn. App. 2009), *review denied* (Minn. Nov. 17, 2009).

1. A defendant is not entitled to a voluntary-intoxication instruction for crimes that have no specific-intent element.

2. The crime of recklessly making terroristic threats under Minnesota Statutes section 609.713, subdivision 1 contains no specific-intent element.

*State v. McCurry*, (A08-931), 770 N.W.2d 553 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

Evidence is admissible under Minn. Stat. § 634.20 (2006) only when the charges being tried include a charge constituting domestic abuse.

*State v. Booker*, (A08-420), 770 N.W.2d 161 (Minn. App. 2009), *review denied* (Minn. Oct. 20, 2009).

A defendant in a criminal case does not have a right under the rules of criminal procedure to be present at a hearing at which a district court considers whether a witness has a Fifth Amendment privilege to refuse to testify at the defendant's trial. The hearing is not a "stage of the trial," as that term is used in Minn. R. Crim. P. 26.03, subd. 1(1).

*State v. Baynes*, (A08-1914), 766 N.W.2d 343 (Minn. App. 2009).

The state may not raise issues of inconsistent verdicts and insufficiency of the evidence supporting those verdicts in a post-trial sentencing appeal because, consistent with Minn. R. Crim. P. 28.05, subd. 2, those issues exceed the scope of appellate review available in a sentencing appeal, and the remedies appellant seeks are not provided for by law.

*Finnegan v. State*, (A08-777), 764 N.W.2d 856 (Minn. App. 2009), *review granted* (Minn. July 22, 2009).

A defendant voluntarily and without justification absents himself from trial after trial has commenced by attempting suicide, and thereby, waives his right to be present at all stages of trial.

*State v. Morales*, (A07-2401), 764 N.W.2d 621 (Minn. App. 2009), *review granted* (Minn. July 22, 2009).

1. It is error to admit portions of a declarant's out-of-court statement that are not against his penal interest, but rather inculcate the defendant, when redactions meant to eliminate the inculpatory inference are undermined by the circumstances under which the statements are admitted and by the prosecutor's closing argument disregarding the redactions.

2. The prosecution may not, by questioning a witness who has invoked his Fifth Amendment privilege, rely on the details of his prior testimony cited in the questioning as critical support for its case.

*State v. Jackson*, (A08-1), 764 N.W.2d 612 (Minn. App. 2009), *review denied* (Minn. July 22, 2009).

Firearm-trace reports are not testimonial in nature and do not implicate a defendant's right to confrontation under *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004), because they are not prepared for purposes of litigation, but rather exist merely to track a gun's ownership and possession.

*State v. Lopez*, (A08-133), 764 N.W.2d 605, *review granted* (Minn. June 30, 2009).

Appellate review of a district court's determination that a defendant must register as a predatory offender presents a mixed question of law and fact. Such review is conducted pursuant to the established standards: factual findings for clear error and legal determinations, de novo.

*State v. Hakala*, (A08-215), 763 N.W.2d 346 (Minn. App. 2009), *review granted* (Minn. June 16, 2009).

In a case involving the alleged sexual abuse of children, a district court abuses its discretion by excluding expert witness testimony offered for the limited purpose of challenging the validity of the interview techniques and protocols utilized to conduct the interviews of the alleged victims.

*State v. Kail*, (A08-1081), 760 N.W.2d 16 (Minn. App. 2009).

1. Whether a deaf person qualifies as a "person disabled in communication" as defined in Minnesota Statutes section 611.31 (2006), obliging the state to assign an interpreter for a proceeding, depends on the communication method used during the proceeding.

2. A person who fully understands and communicates in writing during an arrest and subsequent implied consent proceeding is not a “person disabled in communication,” despite being unable to hear and speak, and is therefore not entitled to a sign-language interpreter under Minnesota Statutes section 611.32 (2006).

*State v. Leutschaft*, (A07-1844) 759 N.W.2d 414 (Minn. App. 2009), *review denied* (Minn. Mar. 17, 2009)

1. Although an unsubstantiated intimation that the accused “tailored” his trial testimony to fit the testimony of another witness or the opponent’s case violates the accused’s rights of confrontation and due process, questions about “tailoring” may be proper if the facts show that possibility.

2. Questions that seek to elicit from a witness testimony that another witness was lying are rarely proper and may be asked only when credibility is held in central focus through either an express or unmistakably implied accusation that a witness has testified falsely.

3. It is not improper vouching when a prosecutor, without injecting personal opinion, argues that a witness testified honestly and that the witness’s version of the incident at issue was plausible.

4. Although it was not improper for the prosecutor in final argument to refer to the incident at issue as “road rage” because that characterization was part of the trial evidence, it was improper to suggest that such incidents often end with shootings, a proposition not supported by the evidence.

*State v. Williams*, (A07-1502), 757 N.W.2d 504 (Minn. App. 2008), *aff’d*, 771 N.W.2d 514 (Minn. 2009).

Where a defendant’s multiple offenses arise from a single behavioral incident and include possession of a firearm by an ineligible person, Minn. Stat. § 609.035, subd. 3 (2006), permits separate sentencing for the convictions and, accordingly, the first occurring offense may be included in the criminal-history score to determine the presumptive sentence for the second offense.

*State v. DeWalt*, (A07-1610), 757 N.W.2d 282 (Minn. App. 2008).

1. A district court does not err by proceeding at trial with the defendant absent from the courtroom when the record demonstrates that the defendant’s absence is voluntary.

2. The state must charge an offense by indictment, in accordance with Minn. R. Crim. P. 17.01, in order for a district court to have authority to impose an enhanced criminal sentence of life imprisonment.

*State v. Johnson*, (A07-1189), 756 N.W.2d 883 (Minn. App. 2008), *review denied* (Minn. Dec. 23, 2008).

1. An autopsy report is “testimonial” in nature, and therefore implicates a defendant’s right to confrontation under *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004).

2. Attempted offenses, other than attempted first-degree murder, are not listed in section VI of the Minnesota Sentencing Guidelines, and, therefore, are not offenses for which permissive consecutive sentences may be imposed.

*Jama v. State*, (A07-1864), 756 N.W.2d 107 (Minn. App. 2008).

The bar against raising issues in postconviction proceedings that were known at the time of a direct appeal does not apply to ineffective-assistance-of-trial-counsel claims when counsel on direct appeal was also trial counsel.

*State v. Word*, (A07-907), 755 N.W.2d 776 (Minn. App. 2008).

When a district court’s pretrial ruling on a motion in limine is qualified, general, and only allows introduction of limited relationship evidence pursuant to Minn. Stat. § 634.20 (2006), in order to preserve claims of error on appeal, defense counsel must object at trial to what counsel considers excessive, unfair, or prejudicial evidence.

*State v. Jones*, (A07-1168), 755 N.W.2d 341 (Minn. App. 2008), *aff’d*, 772 N.W.2d. 496 (Minn. 2009).

A criminal defendant who is ineligible for a public defender and fails to hire a private attorney, despite multiple warnings from the district court, has validly waived his right to counsel and may be required to proceed pro se.

## **Waivers**

*Carey v. State*, (A08-432), 765 N.W.2d 396 (Minn. App. 2009), *review denied* (Minn. Aug. 11, 2009).

A criminal defendant is not entitled to withdraw a guilty plea on the ground that the district court, pursuant to a plea agreement, imposed sentences on two or more convictions in a non-chronological manner, contrary to section II.F. of the sentencing guidelines.

*Finnegan v. State*, (A08-777), 764 N.W.2d 856 (Minn. App. 2009), *review granted* (Minn. July 22, 2009).

A defendant voluntarily and without justification absents himself from trial after trial has commenced by attempting suicide, and thereby, waives his right to be present at all stages of trial.

*State v. Antrim*, (A08-548), 764 N.W.2d 67 (Minn. App. 2009).

Failure to strictly comply with all of the waiver requirements of Minn. R. Crim. P. 26.01, subd. 3, requires reversal of a conviction entered pursuant to a defendant's stipulation to the prosecutor's case under Minn. R. Crim. P. 26.01, subd. 4.

*Oldenburg v. State*, (A08-601), 763 N.W.2d 655 (Minn. App. 2009).

The addition of a conditional-release term to a sentence for felony driving while impaired does not violate a plea agreement when the plea agreement did not include a guaranteed durational time limit on prison time and the defendant had notice of the conditional-release term at the time of the plea.

*Williams v. State*, (A07-2447), 760 N.W.2d 8 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009).

An adequate factual basis for a *Norgaard* plea exists if the record provides a strong factual basis for the plea, and the defendant acknowledges that the evidence is sufficient to support his or her conviction.

*State v. Verdon*, (A07-1811), 757 N.W.2d 879 (Minn. App. 2008), *review denied* (Minn. Feb. 25, 2009).

1. Because the assignment of a Minnesota Offense Code to a defendant's offense does not enhance the defendant's sentence beyond the presumptive guidelines sentence, the right to a jury trial recognized in *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004) is not applicable to factual determinations incident to that assignment.

2. A judicial assignment of a Minnesota Offense Code must have a basis in the record, and a reviewing court will only reverse the district court's assignment if it is clearly erroneous.

*State v. Jones*, (A07-1168), 755 N.W.2d 341 (Minn. App. 2008), *aff'd*, 772 N.W.2d. 496 (Minn. 2009).

A criminal defendant who is ineligible for a public defender and fails to hire a private attorney, despite multiple warnings from the district court, has validly waived his right to counsel and may be required to proceed pro se.

## **DEBTOR/CREDITOR**

### **Liens**

*Premier Bank v. Becker Dev., LLC*, (A08-1252), 767 N.W.2d 691 (Minn. App. 2009), *review granted* (Minn. Sept. 16, 2009).

A contractor may foreclose a perfected blanket mechanic's lien on less than all the property subject to the lien, provided that the equities demonstrate that the foreclosure does not unfairly burden the property foreclosed on.

## **Other**

*Metro Gold, Inc. v. Coin.*, (A07-2117), 757 N.W.2d 924 (Minn. App. 2008).

1. In an action pursuant to Minn. Stat. § 604.113 (2006), the issuer of a dishonored check must receive actual notice that the check was dishonored before civil penalties may attach for failure to honor the check within the statutory time period.

2. The district court has the discretion to apply the defense of impossibility to a claim for penalties under Minn. Stat. § 604.113.

## **DRIVERS LICENSES**

(Implied Consent License Revocation Unless Otherwise Specified)

*State v. Omwega*, (A08-1738), 769 N.W.2d 291 (Minn. App. 2009), *review denied* (Minn. Sept. 29, 2009).

The Sixth Amendment does not require the State to prove all of the underlying facts of an implied-consent license revocation beyond the existence of the revocation itself in order to use the revocation to enhance a charge of driving while impaired.

*State v. Crane*, (A08-377), 766 N.W.2d 68 (Minn. App. 2009), *review denied* (Minn. Aug. 26, 2009).

Absent further developments in the ongoing litigation between the state and CMI, the manufacturer of the Intoxilyzer 5000EN, a district court's finding that the state does not possess the Intoxilyzer source code is clearly erroneous under the supreme court's ruling in *State v. Underdahl*.

## **Investigatory Stop or Seizure**

*State v. White*, (A08-12), 759 N.W.2d 667 (Minn. App. 2009).

Under Minn. Stat. § 169.79, subd. 7 (2006), it is illegal to cover assigned letters, numbers, and a state of origin on a license plate with any material.

*Mell v. Comm'r of Pub. Safety*, (A07-2372), 757 N.W.2d 702 (Minn. App. 2008).

Routine administration of preliminary breath tests during jail booking for non-alcohol-related offenses and use of the results to invoke the implied-consent law is not unconstitutional.

## **PBT**

*Mell v. Comm'r of Pub. Safety*, (A07-2372), 757 N.W.2d 702 (Minn. App. 2008).

Routine administration of preliminary breath tests during jail booking for non-alcohol related offenses and use of the results to invoke the implied-consent law is not unconstitutional.

## **Probable Cause**

*Mell v. Comm’r of Pub. Safety*, (A07-2372), 757 N.W.2d 702 (Minn. App. 2008).

Routine administration of preliminary breath tests during jail booking for non-alcohol-related offenses and use of the results to invoke the implied-consent law is not unconstitutional.

## **Statutory Grounds for Requiring Test**

*Mell v. Comm’r of Pub. Safety*, (A07-2372), 757 N.W.2d 702 (Minn. App. 2008).

Routine administration of preliminary breath tests during jail booking for non-alcohol-related offenses and use of the results to invoke the implied-consent law is not unconstitutional.

## **Testing**

*Johnson v. Comm’r of Pub. Safety*, (A07-2413), 756 N.W.2d 140 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008).

In an implied-consent-law case, a peace officer may satisfy the test-result-certification requirement in Minn. Stat. § 169A.52, subd. 4(a) (2006), despite an erroneously completed Peace Officer’s Certificate, so long as the officer forwards to the Commissioner of Public Safety other documents signed by the officer that verify the test results.

# **EMPLOYMENT**

## **Contract Claims**

*Softchoice, Inc. v. Schmidt*, (A08-763, A08-965), 763 N.W.2d 660 (Minn. App. 2009).

1. Under Missouri law, an employee’s participation in an “employee-retention plan” may serve as consideration for a non-competition agreement if, at the time the employee enters into the plan, the employer contributes something of value into the plan.

2. For the purpose of determining whether a promotion may serve as valid consideration for a non-solicitation agreement between an employee and employer, the relevant time period to examine is when the promotion has been formally offered and accepted in writing by the employee.

## **Discrimination**

*Friend v. Gopher Co.*, (A08-1810), 771 N.W.2d 33 (Minn. App. 2009).

1. Employment-discrimination claims based on allegations of disparate treatment may be proved using one of two evidentiary frameworks: direct evidence of

discriminatory motive or the shifting-burdens analysis of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973).

2. A discrimination claim may be proved under the direct-evidence framework using direct or circumstantial evidence, or a combination of direct and circumstantial evidence.

*Bahr v. Capella Univ.*, (A08-1367), 765 N.W.2d 428 (Minn. App. 2009), *review granted* (Minn. Aug. 11, 2009).

The Minnesota Human Rights Act requires that a plaintiff claiming reprisal allege sufficient facts to support a claim of a good-faith, reasonable belief that the employment practice opposed was discriminatory. The plaintiff need not establish that the conduct opposed was in fact a violation of the law.

*Whitaker v. 3M Co.*, (A08-816), 764 N.W.2d 631 (Minn. App. 2009), *review denied* (Minn. July 22, 2009).

1. This court reviews a district court's decision granting or denying class certification for abuse of discretion; an erroneous application of Minn. R. Civ. P. 23 constitutes an abuse of discretion.

2. Parties moving for certification of a class pursuant to Minn. R. Civ. P. 23 have the burden of proving, by a preponderance of the evidence, that the certification requirements of rule 23 have been met.

3. A district court deciding a motion for class certification under Minn. R. Civ. P. 23 must resolve factual disputes relevant to class-certification requirements, including relevant expert disputes, but factual findings by the district court on class certification are not binding on the ultimate trier of fact.

*Baer v. J.D. Donovan, Inc.*, (A08-1203), 763 N.W.2d 681 (Minn. App. 2009), *review denied* (Minn. June 16, 2009).

An applicant for employment is not an "aggrieved party" within the meaning of the Minnesota Human Rights Act if the applicant is merely requested but not required to provide information pertaining to a protected-class status.

## **Labor Issues**

*Karnewie-Tuah v. Frazier*, (A07-1869), 757 N.W.2d 714 (Minn. App. 2008).

1. An employee's state law claim for tortious interference with contractual relations against her supervisor is preempted by section 301 of the federal Labor Management Relations Act when the contract at issue is a collective bargaining agreement.

2. Section 301 of the federal Labor Management Relations Act preempts an employee's state law defamation claim against her supervisor when the statements alleged to be defamatory are made in the context of a disciplinary or grievance-arbitration procedure established by a collective bargaining agreement.

## **Other**

*Williams v. Bd. of Regents*, (A08-765), 763 N.W.2d 646 (Minn. App. 2009).

If an alleged employee's negligent-misrepresentation claim against a public entity can be determined without evaluating whether the entity wrongfully discharged the alleged employee, judicial consideration of the claim is not limited to certiorari review by the court of appeals.

## **Public Employee**

*Williams v. Bd. of Regents*, (A08-765), 763 N.W.2d 646 (Minn. App. 2009).

If an alleged employee's negligent-misrepresentation claim against a public entity can be determined without evaluating whether the entity wrongfully discharged the alleged employee, judicial consideration of the claim is not limited to certiorari review by the court of appeals.

*In re Application for PERA Retirement Benefits of McGuire*, (A07-2066), 756 N.W.2d 517 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008).

The Public Employees Retirement Association of Minnesota cannot be equitably estopped from denying or rescinding unauthorized payments.

*Alexandria Hous. & Redevelopment Auth. v. Rost*, (A07-1620), 756 N.W.2d 896 (Minn. App. 2008).

A person who has been terminated from public-sector employment is entitled to independent review of the termination under Minn. Stat. § 179A.25 if he or she has a contractual right to not be terminated except for cause. When determining whether a person has a contractual right to not be terminated except for cause for purposes of Minn. Stat. § 179A.25, it is appropriate to consider whether the employer's employment handbook has created a unilateral contract of employment that confers on the employee a contractual right to not be terminated except for cause.

## **Wages and Compensation**

*Erdman v. Life Time Fitness, Inc.*, (A08-1993), 771 N.W.2d 58 (Minn. App. 2009), *review granted* (Minn. Nov. 17, 2009).

The Minnesota Fair Labor Standards Act exempts from its application employees who perform certain types of duties and are paid a salary, defined by rule to mean that an employee "is guaranteed a predetermined wage for each workweek." The salary requirement is met when employees are guaranteed a base salary for each workweek; payroll deductions made to recover unearned bonus advances do not preclude a finding that an employee is paid on a salary basis.

## ENVIRONMENTAL LAW

### Water Quality

*Coal. of Greater Minn. Cites v. Pollution Control Agency*, (A08-1198), 765 N.W.2d 159 (Minn. App. 2009), *review denied* (Minn. Aug. 11, 2009).

1. A petitioner has standing to bring a pre-enforcement challenge to an administrative rule under Minn. Stat. § 14.44 (2008) if the petitioner can show that the rule or its threatened application interferes with or threatens to interfere with its legal rights or privileges.

2. The use of the term “may” in Minn. R. 7053.0255, subp. 4 (Supp. II 2008), permits the Minnesota Pollution Control Agency to exercise its lawful discretion in deciding whether to grant or deny an application for an exemption.

## EQUITY

### Adequate Remedy at Law

*In re Application of City of Redwood Falls*, (A07-1957), 756 N.W.2d 133 (Minn. App. 2008).

The plain language of the Minnesota Public Utilities Act, Minn. Stat. § 216B.40 (2006), precludes the Minnesota Public Utilities Commission from giving effect to an unwritten agreement between two utilities altering the exclusive electric service areas that have been lawfully designated by the commission.

### Collateral Estoppel

*Barth v. Stenwick*, (A08-317), 761 N.W.2d 502 (Minn. App. 2009).

The doctrine of collateral estoppel does not preclude a municipality from defending its interests in land in a registration action when the land is not the same land that was the subject of previous registration actions brought by adjoining landowners.

### Injunctions

*Peterson v. Johnson*, (A07-2175), 755 N.W.2d 758 (Minn. App. 2008).

To establish “harassment” by proof of a physical assault pursuant to the first prong of Minn. Stat. § 609.748, subd. 1(a)(1) (2006), a petitioner must prove that the respondent intentionally inflicted or attempted to inflict bodily harm upon another person.

## **Other**

*Slindee v. Fritch Invs., LLC*, (A08-303), 760 N.W.2d 903 (Minn. App. 2009).

A boundary by practical location based on express agreement requires words or acts by the parties definitely and clearly agreeing to a specific boundary.

*In re Application for PERA Retirement Benefits of McGuire*, (A07-2066), 756 N.W.2d 517 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008).

The Public Employees Retirement Association of Minnesota cannot be equitably estopped from denying or rescinding unauthorized payments.

## **Receivers**

*Equity Trust Co. Custodian v. Cole*, (A08-1681), 766 N.W.2d 334 (Minn. App. 2009).

The equitable remedy of piercing the corporate veil is not limited to shareholders and members of corporate entities, but may be applied to impose personal liability against any parties to a lawsuit who disregard the corporate form.

## **Res Judicata**

*Rucker v. Schmidt*, (A08-1730), 768 N.W.2d 408 (Minn. App. 2009), *review granted* (Minn. Sept. 29, 2009).

A party and his attorney who are each alleged to have committed fraud in an action are not in privity for purposes of res judicata based solely on their attorney-client relationship. Therefore, a successful action against the party for fraud on the court in a district court action does not necessarily, by application of the doctrine of res judicata, bar a separate action by the same plaintiff against the party's attorney for the attorney's alleged individual fraud in the dissolution action.

*In re Crablex*, (A08-458), 762 N.W.2d 247 (Minn. App. 2009), *review denied* (Minn. Apr. 29, 2009).

1. A valid foreclosure of a mortgage terminates all easement interests in the foreclosed real estate that are junior to the mortgage being foreclosed and whose holders are properly joined or notified in the foreclosure action.

2. A mortgage, by a declaration of its mortgagee, may be made subordinate in priority to an easement on the mortgaged real estate.

## **Writs**

*Pigs R Us, LLC v. Compton Twp.*, (A08-1580), 770 N.W.2d 212 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

The Municipal Tort Claims Act does not shield a municipality from damages that are awarded in a mandamus action under Minn. Stat. § 586.09 (2008).

## **EVIDENCE**

(No Criminal Cases)

### **Spoilation**

*Yath v. Fairview Clinics, N.P.*, (A08-1556), 767 N.W.2d 34 (Minn. App. 2009).

1. Posting private information on a publicly accessible Internet website satisfies the publicity element of an invasion-of-privacy claim.

2. The Health Insurance Portability and Accountability Act does not preempt Minnesota Statutes section 144.335 (2006), which gives patients a private right of action for improper disclosure of their medical records.

## **FAMILY LAW**

### **Bankruptcy**

*Fast v. Fast*, (A08-688), 766 N.W.2d 47 (Minn. App. 2009).

A hold-harmless obligation in favor of a spouse or former spouse established in a marriage separation or dissolution proceeding, is an exception to discharge set forth in the bankruptcy code, 11 U.S.C. § 523(a)(15) (2006).

### **Child Custody**

*Schisel v. Schisel*, (A08-190), 762 N.W.2d 265 (Minn. App. 2009).

1. The district court has the authority to restrict the in-state geographical residence of minor children in a marriage dissolution, provided that a restriction is necessary to serve the children's best interests.

2. The conclusion that minor children have become ingrained in a particular community of residence is not alone sufficient to justify a restriction of their residence to that community.

3. In calculating a child-support obligation of a self-employed parent, the district court must consider business expense deductions and must apply the FICA/self-employment tax deduction rate.

4. In calculating child-support adjustments under the *Hortis/Valento* formula, the court must determine actual rather than hypothetical parenting time.

### **Child Support**

*Rose v. Rose*, (A08-1063), 765 N.W.2d 142 (Minn. App. 2009).

1. After January 1, 2008, the income-shares guidelines may be used to demonstrate substantially changed circumstances justifying modification of a child-support obligation under Minn. Stat. § 518A.39, subd. 2(b)(1) (2008).

2. If a party demonstrates entitlement to the presumptions under Minn. Stat. § 518A.39, subd. 2(b)(1), it is not necessary to first or separately show a change in circumstance listed in Minn. Stat. § 518A.39, subd. 2(a) (2008).

3. A party who demonstrates entitlement to the presumption of a substantial change of circumstances under Minn. Stat. § 518A.39, subd. 2(b)(1), must also show that the presumed change has rendered the existing order unreasonable and unfair before a modification may be granted.

*Bauerly v. Bauerly*, (A08-794), 765 N.W.2d 108 (Minn. App. 2009).

Minnesota Statutes, section 518A.52, which states that a public authority shall compensate an obligor for overpaid support through reducing debts and arrearages owed to the obligee and by reducing future support, constitutes a mandate only as to the public authority and does not limit a district court's inherent power to grant equitable relief. Because a district court has inherent equitable powers in marriage-dissolution cases, a district court may, in its discretion, order compensation for overpaid support.

*Schisel v. Schisel*, (A08-190), 762 N.W.2d 265 (Minn. App. 2009).

1. The district court has the authority to restrict the in-state geographical residence of minor children in a marriage dissolution, provided that a restriction is necessary to serve the children's best interests.

2. The conclusion that minor children have become ingrained in a particular community of residence is not alone sufficient to justify a restriction of their residence to that community.

3. In calculating a child-support obligation of a self-employed parent, the district court must consider business expense deductions and must apply the FICA/self-employment tax deduction rate.

4. In calculating child-support adjustments under the *Hortis/Valento* formula, the court must determine actual rather than hypothetical parenting time.

*Hunley v. Hunley*, (A08-123), 757 N.W.2d 898 (Minn. App. 2008).

Because requiring a parent to maintain a life insurance policy for the benefit of the parent's child is in the nature of child support, the district court can require a custodial parent to maintain a life insurance policy if doing so is in the child's best interests and supported by the district court's findings of fact.

*In re Welfare of S.R.S.*, (A07-1725), 756 N.W.2d 123 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008).

1. Minnesota courts do not have subject matter jurisdiction under the Uniform Interstate Family Support Act to modify a Colorado child support order when all of the parties do not reside in Minnesota and the order has not been registered in Minnesota.

2. The full faith and credit clause of the United States Constitution does not require Minnesota to accept subject matter jurisdiction in violation of Minnesota law.

## **Domestic Abuse**

*State v. Romine*, (A07-1244), 757 N.W.2d 884 (Minn. App. 2008), *review denied* (Minn. Feb. 17, 2009).

1. A person may not challenge the constitutionality of an order for protection issued pursuant to chapter 518B of the Minnesota Statutes, or the constitutionality of the statute on which the order was based, in a subsequent criminal prosecution for a violation of the order.

2. Subdivisions 14(j), 14(l), and 14(m) of Minnesota Statutes section 518B.01 do not authorize a district court to order the forfeiture and destruction of firearms belonging to a person who has been found guilty of a violation of subdivision 14(b).

## **Parentage**

*Zentz v. Graber*, (A08-141), 760 N.W.2d 1 (Minn. App. 2009), *review denied* (Minn. Mar. 31, 2009).

A man may establish that he is a presumed father under Minn. Stat. § 257.55, subd. 1(d), by alleging that he has received a child into his home and held the child out as his biological child. These allegations need not be proven by clear and convincing evidence to establish this presumption of paternity.

## **Property Division**

*Kerr v. Kerr*, (A08-1721), 770 N.W.2d 567 (Minn. App. 2009).

Closing costs and taxes towards the purchase of a marital homestead paid with the nonmarital funds of one spouse are not deducted from that spouse's time-of-purchase equity in the homestead when applying the formula for establishing marital and nonmarital equity set forth in *Schmitz v. Schmitz*, 309 N.W.2d 748 (Minn. 1981).

*Fast v. Fast*, (A08-688), 766 N.W.2d 47 (Minn. App. 2009).

A hold-harmless obligation in favor of a spouse or former spouse established in a marriage separation or dissolution proceeding, is an exception to discharge set forth in the bankruptcy code, 11 U.S.C. § 523(a)(15) (2006).

*Alam v. Chowdhury*, (A08-636), 764 N.W.2d 86 (Minn. App. 2009).

For an asset to be characterized and distributed as marital property under Minn. Stat. § 518.003, subd. 3b (2008), the asset must have been acquired during the marital relationship between the parties.

*Schisel v. Schisel*, (A08-190), 762 N.W.2d 265 (Minn. App. 2009).

1. The district court has the authority to restrict the in-state geographical residence of minor children in a marriage dissolution, provided that a restriction is necessary to serve the children's best interests.

2. The conclusion that minor children have become ingrained in a particular community of residence is not alone sufficient to justify a restriction of their residence to that community.

3. In calculating a child-support obligation of a self-employed parent, the district court must consider business expense deductions and must apply the FICA/self-employment tax deduction rate.

4. In calculating child-support adjustments under the *Hortis/Valento* formula, the court must determine actual rather than hypothetical parenting time.

### **ODRO (Qualified Domestic Relations Order)**

*Langston v. Wilson McShane Corp.*, (A07-2034), 758 N.W.2d 583 (Minn. App. 2008), *review granted* (Minn. Feb. 25, 2009).

Whether a domestic relations order can be deemed a “qualified” domestic relations order for purposes of the Employee Retirement Income Security Act is a federal question over which state courts do not have concurrent subject-matter jurisdiction.

### **Reopening Judgment**

*Fast v. Fast*, (A08-688), 766 N.W.2d 47 (Minn. App. 2009).

A hold-harmless obligation in favor of a spouse or former spouse established in a marriage separation or dissolution proceeding, is an exception to discharge set forth in the bankruptcy code, 11 U.S.C. § 523(a)(15) (2006).

### **Spousal Maintenance**

*Hemmingsen v. Hemmingsen*, (A08-1136), 767 NW.2d 711 (Minn. App. 2009), *review granted* (Minn. Sept. 29, 2009).

1. If an obligee raises a colorable claim of bad faith by an obligor who voluntarily retires at a normal or customary retirement age, the obligor must show by a preponderance of the evidence that the change in circumstances was not primarily influenced by a specific intent to decrease or terminate maintenance.

2. Retirement that occurs at a normal or customary retirement age weighs strongly in favor of a finding of good-faith retirement but is not conclusive of good faith.

*Melius v. Melius*, (A08-826, A08-1010), 765 N.W.2d 411 (Minn. App. 2009).

The district court must make a finding of bad faith or unjustifiable self-limitation of income before income can be imputed to a spousal-maintenance obligor.

## **Uniform Laws**

*In re Welfare of S.R.S.*, (A07-1725), 756 N.W.2d 123 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008).

1. Minnesota courts do not have subject matter jurisdiction under the Uniform Interstate Family Support Act to modify a Colorado child support order when all of the parties do not reside in Minnesota and the order has not been registered in Minnesota.

2. The full faith and credit clause of the United States Constitution does not require Minnesota to accept subject matter jurisdiction in violation of Minnesota law.

## **Visitation**

*Dahl v. Dahl*, (A08-580), 765 N.W.2d 118 (Minn. App. 2009).

1. For purposes of a motion to modify parenting time under Minn. Stat. § 518.175, subd. 5 (2008), the baseline parenting-time order is the last final and permanent order establishing parenting time.

2. The rebuttable presumption in Minn. Stat. § 518.175 subd. 1(e) (2008), that a parent is entitled to 25% of parenting time, applies to a motion to modify parenting time.

3. Minn. Stat. § 518.175, subd. 1(c) (2008) applies to a motion to modify parenting time.

## **IMMUNITY**

### **Official**

*Krieger v. City of St. Paul*, (A08-750), 762 N.W.2d 274 (Minn. App. 2009).

For purposes of the trespasser-liability exception to recreational-use immunity, an inherently dangerous condition is not established where death or serious bodily harm might result only in particularly vulnerable users of recreational property.

*J.W. ex rel. B.R.W. v. Intermediate Sch. Dist. No. 287*, (A08-612), 761 N.W.2d 896 (Minn. App. 2009).

1. A school district's decision, when made after a consideration of the implicated safety and privacy issues, not to disclose certain prior acts and behavior of a student on that student's bus-transportation form is discretionary and therefore protected by statutory immunity.

2. Following the explicit and unambiguous seating instructions contained on a student's bus-transportation form is a ministerial act. A school district employee's failure to follow such instructions is not protected by official immunity.

## **Qualified**

*Pigs R Us, LLC v. Compton Twp.*, (A08-1580), 770 N.W.2d 212 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

The Municipal Tort Claims Act does not shield a municipality from damages that are awarded in a mandamus action under Minn. Stat. § 586.09 (2008).

*Williams v. Bd. of Regents*, (A08-765), 763 N.W.2d 646 (Minn. App. 2009).

If an alleged employee's negligent-misrepresentation claim against a public entity can be determined without evaluating whether the entity wrongfully discharged the alleged employee, judicial consideration of the claim is not limited to certiorari review by the court of appeals.

## **Statutory**

*Pigs R Us, LLC v. Compton Twp.*, (A08-1580), 770 N.W.2d 212 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

The Municipal Tort Claims Act does not shield a municipality from damages that are awarded in a mandamus action under Minn. Stat. § 586.09 (2008).

*Losen v. Allina Health System*, (A08-1478), 767 N.W.2d 703 (Minn. App. 2009), *review denied* (Minn. Sept. 29, 2009).

Statutory immunity under Minn. Stat. § 253B.23, subd. 4 (2008), applies to an examiner's good-faith decision that a proposed patient cannot be placed on a 72-hour emergency hold.

*Krieger v. City of St. Paul*, (A08-750), 762 N.W.2d 274 (Minn. App. 2009).

For purposes of the trespasser-liability exception to recreational-use immunity, an inherently dangerous condition is not established where death or serious bodily harm might result only in particularly vulnerable users of recreational property.

*J.W. ex rel. B.R.W. v. Intermediate Sch. Dist. No. 287*, (A08-612), 761 N.W.2d 896 (Minn. App. 2009).

1. A school district's decision, when made after a consideration of the implicated safety and privacy issues, not to disclose certain prior acts and behavior of a student on that student's bus-transportation form is discretionary and therefore protected by statutory immunity.

2. Following the explicit and unambiguous seating instructions contained on a student's bus-transportation form is a ministerial act. A school district employee's failure to follow such instructions is not protected by official immunity.

## INDIAN LAW

*State v. Roy*, (A08-116), 761 N.W.2d 883 (Minn. App. 2009), *review denied* (Minn. May 19, 2009).

Under Public Law 280, Minnesota has jurisdiction to prosecute a tribal member for a violation of the felon-in-possession statute, Minn. Stat. § 609.165 (2004), because: (a) the inability to possess a firearm under Minn. Stat. § 609.165 is the result of the individual's criminal conduct; (b) the prosecution does not affect the tribe's treaty hunting rights; and (c) Minn. Stat. § 609.165 is criminal/prohibitory.

### **State Jurisdiction – Civil**

*In re Welfare of Children of R.A.J.*, (A09-140), 769 N.W.2d 297 (Minn. App. 2009).

The district court had jurisdiction to vacate its order transferring a child-welfare proceeding to tribal court before tribal court proceedings commenced, when the district court found that “misrepresentations were intentionally and wrongfully advanced [to the district court] to gain [its] agreement to transfer” the proceeding.

*Oberloh v. Johnson*, (A08-80), 768 N.W.2d 373 (Minn. App. 2009).

Tribal sovereign immunity extends to a tribal treasurer acting within the scope of authority bestowed by the tribe.

### **Tribal Sovereign Immunity**

*Oberloh v. Johnson*, (A08-80), 768 N.W.2d 373 (Minn. App. 2009).

Tribal sovereign immunity extends to a tribal treasurer acting within the scope of authority bestowed by the tribe.

## INSURANCE

*Meyer v. Nwokedi*, (A08-250), 759 N.W.2d 426 (Minn. App. 2009), *review granted* (Minn. Mar. 31, 2009).

1. Minn. Stat. § 169.09, subd. 5a (2008), is preempted by 49 U.S.C. § 30106 (Supp. V. 2005), to the extent that section 169.09, subdivision 5a, seeks to impose vicarious liability on the owner of a rental vehicle.

2. Minn. Stat. § 65B.49, subd. 5a(i)(2) (2008), which limits the vicarious liability of a rental-vehicle owner, is not preserved by the “savings clause” in 49 U.S.C. § 30106(b), and is therefore preempted.

## **Agents or Policy**

*Jarvis & Sons, Inc. v. Int'l Marine Underwriters*, (A08-1402), 768 N.W.2d 365 (Minn. App. 2009).

1. Minnesota courts may exercise subject-matter jurisdiction over in personam suits involving marine insurance under the saving-to-suitors clause of 28 U.S.C. § 1333 (2006).

2. Because Congress and the federal courts have left regulation of marine insurance to the states, state law applies to interpretation of a marine insurance policy.

3. In a maritime-liability-insurance policy extending to off-season risks, an endorsement stating that the policy will terminate “as soon as the Vessel leaves her moorings” overrides a policy provision that voids coverage for violation of a vessel-owner’s warranty that the vessel is “laid up and out of commission.”

*Donnelly Bros. v. State Auto Prop. & Cas. Ins. Co.*, (A08-457), 759 N.W.2d 651 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009).

1. The insurer, under an occurrence-liability-insurance policy, has a presumptive duty to defend an insured contractor against a negligence action for damages caused by water intrusion that occurred during the policy period.

2. Summary judgment determining that an insurer has no duty to defend a construction contractor against claims for damages caused by water intrusion that occurred during the policy period of an occurrence-liability policy is proper only if the record clearly and convincingly establishes that initial water-intrusion damage attributable to that contractor occurred prior to the effective policy date and that allocation is not applicable.

## **Arbitration**

*State Farm Mut. Auto. Ins. Co. v. Frelix*, (A08-1045), 764 N.W.2d 581 (Minn. App. 2009).

By statute, mandatory no-fault arbitration is appropriate if expenses incurred by the claimant at the commencement of arbitration are less than or equal to \$10,000. If no-fault expenses are incurred by the claimant on the same day that the petition for arbitration is filed, and those expenses bring the total expenses submitted substantially over the jurisdictional limit, mandatory arbitration is inappropriate.

## **Automobile Liability Coverage**

*Vee v. Ibrahim*, (A08-1695, A08-1702), 769 N.W.2d 770 (Minn. App. 2009), *review denied* (Minn. Sept. 29, 2009).

A semitrailer is not a “motor vehicle” for the purpose of applying the motor vehicle vicarious liability statute, Minnesota Statutes section 169.09, subdivision 5a.

## **Commercial General Liability Insurance**

*Donnelly Bros. v. State Auto Prop. & Cas. Ins. Co.*, (A08-457), 759 N.W.2d 651 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009).

1. The insurer, under an occurrence-liability-insurance policy, has a presumptive duty to defend an insured contractor against a negligence action for damages caused by water intrusion that occurred during the policy period.

2. Summary judgment determining that an insurer has no duty to defend a construction contractor against claims for damages caused by water intrusion that occurred during the policy period of an occurrence-liability policy is proper only if the record clearly and convincingly establishes that initial water-intrusion damage attributable to that contractor occurred prior to the effective policy date and that allocation is not applicable.

## **Duty to Defend**

*Hornberger v. Wendel*, (A08-903), 764 N.W.2d 371 (Minn. App. 2009).

An attorney-client relationship exists between an insured and defense counsel retained by a liability insurer on the insured's behalf, and this relationship is not nullified because the insurer and defense counsel have not had contact with the insured regarding the defense of a claim.

*Donnelly Bros. v. State Auto Prop. & Cas. Ins. Co.*, (A08-457), 759 N.W.2d 651 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009).

1. The insurer, under an occurrence-liability-insurance policy, has a presumptive duty to defend an insured contractor against a negligence action for damages caused by water intrusion that occurred during the policy period.

2. Summary judgment determining that an insurer has no duty to defend a construction contractor against claims for damages caused by water intrusion that occurred during the policy period of an occurrence-liability policy is proper only if the record clearly and convincingly establishes that initial water-intrusion damage attributable to that contractor occurred prior to the effective policy date and that allocation is not applicable.

## **Homeowners**

*RAM Mut. Ins. Co. v. Meyer*, (A08-864), 768 N.W.2d 399 (Minn. App. 2009), *review denied* (Minn. Oct. 20, 2009).

An intentional-act exclusion in a liability-insurance policy only excludes coverage for those occurrences in which the act is so willful and egregious or the anticipated injury is so obvious that the injury is not accidental.

*SECURA Supreme Ins. Co. v. Larson*, (A07-1736), 755 N.W.2d 320 (Minn. App. 2008), *review denied* (Minn. Nov. 18, 2008).

1. The phrase “results from” is identical in meaning to the phrase “arises out of” when used to describe the scope of the injuries for which a criminal-act exclusion contained in a homeowners’ insurance policy precludes coverage.

2. The inclusion of a severability clause in a homeowners’ insurance policy stating that the policy must be applied separately to each insured does not render ambiguous an otherwise unambiguous criminal-act exclusion that bars coverage for “any insured” for injuries resulting from the criminal conduct of a single insured.

### **Other**

*Jarvis & Sons, Inc. v. Int’l Marine Underwriters*, (A08-1402), 768 N.W.2d 365 (Minn. App. 2009).

1. Minnesota courts may exercise subject-matter jurisdiction over in personam suits involving marine insurance under the saving-to-suitors clause of 28 U.S.C. § 1333 (2006).

2. Because Congress and the federal courts have left regulation of marine insurance to the states, state law applies to interpretation of a marine insurance policy.

3. In a maritime-liability-insurance policy extending to off-season risks, an endorsement stating that the policy will terminate “as soon as the Vessel leaves her moorings” overrides a policy provision that voids coverage for violation of a vessel-owner’s warranty that the vessel is “laid up and out of commission.”

### **UIM (Underinsured Motorist)**

*Johnson v. Cumiskey* (A08-1315), 765 N.W.2d 652 (Minn. App. 2009).

Minnesota’s No-Fault Automobile Insurance Act does not require that motorcycle insurance policies written to provide only limited underinsured motorist coverage under a limits-less-paid structure be reformed to provide full underinsured motorist coverage under a damages-less-paid structure.

*Stroop v. Farmers Ins. Exch.*, (A08-1320), 764 N.W.2d 384 (Minn. App. 2009), *review denied* (Minn. July 22, 2009).

An underinsured-motorist (UIM) claim accrues and the statute of limitations begins to run on the date that the insured plaintiff in an action to recover damages caused by an automobile accident receives notice from the insured plaintiff’s UIM insurer that the UIM insurer will not substitute its check for that of the tortfeasor’s insurer to preserve the UIM insurer’s subrogation rights against the tortfeasor under *Schmidt v. Clothier*.

## INTELLECTUAL PROPERTY

### Other

*Swenson v. Bender*, (A08-576), 764 N.W.2d 596 (Minn. App. 2009), *review denied* (Minn. July 22, 2009).

1. The advisor-student relationship between a doctoral candidate and a university faculty member is not per se fiduciary.

2. The advisor-student relationship does not become fiduciary merely because the candidate and faculty member discuss a potential business relationship arising from ideas in the candidate's dissertation, and it imposes no duty on the faculty member to withhold merited accusations of plagiarism.

## JUVENILE DELINQUENCY

### Disposition

*In re Welfare of M.J.M.*, (A08-998), 766 N.W.2d. 360 (Minn. App. 2009), *review denied* (Minn. Aug. 26, 2009).

1. A district court does not have jurisdiction to revoke a stay of adjudication in a juvenile delinquency matter after expiration of the 180-day period allowed by law to continue the stay.

2. A juvenile's failure to appeal within 30 days of a court's order wrongfully extending its jurisdiction over the juvenile does not constitute a waiver of the juvenile's right to object to jurisdiction.

### Extended Jurisdiction Juvenile

*State v. J.E.S.*, (A08-668), 763 N.W.2d 64 (Minn. App. 2009).

A juvenile court may not revoke the probation of an EJJ offender over 21 based on violations that were alleged after the offender turns 21. A juvenile court retains jurisdiction to revoke the probation of an extended jurisdiction juvenile after the offender turns 21 only if the proceeding was commenced before the offender turned 21. A revocation proceeding is commenced pursuant to Minn. R. Juv. Delinq. P. 19.11.

## JUVENILE PROTECTION

### **ICWA-MIFPA (Indian Child Welfare Act – Minnesota Indian Family Preservation Act)**

*In re Welfare of Children of R.A.J.*, (A09-140), 769 N.W.2d 297 (Minn. App. 2009).

The district court had jurisdiction to vacate its order transferring a child-welfare proceeding to tribal court before tribal court proceedings commenced, when the district court found that “misrepresentations were intentionally and wrongfully advanced [to the district court] to gain [its] agreement to transfer” the proceeding.

## LOCAL GOVERNMENT/MUNICIPAL LAW

### **Finances**

*Bridgewater Tele. Co. v. City of Monticello*, (A08-1928), 765 N.W.2d 905 (Minn. App. 2009), *review denied* (Minn. June 16, 2009).

1. The statutory language “utility or other public convenience” contained in Minn. Stat. § 475.52, subd. 1 (2008), which deals with the purpose for which a city may issue a revenue bond, encompasses the creation of a broadband-communication network that would provide telephone, Internet, and cable television services.

2. The prohibition contained in Minn. Stat. § 475.52, subd. 1, against using bonding authority to pay for “current expenses,” does not apply to the “start-up” costs associated with creating a broadband-communication network.

*Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, (A08-767), 765 N.W.2d 403 (Minn. App. 2009), *review granted* (Minn. Aug. 26, 2009).

1. The existence and extent of an economic development authority’s power to condemn property is a question of law subject to de novo review on appeal.

2. A city resolution may condition or limit the power of eminent domain transferred by the city to an economic development authority.

3. When a city delegates control over a development project to an economic development authority, the economic development authority’s power to condemn is limited to that which the city could exercise and actually transferred to the development authority with respect to the project.

### **Mandamus**

*Pigs R Us, LLC v. Compton Twp.*, (A08-1580), 770 N.W.2d 212 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

The Municipal Tort Claims Act does not shield a municipality from damages that are awarded in a mandamus action under Minn. Stat. § 586.09 (2008).

## **Ordinances**

*In re On-Sale Liquor License*, (A08-681), 763 N.W.2d 359 (Minn. App. 2009).

1. Absent a valid ground to suspend or revoke relator's liquor license, respondent city's reliance on the "good cause" standard in the Minneapolis Code of Ordinances § 259.250(9) to support adverse action against the license violated relator's due process rights because the standard failed to provide relator with adequate notice that the off-premises conduct of its patrons could result in adverse action.

2. The city exceeded its express and implied legal authority by imposing conditions on relator's previously issued liquor license because no statute or ordinance authorizes the city to condition a license when the city had no valid ground to suspend or revoke the license.

3. Because this court's review on writ of certiorari is strictly limited to the city council's findings and decision, and because relator's additional constitutional and Minnesota Human Rights Act claims can be litigated in another forum, these additional claims are outside the scope of our review.

*In re Denial of Certification of the Variance Granted to Haslund*, (A08-427), 759 N.W.2d 680 (Minn. App. 2009), *review granted* (Minn. Apr. 21, 2009).

When a municipality's zoning ordinances conflict with Minnesota Department of Natural Resources (DNR) rules enacted under the Lower St. Croix Wild and Scenic River Act, DNR's rules control.

## **PREEMPTION**

*Meyer v. Nwokedi*, (A08-250), 759 N.W.2d 426 (Minn. App. 2009), *review granted* (Minn. Mar. 31, 2009).

1. Minn. Stat. § 169.09, subd. 5a (2008), is preempted by 49 U.S.C. § 30106 (Supp. V. 2005), to the extent that section 169.09, subdivision 5a, seeks to impose vicarious liability on the owner of a rental vehicle.

2. Minn. Stat. § 65B.49, subd. 5a(i)(2) (2008), which limits the vicarious liability of a rental-vehicle owner, is not preserved by the "savings clause" in 49 U.S.C. § 30106(b), and is therefore preempted.

## **Insurance**

*Vee v. Ibrahim*, (A08-1695, A08-1702), 769 N.W.2d 770 (Minn. App. 2009), *review denied* (Minn. Sept. 29, 2009).

A semitrailer is not a "motor vehicle" for the purpose of applying the motor vehicle vicarious liability statute, Minnesota Statutes section 169.09, subdivision 5a.

## **Other**

*Yath v. Fairview Clinics, N.P.*, (A08-1556), 767 N.W.2d 34 (Minn. App. 2009).

1. Posting private information on a publicly accessible Internet website satisfies the publicity element of an invasion-of-privacy claim.

2. The Health Insurance Portability and Accountability Act does not preempt Minnesota Statutes section 144.335 (2006), which gives patients a private right of action for improper disclosure of their medical records.

*Karnewie-Tuah v. Frazier*, (A07-1869), 757 N.W.2d 714 (Minn. App. 2008).

1. An employee's state law claim for tortious interference with contractual relations against her supervisor is preempted by section 301 of the federal Labor Management Relations Act when the contract at issue is a collective bargaining agreement.

2. Section 301 of the federal Labor Management Relations Act preempts an employee's state law defamation claim against her supervisor when the statements alleged to be defamatory are made in the context of a disciplinary or grievance-arbitration procedure established by a collective bargaining agreement.

## **Securities**

*Risdall v. Brown-Wilbert, Inc.*, (A06-1233), 759 N.W.2d 67 (Minn. App. 2009), *review denied* (Minn. Mar. 17, 2009).

Two or more offers or sales of securities will be integrated for purposes of exemption from registration if the offers and sales meet the five-factor test set out in the Note to Rule 502(a), 17 C.F.R. § 230.502(a) (2008).

# **PROBATE**

## **Accounting**

*Lorberbaum v. Huff (In re Margolis Revocable Trust)*, (A08-1407), 765 N.W.2d 919 (Minn. App. 2009).

Under Minn. Stat. § 501B.14, subd. 1(2) (2008), a trustee is generally prohibited from exercising a discretionary power to satisfy a duty of support owed by the trustee to any person. Because this prohibition merely rewrites the terms of a trust to avoid unfavorable tax consequences, public policy does not bar the enforcement of an exculpatory clause to relieve a trustee from liability based on a violation of this section.

## **Claims Against Decedent or Estate**

*In Re Estate of Grote*, (A08-1691), 766 N.W.2d 82 (Minn. App. 2009).

The entirety of any property owned in joint tenancy at the time of death by a recipient of medical assistance benefits that has passed into the estate of the recipient's surviving spouse is available for recovery of benefits paid for the recipient.

## **Medical Assistance**

*In Re Estate of Grote*, (A08-1691), 766 N.W.2d 82 (Minn. App. 2009).

The entirety of any property owned in joint tenancy at the time of death by a recipient of medical assistance benefits that has passed into the estate of the recipient's surviving spouse is available for recovery of benefits paid for the recipient.

## **Trusts**

*Lorberbaum v. Huff (In re Margolis Revocable Trust)*, (A08-1407), 765 N.W.2d 919 (Minn. App. 2009).

Under Minn. Stat. § 501B.14, subd. 1(2) (2008), a trustee is generally prohibited from exercising a discretionary power to satisfy a duty of support owed by the trustee to any person. Because this prohibition merely rewrites the terms of a trust to avoid unfavorable tax consequences, public policy does not bar the enforcement of an exculpatory clause to relieve a trustee from liability based on a violation of this section.

## **Wills**

*Gellert v. Eginton*, (A08-1696), 770 N.W.2d 190 (Minn. App. 2009), *review denied* (Minn. Oct. 20, 2009).

An award of attorney fees under Minn. Stat. § 524.3-720 (2008), is not limited to probate proceedings and may be proper when an interested person prosecutes or pursues a claim that contributes to the benefit of an estate.

# **REAL PROPERTY**

## **Boundary Disputes**

*In re Hauge*, (A08-908), 766 N.W.2d 50 (Minn. App. 2009).

The six-month limitation of actions under Minn. Stat. § 508.28 (2008) applies to a judicial decree of registration and original certificate of title issued pursuant to that decree, but does not apply to the filing of a registered land survey and certificate of title that is issued based on that survey.

*Barth v. Stenwick*, (A08-317), 761 N.W.2d 502 (Minn. App. 2009).

The doctrine of collateral estoppel does not preclude a municipality from defending its interests in land in a registration action when the land is not the same land that was the subject of previous registration actions brought by adjoining landowners.

### **Cartway**

*Kennedy v. Pepin Twp.*, (A08-1921), 767 N.W.2d 30 (Minn. App. 2009), *review granted* (Minn. Sept. 19, 2009).

The requirement of Minn. Stat. § 164.08, subd. 2(a) (2008), that a town board establish a cartway connecting a petitioner's landlocked property with a public road, is not fulfilled by establishing a cartway from a public road only to an unusable portion of petitioner's property from which there is no access to the usable portion of the property.

### **Condemnation-Eminent Domain**

*City of Willmar v. Kvam*, (A08-1405), 769 N.W.2d 775 (Minn. App. 2009), *review denied* (Minn. Oct. 20, 2009).

Minn. Stat. § 465.01 (2008) gives a municipality the authority to take a fee-simple interest, rather than an easement, in property to facilitate the construction and maintenance of sewer and wastewater disposal lines.

*Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, (A08-767), 765 N.W.2d 403 (Minn. App. 2009), *review granted* (Aug. 26, 2009).

1. The existence and extent of an economic development authority's power to condemn property is a question of law subject to de novo review on appeal.
2. A city resolution may condition or limit the power of eminent domain transferred by the city to an economic development authority.
3. When a city delegates control over a development project to an economic development authority, the economic development authority's power to condemn is limited to that which the city could exercise and actually transferred to the development authority with respect to the project.

*City of Jordan v. The Church of St. John Baptist of Jordan*, (A08-999), 764 N.W.2d 71 (Minn. App. 2009).

The prohibition in Minn. Stat. § 315.42 (2008) on the use of land owned by a religious corporation for road or street purposes without the consent of the corporation's governing board precludes the use of land owned by a religious corporation for sidewalk and traffic signal purposes without the consent of the corporation's governing board.

*Oliver v. State*, (A08-646), 760 N.W.2d 912 (Minn. App. 2009), *review dismissed* (Minn. Nov. 16, 2009).

Whether there has been a taking of real property based on the right of access requires courts to analyze whether reasonably convenient and suitable access exists from the public roadway to the perimeter of the private property, not whether the access point may be conveniently reached from some internal location on the property.

*Hous. & Redevelopment Auth. v. Main St. Fridley Props.*, (A08-880), 755 N.W.2d 789 (Minn. App. 2008).

The time to appeal a court order approving the public use or public purpose, necessity, and authority for the taking in a condemnation proceeding under Minn. Stat. § 117.075, subd. 1(c) (2006), is not tolled by a postdecision motion under Minn. R. Civ. App. P. 104.01, subd. 2.

### **Deeds**

*Slindee v. Fritch Invs., LLC*, (A08-303), 760 N.W.2d 903 (Minn. App. 2009).

A boundary by practical location based on express agreement requires words or acts by the parties definitely and clearly agreeing to a specific boundary.

### **Easements**

*Slindee v. Fritch Invs., LLC*, (A08-303), 760 N.W.2d 903 (Minn. App. 2009).

A boundary by practical location based on express agreement requires words or acts by the parties definitely and clearly agreeing to a specific boundary.

### **Improvements to Real Property**

*Wallboard, Inc. v. St. Cloud Mall, LLC*, (A08-319), 758 N.W.2d 356 (Minn. App. 2008).

The prelien-notice exception in Minn. Stat. § 514.011, subd. 4c (2006), does not apply to a tenant who improves lease premises of less than 5,000 usable square feet of space, even if the landlord's entire property exceeds 5,000 square feet.

*Siewert v. N. States Power Co.*, (A07-1975, A07-2070), 757 N.W.2d 909 (Minn. App. 2008), *review granted* (Minn. Feb. 17, 2009).

1. Tort claims for compensatory damages arising from the delivery of electrical service are not barred by the filed-rate doctrine.

2. The district court is not barred by the primary-jurisdiction doctrine from considering common-law damages for tort claims arising from the delivery of electrical service.

3. The statute of repose for improvements to real property, Minn. Stat. § 541.051 (Supp. 2007), does not bar tort claims arising from the delivery of electrical service when the allegations are based solely on the method of service and not on component parts of the electrical-power-distribution system.

### **Mechanics Liens**

*Premier Bank v. Becker Dev., LLC*, (A08-1252), 767 N.W.2d 691 (Minn. App. 2009), *review granted* (Minn. Sept. 16, 2009).

A contractor may foreclose a perfected blanket mechanic's lien on less than all the property subject to the lien, provided that the equities demonstrate that the foreclosure does not unfairly burden the property foreclosed on.

*Wallboard, Inc. v. St. Cloud Mall, LLC*, (A08-319), 758 N.W.2d 356 (Minn. App. 2008).

The prelien-notice exception in Minn. Stat. § 514.011, subd. 4c (2006), does not apply to a tenant who improves lease premises of less than 5,000 usable square feet of space, even if the landlord's entire property exceeds 5,000 square feet.

### **Mortgages**

*Premier Bank v. Becker Dev., LLC*, (A08-1252), 767 N.W.2d 691 (Minn. App. 2009), *review granted* (Minn. Sept. 16, 2009).

A contractor may foreclose a perfected blanket mechanic's lien on less than all the property subject to the lien, provided that the equities demonstrate that the foreclosure does not unfairly burden the property foreclosed on.

*In re Crablex*, (A08-458), 762 N.W.2d 247 (Minn. App. 2009), *review denied* (Minn. Apr. 29, 2009).

1. A valid foreclosure of a mortgage terminates all easement interests in the foreclosed real estate that are junior to the mortgage being foreclosed and whose holders are properly joined or notified in the foreclosure action.

2. A mortgage, by a declaration of its mortgagee, may be made subordinate in priority to an easement on the mortgaged real estate.

## **Other**

*Southcross Commerce Ctr., LLP v. Tupy Props., LLC*, (A08-1324), 766 N.W.2d 704 (Minn. App. 2009).

When a nonmoving party to a summary-judgment motion presents undisputed evidence that conclusively establishes a rebuttable presumption in its favor, the moving party is precluded from obtaining summary judgment.

*Equity Trust Co. Custodian v. Cole*, (A08-1681), 766 N.W.2d 334 (Minn. App. 2009).

The equitable remedy of piercing the corporate veil is not limited to shareholders and members of corporate entities, but may be applied to impose personal liability against any parties to a lawsuit who disregard the corporate form.

*In re Hauge*, (A08-908), 766 N.W.2d 50 (Minn. App. 2009).

The six-month limitation of actions under Minn. Stat. § 508.28 (2008) applies to a judicial decree of registration and original certificate of title issued pursuant to that decree, but does not apply to the filing of a registered land survey and certificate of title that is issued based on that survey.

*JEM Acres, LLC v. Bruno*, (A08-735), 764 N.W.2d 77 (Minn. App. 2009).

A seller, who represents to a buyer that a septic system complies with applicable laws and rules governing sewage-treatment systems and who has reason to know that the representations are false, is not shielded from liability under Minn. Stat. § 115.55, subd. 6 (2008), based on the existence of a septic-system certificate of compliance.

*Halla Nursery, Inc. v. City of Chanhassen*, (A08-233), 763 N.W.2d 42 (Minn. App. 2009), *review granted* (Minn. June 16, 2009).

A permit applicant does not obtain vested rights in a substantially completed construction project when the applicant was aware upon submission of the permit application that the construction sought is prohibited by a prior judgment or relevant city ordinances.

## **Partition**

*Glenwood Inv. Prop. v. Britton Family Trust*, (A08-788), 765 N.W.2d 112 (Minn. App. 2009).

An order for partition under Minn. Stat. § 558.04 (2008) is not reviewable unless appealed within 30 days of the filing of the order pursuant to Minn. Stat. § 558.215 (2008).

## **Priority of Liens**

*Premier Bank v. Becker Dev., LLC*, (A08-1252), 767 N.W.2d 691 (Minn. App. 2009), *review granted* (Minn. Sept. 16, 2009).

A contractor may foreclose a perfected blanket mechanic's lien on less than all the property subject to the lien, provided that the equities demonstrate that the foreclosure does not unfairly burden the property foreclosed on.

*In re Crablex*, (A08-458), 762 N.W.2d 247 (Minn. App. 2009), *review denied* (Minn. Apr. 29, 2009).

1. A valid foreclosure of a mortgage terminates all easement interests in the foreclosed real estate that are junior to the mortgage being foreclosed and whose holders are properly joined or notified in the foreclosure action.

2. A mortgage, by a declaration of its mortgagee, may be made subordinate in priority to an easement on the mortgaged real estate.

## **Unlawful Detainer (Eviction)**

*Wilhite v. Housing & Redevelopment Auth.*, (A07-2103), 759 N.W.2d 252 (Minn. App. 2009).

Failure to vacate a leased residential premises upon the expiration of the lease constitutes a serious lease violation under 24 C.F.R. § 982.552(b)(2) (2008), mandating the termination of Section 8 Rental Assistance.

## **Water Access & Development**

*In re Denial of Certification of the Variance Granted to Haslund*, (A08-427), 759 N.W.2d 680 (Minn. App. 2009), *review granted* (Minn. Apr. 21, 2009).

When a municipality's zoning ordinances conflict with Minnesota Department of Natural Resources (DNR) rules enacted under the Lower St. Croix Wild and Scenic River Act, DNR's rules control.

## **Zoning**

*Pigs R Us, LLC v. Compton Twp.*, (A08-1580), 770 N.W.2d 212 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009).

The Municipal Tort Claims Act does not shield a municipality from damages that are awarded in a mandamus action under Minn. Stat. § 586.09 (2008).

*Krummenacher v. City of Minnetonka*, (A08-1988), 768 N.W.2d 377 (Minn. App. 2009), *review granted* (Minn. Sept. 29, 2009).

1. Minn. Stat. § 462.357, subd. 1e(a) (2008), does not limit a municipality's authority to grant a variance to allow an expansion of a nonconforming property.

2. A municipality's approval of a variance to allow an expansion of a nonconforming accessory building was not unreasonable, arbitrary, or capricious when the reasons articulated by the municipality factually supported the three required factors of undue hardship and the conclusion that the proposed alterations are consistent with the spirit and intent of the ordinance.

3. The district court did not err in refusing to compel discovery when the record was sufficient to allow review of whether a municipality's approval was unreasonable, arbitrary, or capricious.

*In re Denial of Certification of the Variance Granted to Haslund*, (A08-427), 759 N.W.2d 680 (Minn. App. 2009), *review granted* (Minn. Apr. 21, 2009).

When a municipality's zoning ordinances conflict with Minnesota Department of Natural Resources (DNR) rules enacted under the Lower St. Croix Wild and Scenic River Act, DNR's rules control.

## SCHOOL LAW

### **IDEA (Individuals with Disabilities Education Act)**

*Indep. Sch. Dist. No. 12 v. Dep't of Educ.*, (A08-1600), 767 N.W.2d 478 (Minn. App. 2009), *review granted* (Minn. Sept. 16, 2009).

1. The federal Individuals with Disabilities Education Act (IDEA) requires that a child's individualized education program (IEP) include the supplementary aids and services necessary to support that child's participation in selected extracurricular and nonacademic activities that the IEP team determines to be part of an appropriate education for that child.

2. Under IDEA, an IEP need not include supplemental aids and services (accommodations) related to a child's participation in an extracurricular activity that the IEP team determines is not required for an appropriate education of that child.

3. The procedural requirements of IDEA apply to a complaint challenging the failure to include content allegedly required in an IEP.

## STATUTE OF LIMITATIONS

### **Specific Actions**

*Stroop v. Farmers Ins. Exch.*, (A08-1320), 764 N.W.2d 384 (Minn. App. 2009), *review denied* (Minn. July 22, 2009).

An underinsured-motorist (UIM) claim accrues and the statute of limitations begins to run on the date that the insured plaintiff in an action to recover damages caused by an automobile accident receives notice from the insured plaintiff's UIM insurer that

the UIM insurer will not substitute its check for that of the tortfeasor's insurer to preserve the UIM insurer's subrogation rights against the tortfeasor under *Schmidt v. Clothier*.

## TORTS

*Meyer v. Nwokedi*, (A08-250), 759 N.W.2d 426 (Minn. App. 2009), *review granted* (Minn. Mar. 31, 2009).

1. Minn. Stat. § 169.09, subd. 5a (2008), is preempted by 49 U.S.C. § 30106 (Supp. V. 2005), to the extent that section 169.09, subdivision 5a, seeks to impose vicarious liability on the owner of a rental vehicle.

2. Minn. Stat. § 65B.49, subd. 5a(i)(2) (2008), which limits the vicarious liability of a rental-vehicle owner, is not preserved by the "savings clause" in 49 U.S.C. § 30106(b), and is therefore preempted.

### **Breach of Duty of Loyalty or Fiduciary Duty**

*Yath v. Fairview Clinics, N.P.*, (A08-1556), 767 N.W.2d 34 (Minn. App. 2009).

1. Posting private information on a publicly accessible Internet website satisfies the publicity element of an invasion-of-privacy claim.

2. The Health Insurance Portability and Accountability Act does not preempt Minnesota Statutes section 144.335 (2006), which gives patients a private right of action for improper disclosure of their medical records.

*Equity Trust Co. Custodian v. Cole*, (A08-1681), 766 N.W.2d 334 (Minn. App. 2009).

The equitable remedy of piercing the corporate veil is not limited to shareholders and members of corporate entities, but may be applied to impose personal liability against any parties to a lawsuit who disregard the corporate form.

*Swenson v. Bender*, (A08-576), 764 N.W.2d 596 (Minn. App. 2009), *review denied* (Minn. July 22, 2009).

1. The advisor-student relationship between a doctoral candidate and a university faculty member is not per se fiduciary.

2. The advisor-student relationship does not become fiduciary merely because the candidate and faculty member discuss a potential business relationship arising from ideas in the candidate's dissertation, and it imposes no duty on the faculty member to withhold merited accusations of plagiarism.

*Olson & Assocs. v. Leffert, Jay & Polglaze, P.A.*, (A07-2165), 756 N.W.2d 907 (Minn. App. 2008), *review denied* (Minn. Jan. 20, 2009).

1. A client's instructions to an attorney to deposit settlement proceeds into the attorney's trust account for safekeeping pending resolution of a third party's lien against

the settlement proceeds may create a trust that imposes fiduciary duties on the attorney toward the third party for whose benefit the trust was established.

2. Communications between an attorney and third party who has asserted a lien on settlement proceeds made payable to the attorney's client may give rise to an enforceable contract that obligates the attorney to retain settlement proceeds until the resolution of the third party's lien against the settlement proceeds.

### **Consumer Protection Statutes**

*Equity Trust Co. Custodian v. Cole*, (A08-1681), 766 N.W.2d 334 (Minn. App. 2009).

The equitable remedy of piercing the corporate veil is not limited to shareholders and members of corporate entities, but may be applied to impose personal liability against any parties to a lawsuit who disregard the corporate form.

### **Defamation**

*Karnewie-Tuah v. Frazier*, (A07-1869), 757 N.W.2d 714 (Minn. App. 2008).

1. An employee's state law claim for tortious interference with contractual relations against her supervisor is preempted by section 301 of the federal Labor Management Relations Act when the contract at issue is a collective bargaining agreement.

2. Section 301 of the federal Labor Management Relations Act preempts an employee's state law defamation claim against her supervisor when the statements alleged to be defamatory are made in the context of a disciplinary or grievance-arbitration procedure established by a collective bargaining agreement.

### **Infliction of Emotional or Mental Distress**

*Yath v. Fairview Clinics, N.P.*, (A08-1556), 767 N.W.2d 34 (Minn. App. 2009).

1. Posting private information on a publicly accessible Internet website satisfies the publicity element of an invasion-of-privacy claim.

2. The Health Insurance Portability and Accountability Act does not preempt Minnesota Statutes section 144.335 (2006), which gives patients a private right of action for improper disclosure of their medical records.

### **Malpractice**

*Losen v. Allina Health System*, (A08-1478), 767 N.W.2d 703 (Minn. App. 2009), *review denied* (Minn. Sept. 29, 2009).

Statutory immunity under Minn. Stat. § 253B.23, subd. 4 (2008), applies to an examiner's good-faith decision that a proposed patient cannot be placed on a 72-hour emergency hold.

*Fontaine v. Steen*, (A07-2327), 759 N.W.2d 672 (Minn. App. 2009).

1. Whether a legal-malpractice claim requires expert testimony to establish a prima facie case is a question of law, reviewed de novo on appeal.

2. An adverse court ruling on a legal issue does not necessarily constitute a prima facie showing of legal malpractice in that same proceeding.

### **Misrepresentation or Fraud**

*Equity Trust Co. Custodian v. Cole*, (A08-1681), 766 N.W.2d 334 (Minn. App. 2009).

The equitable remedy of piercing the corporate veil is not limited to shareholders and members of corporate entities, but may be applied to impose personal liability against any parties to a lawsuit who disregard the corporate form.

### **Negligence**

*Brayn v. Kissoon*, (A08-1482), 767 N.W.2d 491 (Minn. App. 2009), *review denied* (Minn. Sept. 16, 2009).

In an action for misrepresentation relating to the purchase of a home, it is necessary to prove that the alleged misrepresentation proximately caused the claimed damages.

*Gilmore v. Walgreens Co.*, (A07-2387), 759 N.W.2d 433 (Minn. App. 2009), *review denied* (Minn. Mar. 31, 2009).

A storeowner has a duty of reasonable care to protect an invitee from a dangerous condition, notwithstanding that the condition is open and obvious, if the storeowner should reasonably anticipate that other conditions or circumstances in the store will distract the invitee's attention from the obviously dangerous condition.

### **Other**

*Dykes v. Superior, Inc.*, (A08-583), 761 N.W.2d 892 (Minn. App. 2009), *review granted* (Minn. May 27, 2009).

A settlement agreement that releases one or more joint tortfeasors, and does not expressly reserve the right to pursue claims against other joint tortfeasors, releases the other tortfeasors from joint and several liability only if the parties to the settlement agreement manifested such an intent, or if the injured party received full compensation for the damages sought against the other tortfeasors.

### **Privacy**

*Yath v. Fairview Clinics, N.P.*, (A08-1556), 767 N.W.2d 34 (Minn. App. 2009).

1. Posting private information on a publicly accessible Internet website satisfies the publicity element of an invasion-of-privacy claim.

2. The Health Insurance Portability and Accountability Act does not preempt Minnesota Statutes section 144.335 (2006), which gives patients a private right of action for improper disclosure of their medical records.

### **Strict Liability, Negligence Per Se, or Violation of Statute**

*Stewart v. Koenig*, (A08-1209), 767 N.W.2d 497 (Minn. App. 2009), *review granted* (Minn. Sept. 16, 2009).

The driver of a motor vehicle operating on a private driveway that crosses a state recreational trail is a “trail user” and is subject to the rules governing state recreational trails.

### **Tortious Interference With Contract**

*Karnewie-Tuah v. Frazier*, (A07-1869), 757 N.W.2d 714 (Minn. App. 2008).

1. An employee’s state law claim for tortious interference with contractual relations against her supervisor is preempted by section 301 of the federal Labor Management Relations Act when the contract at issue is a collective bargaining agreement.

2. Section 301 of the federal Labor Management Relations Act preempts an employee’s state law defamation claim against her supervisor when the statements alleged to be defamatory are made in the context of a disciplinary or grievance-arbitration procedure established by a collective bargaining agreement.

### **Trespass**

*Slindee v. Fritch Invs., LLC*, (A08-303), 760 N.W.2d 903 (Minn. App. 2009).

A boundary by practical location based on express agreement requires words or acts by the parties definitely and clearly agreeing to a specific boundary.

### **Wrongful Death**

*Losen v. Allina Health System*, (A08-1478), 767 N.W.2d 703 (Minn. App. 2009), *review denied* (Minn. Sept. 29, 2009).

Statutory immunity under Minn. Stat. § 253B.23, subd. 4 (2008), applies to an examiner’s good-faith decision that a proposed patient cannot be placed on a 72-hour emergency hold.