

The background features a stylized illustration of three books. On the left, there are two grey books standing upright. To their right, a red book is leaning against them. The books are rendered with simple outlines and flat colors, giving them a graphic, illustrative appearance.

# **Minnesota Court of Appeals**

## **Significant Decisions**

**September 2013-August 2014**

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## PART I – CIVIL CASES

### Administrative Law

***GH Holdings, LLC v. Minn. Dep’t of Commerce*, 840 N.W.2d 838 (Minn. App. Dec. 23, 2013) (A13-0281).**

When the Minnesota Petroleum Tank Release Compensation Board adopted Minn. R. 2890.4600, subp. 2(A) (2013), it exceeded its statutory authority by purporting to limit the evidence in a contested case to the written record submitted to the Minnesota Petroleum Tank Release Compensation Board. The limitation of evidence in Minn. R. 2890.4600, subp. 2(A), is therefore declared to be invalid.

***Minn. Transitions Charter Sch. v. Comm’r of Minn. Dep’t of Educ.*, 844 N.W.2d 223 (Minn. App. Mar. 17, 2014), review denied (Minn. May 28, 2014) (A13-1232).**

Charter schools are not eligible to operate alternative-learning programs under Minn. Stat. § 123A.05, subd. 1(a) (2012).

### Appellate Procedure & Review

***Weiss v. Private Capital, LLC*, 839 N.W.2d 106 (Minn. App. Oct. 28, 2013) (A13-1098).**

A request for attorney fees that is based on a contract is a separate claim of the type recognized in *T. A. Schifsky & Sons, Inc. v. Bahr Constr., LLC*, 773 N.W.2d 783 (Minn. 2009), so that a judgment entered while such a request is pending is not a final and appealable judgment.

***Doe 175 ex rel. Doe 175 v. Columbia Heights Sch. Dist., ISD No. 13*, 842 N.W.2d 38 (Minn. App. Jan. 21, 2014) (A13-0768).**

1. An appellant may not obtain answers to questions certified by a district court if the district court did not consider the certified questions in its order denying a motion to dismiss or a motion for summary judgment, as required by rule 103.03(i) of the Minnesota Rules of Civil Appellate Procedure.

2. An appellant may not obtain answers to questions certified by a district court in the “interest of justice” if there is no other issue properly before the court, as required by rule 103.04 of the Minnesota Rules of Civil Appellate Procedure.

3. In considering a petition for discretionary review of a non-appealable order that does not concern class certification, pursuant to rule 105.01 of the Minnesota Rules of Civil Appellate Procedure, this court considers the factors identified in *Gordon v. Microsoft Corp.*, 645 N.W.2d 393 (Minn. 2002), and the factors identified in *Valspar Refinish, Inc. v. Gaylord’s, Inc.*, No. A05-1640 (Minn. Nov. 22, 2005) (order).

4. A respondent may not obtain interlocutory appellate review of a district court's partial grant of summary judgment by way of a notice of related appeal pursuant to rule 106 of the Minnesota Rules of Civil Appellate Procedure if the appellant's underlying appeal is being dismissed and if respondent seeks review of an otherwise non-appealable order.

***Michaels v. First USA Title, LLC*, 844 N.W.2d 528 (Minn. App. Mar. 17, 2014) (A13-0757).**

1. On appeal from a default judgment granted in a multiparty lawsuit in which the appellant did not participate at trial and did not move for a new trial, appellate review is limited to (1) substantive questions of law that the record shows were argued to and decided by the district court, (2) whether the record supports the district court's findings of fact, and (3) whether those findings adequately support the district court's conclusions of law and judgment.

2. On appeal from a default judgment granted in a multiparty lawsuit in which the appellant did not participate at trial and did not move for a new trial, evidence not introduced at trial is outside the record on appeal, even if the district court previously considered the evidence on a motion for summary judgment.

***State v. Griffin*, 846 N.W.2d 93 (Minn. App. May 12, 2014), review denied (Minn. Aug. 5, 2014) (A13-0400).**

(See page 16 for additional syllabus point for this case)

2. When an unobjected-to trial error is not one of fundamental law or controlling principle and is first raised by a postverdict motion for a new trial, our review of a denial of the motion for new trial is limited to plain-error review.

***Larson v. Jesson*, 847 N.W.2d 531 (Minn. App. June 9, 2014) (A14-0095).**

When a judicial appeal panel dismisses a civil-commitment discharge petition under Minn. R. Civ. P. 41.02(b), the standard of appellate review is de novo.

### **Child Protection**

***In re Welfare of Children of M.A.H.*, 839 N.W.2d 730 (Minn. App. Nov. 18, 2013) (A13-0834).**

1. A district court may conclude that a severely malnourished child whose parents did not arrange for appropriate medical care has suffered egregious harm sufficient to establish the existence of a statutory ground to terminate parental rights.

2. The termination of parental rights to a child due to egregious harm, allows, but does not require, termination of parental rights to the child's siblings.

***In re Welfare of Children of B.M.*, 845 N.W.2d 558 (Minn. App. Apr. 21, 2014) (A13-2025).**

1. Mental impairment is not sufficient grounds to terminate a father's parental rights to his child where there is no evidence that the impairment interfered with his ability to be a party to the parent-child relationship.

2. The district court abused its discretion by terminating appellant-father's parental rights when it failed to find that the county undertook reasonable efforts to reunite parent and child.

### **Civil Procedure**

***Finn v. Alliance Bank*, 838 N.W.2d 585 (Minn. App. Sept. 3, 2013), review granted (Minn. Nov. 12, 2013) (A12-1930, A12-2092).**

1. Actual-fraud claims under the Minnesota Uniform Fraudulent Transfer Act (the MUFTA), Minn. Stat. §§ 513.41-.51 (2012), are governed by the six-year statute of limitations of Minn. Stat. § 541.05, subd. 1(6) (2012), and accrue upon discovery by the aggrieved party of the facts constituting the fraud.

2. Constructive-fraud claims brought under the MUFTA are governed by the six-year statute of limitations in Minn. Stat. § 541.05, subd. 1(2) (2012), which does not contain a discovery provision.

***Westfield Ins. Co. v. Wensmann, Inc.*, 840 N.W.2d 438 (Minn. App. Dec. 16, 2013), review denied (Minn. Feb. 26, 2014) (A13-0532).**

1. In a declaratory judgment action initiated by an insurer to declare the nonexistence of insurance coverage for a known loss, the district court does not err when it permits a nonparty making a claim against the insured to intervene in the coverage litigation.

2. Vacation of a default declaratory judgment is appropriate when an intervenor with an interest in the declaratory judgment action was not notified of the commencement of the action until after default judgment was granted against the insured in default, and where the intervenor acts with due diligence in seeking vacation, shows a reasonable basis for its claim on the merits, and would be prejudiced if the default judgment were not vacated.

***Amica Mut. Ins. Co. v. Wartman*, 841 N.W.2d 637 (Minn. App. Jan. 6, 2014), review denied (Minn. Mar. 18, 2014) (A13-0937).**

Minnesota law requires that an action upon a judgment be commenced "within ten years after the entry of such judgment." Minn. Stat. § 541.04 (2012). To extend a judgment beyond the ten-year period of limitations, the judgment creditor must bring suit against the original judgment debtor within the ten-year period. An action against a

corporate judgment debtor's sole shareholder seeking to impose personal liability on the shareholder for a judgment against the corporation is not an action upon a judgment within the meaning of Minn. Stat. § 541.04.

***Zirnhelt v. Carter*, 843 N.W.2d 270 (Minn. App. Mar. 3, 2014) (A13-1053).**

(See page 13 for an additional syllabus point for this case)

1. A complaint filed in district court pursuant to Minn. R. Gen. Pract. 522 relates back to the date the corresponding statement of claim was filed in conciliation court pursuant to Minn. R. Gen. Pract. 505.

***HNA Props. v. Moore*, 848 N.W.2d 238 (Minn. App. Mar. 17, 2014) (A13-0870).**

1. According to the plain language of Minn. Stat. § 549.02, subd. 1 (2012), a defendant is entitled to \$200 in costs upon dismissal of a case.

2. A party who obtains a dismissal for procedural reasons is not a prevailing party.

3. Minn. Stat. § 563.01, subd. 10 (2012), does not apply when a defendant is awarded statutory costs as a result of the district court's dismissal of a case.

***Meeker v. IDS Prop. Cas. Ins. Co.*, 846 N.W.2d 468 (Minn. App. Apr. 21, 2014), review granted (Minn. June 25, 2014) (A13-1302).**

Service of process under Minn. Stat. § 45.028, subd. 2 (2012), is effective if the plaintiff sends a copy of the process to the Minnesota Commissioner of Commerce by certified mail before the end of the applicable limitations period and sends notice of the service and a copy of the process to the defendant by certified mail and files the plaintiff's affidavit of compliance in the action on or before the return day of the process.

***Drews v. Federal Nat. Mortg. Ass'n*, 850 N.W.2d 738 (Minn. App. July 21, 2014) (A13-1135).**

Minn. Stat. § 580.03 (2012) requires a notice of foreclosure sale to be served in like manner as a summons in a civil action. Service cannot be avoided by physically refusing to accept the papers. When a party produces evidence of proper service, the burden shifts to the party challenging service to show by clear and convincing evidence that service was improper. Shifting the burden of production is not inconsistent with the strict-compliance standard applicable to Minn. Stat. § 580.03.

***Hogenson v. Hogenson*, 852 N.W.2d 266 (Minn. App. Aug. 11, 2014) (A13-1846).**

The phrase "[e]xcept as otherwise . . . allowed by law" in Minn. Stat. § 549.09, subd. 1(b) (2012), requires that, when the common law permits recovery of preverdict interest on a claim, preverdict interest on any award be calculated according to common law principles. When preverdict interest is not available under common law, it should be calculated exclusively under Minn. Stat. § 549.09, subd. 1(b).

## **Constitutional Law**

***State ex rel. Swanson v. Integrity Advance, LLC*, 846 N.W.2d 435 (Minn. App. Mar. 31, 2014), review granted (Minn. June 17, 2014) (A13-1388).**

The prohibition of the Dormant Commerce Clause of the United States Constitution against the enactment of statutes that discriminate against or unduly burden interstate commerce does not preclude Minnesota's regulation of an online payday lender when the lender extends loans to Minnesotans and such commerce is not wholly extraterritorial.

## **Contracts**

***Geneva JPM 2003-PMI, LLC v. Geneva FSCX I, LLC*, 843 N.W.2d 263 (Minn. App. Mar. 3, 2014) (A13-0718).**

Absent contractual language indicating otherwise, the amount a creditor may collect on a guaranty depends on the balance of the debt at the time the creditor invokes its rights under the guaranty.

***Kalenburg v. Klein*, 847 N.W.2d 34 (Minn. App. May 12, 2014) (A13-0707).**

A residential-property purchase agreement providing that it cancels by its own terms and that either the buyer or the seller may obtain a declaratory cancellation under Minnesota Statutes section 559.217, subdivision 4 (2012), permits, but does not require, a declaratory cancellation.

***SN4, LLC v. Anchor Bank, FSB*, 848 N.W.2d 559 (Minn. App. June 2, 2014), review denied (Minn. Sept. 16, 2014) (A13-1566).**

Under the Uniform Electronic Transactions Act (UETA), Minn. Stat. §§ 325L.01–.19 (2012), an electronic signature in an e-mail message does not necessarily evidence intent to electronically sign a document attached to the e-mail. Whether a sender has electronically signed an attached document depends on the circumstances, including whether the attached document itself contains the sender's electronic signature and whether the attached document was intended to be a draft or final version.

## **Environmental Law**

***In re Env'tl. Assessment Worksheet for the 33rd Sale of State Metallic Leases in Aitkin, Lake, and Saint Louis Counties, Minn.*, 838 N.W.2d 212 (Minn. App. Sept. 9, 2013), review denied (Minn. Nov. 26, 2013) (A12-2172).**

The state's sale of mineral leases does not by itself trigger environmental-review requirements under the Minnesota Environmental Protection Act and related rules because the leases do not contemplate definite, on-the-ground physical changes to the environment. Environmental-review requirements may be triggered in the future by more specific exploration plans for property leased as a result of the sale.

***In re Reichmann Land and Cattle, LLP*, 847 N.W.2d 42 (Minn. App. May 19, 2014), review granted (Minn. Aug. 5, 2014) (A13-1461).**

1. When livestock are maintained on crop fields during the winter, the fields are only "pasture" under Minn. Stat. § 116.07, subd. 7d (2012), if the concentration of livestock is such that the livestock are allowed to forage throughout the winter.

2. If an agricultural lot sustains crops for the duration of the normal growing season, a National Pollutant Discharge Elimination System permit is not required to confine livestock on the lot during the winter.

## **Family Law**

***Anh Phuong Le v. Holter*, 838 N.W.2d 797 (Minn. App. Nov. 4, 2013), review denied (Minn. Dec. 31, 2013) (A12-2011).**

In a child-custody dispute, a district court is not required to hold an evidentiary hearing before ruling on the merits of a removal motion under Minnesota Statutes section 518.175, subdivision 3 (2012).

***In re Guardianship of O'Brien*, 847 N.W.2d 710 (Minn. App. May 27, 2014) (A13-1348).**

1. To be competent to marry under Minn. Stat. § 517.02, a ward must have sufficient mental capacity to understand the meaning, rights, and obligations of marriage.

2. When determining a ward's competence to marry, the burden of proof is on those challenging the ward's competence.

3. A district court determination that a ward is not competent to marry must be supported by specific findings addressing the ward's ability to understand the meaning, rights, and obligations of marriage, and should be supported by expert testimony.

***Gossman v. Gossman*, 847 N.W.2d 718 (Minn. App. June 2, 2014) (A13-1095).**

If a dissolution judgment and decree includes a valid *Karon* waiver that divests the district court of jurisdiction to modify spousal maintenance, any subsequent order that purports to modify spousal maintenance is void and unenforceable.

***Sanvik v. Sanvik*, 850 N.W.2d 732 (Minn. App. July 14, 2014) (A13-1875).**

1. When a party's motion for attorney fees under Minn. Stat. § 518.14, subd. 1 (2012), is pending upon dismissal of a divorce action, that party's right to seek contribution for attorney fees from the opposing party continues and may be asserted by the party's attorney.

2. Minn. Stat. § 518.14, subd. 1, does not permit a court to award conduct-based attorney fees against an attorney for a party in a divorce proceeding.

***Spanier v. Spanier*, 852 N.W.2d 284 (Minn. App. Aug. 18, 2014) (A13-2175).**

On a motion to modify custody under Minn. Stat. § 518.18(d) (2012), an order that does not modify physical or legal custody is not a "prior order" for purposes of determining whether a change of circumstances has occurred since the last custody order.

### **Government & Immunity**

***Nichols v. State, Office of Sec'y of State*, 842 N.W.2d 20 (Minn. App. Jan. 21, 2014), review granted (Minn. Mar. 26, 2014) (A13-0529).**

The state is immune from suit on a claim of false inducement of employment under sections 181.64 and 181.65 of the Minnesota Statutes because those statutes do not expressly mention the state and do not use words that make it plain, clear, or unmistakable that the legislature intended to waive the state's sovereign immunity with respect to the statutory claim authorized therein.

***Lakes Area Bus. Ass'n v. City of Forest Lake*, 842 N.W.2d 320 (Minn. App. Jan. 27, 2014), review denied (Minn. Apr. 15, 2014) (A13-0698).**

1. The requirements of Minnesota Statutes section 475.521 do not apply to an economic development authority that issues revenue bonds that finance capital improvements.

2. An economic development authority is not required to hold an election before issuing, under Minnesota Statutes section 469.103, revenue bonds that finance capital improvements.

***Dean v. City of Winona*, 843 N.W.2d 249 (Minn. App. Feb. 24, 2014), review granted (Minn. May 20, 2014) (A13-1028).**

1. A municipality may use its police power to limit the number of lots on a block that are eligible to obtain certification as a rental property.

2. An ordinance that establishes a neutral, numerical limit on the number of lots on a block that are eligible to obtain certification as a rental property does not violate equal protection or due process under the Minnesota Constitution.

***Rochester City Lines, Co. v. City of Rochester*, 846 N.W.2d 444 (Minn. App. Apr. 7, 2014), review granted (Minn. June 17, 2014) (A13-1477).**

Because the award of a public contract based on a best-value determination offers greater discretion to the contracting entity than a lowest-responsive-bidder determination, the reviewing court must balance the requirements of competitive-bidding law with that discretion when reviewing a common-law bid-protest claim.

***Minnesota Joint Underwriting Ass'n v. Star Tribune Media Co., LLC*, 849 N.W.2d 421 (Minn. App. June 9, 2014), review granted (Minn. Aug. 19, 2014) (A13-2112).**

The Minnesota Joint Underwriting Association is not a government entity subject to the Minnesota Government Data Practices Act.

### **Insurance Coverage**

***Econ. Premier Assurance Co. v. W. Nat'l Mut. Ins. Co.*, 839 N.W.2d 749 (Minn. App. Nov. 25, 2013) (A13-0621).**

The doctrine of *contra proferentem*, which ordinarily guides courts to interpret ambiguous insurance-contract language against the insurer-drafter and in favor of finding coverage for the insured policy holder, does not influence the interpretation of allegedly ambiguous language in an insurance policy that is the subject of a coverage suit between the drafting insurer and another insurance company.

***Schroeder v. W. Nat'l Mut. Ins. Co.*, 850 N.W.2d 712 (Minn. App. July 7, 2014), review granted (Minn. Sept. 16, 2014) (A13-2289).**

Under the Minnesota No-Fault Act, Minn. Stat. §§ 65B.41-.71 (2012), an injured insured who has primary responsibility for the management of a household is entitled to the reasonable value of the insured's household care and maintenance services, regardless of whether the services were replaced when the insured could not perform them.

## **Jurisdiction & Procedure**

***Stern v. Stern*, 839 N.W.2d 96 (Minn. App. Oct. 15, 2013) (A13-0447).**

Because the juvenile court exercises original and exclusive jurisdiction over the protection and custody of children in proceedings brought under the juvenile protection provisions of the Minnesota Juvenile Court Act, Minn. Stat. §§ 260C.001–.637 (2012), the family court division of district court lacks concurrent jurisdiction over a petition for de facto custody brought pursuant to Minn. Stat. § 257C.03 (2012).

***Lifespan of Minn., Inc. v. Minneapolis Pub. Sch. Indep. Sch. Dist. #1*, 841 N.W.2d 656 (Minn. App. Jan. 13, 2014) (A13-1165, A13-1166, A13-1167, A13-1168).**

A district court has subject-matter jurisdiction over a corporation’s breach-of-contract claims against school districts when the corporation’s claims do not require the district court to evaluate the quality of or reasons for the school districts’ discretionary executive decisions.

***Volkman v. Hanover Invs., Inc.*, 843 N.W.2d 789 (Minn. App. Mar. 3, 2014) (A13-1111).**

The contacts of a foreign corporation with Minnesota are sufficient to subject the corporation to specific personal jurisdiction in the courts of Minnesota when the corporation enters into a shareholder agreement with a Minnesota resident that conditions the Minnesota resident’s shareholder status on her continued employment in Minnesota.

***Butler v. JLA Indus. Equip., Inc.*, 845 N.W.2d 834 (Minn. App. Apr. 21, 2014), review denied (Minn. July 15, 2014) (A13-1448).**

When analyzing minimum contacts under the stream-of-commerce theory of personal jurisdiction, a nonresident defendant without direct contacts with Minnesota purposefully avails itself of the benefits and protections of Minnesota if it engages in a regular course of voluminous sales through a nonresident distributor to Minnesota customers.

## **Labor & Employment**

***Engfer v. Gen. Dynamics Advanced Info. Sys., Inc.*, 844 N.W.2d 236 (Minn. App. Mar. 17, 2014), review granted (Minn. May 28, 2014) (A13-0872).**

The preemption provision of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1144(a) (2012), applies to preempt the provision in the Minnesota Unemployment Insurance Act, Minn. Stat. § 268.035, subd. 29(a)(12) (2012), that “[t]he plan must provide supplemental payments only for those weeks the applicant has been paid regular, extended, or additional unemployment benefits” in order for the

supplemental benefits to be exempt from the definition of “wages” contained in Minn. Stat. § 268.035, subd. 29(a) (2012).

***Ford v. Minneapolis Pub. Sch.*, 845 N.W.2d 566 (Minn. App. Apr. 21, 2014), review granted, judgment vacated (Minn. July 15, 2014) (A13-1072).**

When the alleged discriminatory act in a claim under the whistleblower statute is the decision to eliminate an employee’s position, the statute of limitations begins to run when the employer notifies the employee that the position will be eliminated.

***Exner v. Minneapolis Pub. Sch., Special Sch. Dist. No. 1*, 849 N.W.2d 437 (Minn. App. July 14, 2014) (A13-2030).**

When a school board terminates a teacher’s employment in accordance with the Teacher Tenure Act, Minn. Stat. § 122A.41 (2012), the board waives an argument that the teacher was discharged because he did not have a valid employment contract.

### **Liens & Foreclosures**

***Hunter v. Anchor Bank, N.A.*, 842 N.W.2d 10 (Minn. App. Dec. 23, 2013), review denied (Minn. Mar. 18, 2014) (A13-0515).**

If two separate parcels of land secure one mortgage, each parcel must be sold separately at a foreclosure sale, as required by Minnesota Statutes section 580.08, and the failure to strictly comply with this requirement causes a non-compliant foreclosure sale to be void.

***Reilly v. Antonello*, 852 N.W.2d 694 (Minn. App. August 18, 2014) (A14-0030).**

A sole director, officer, and shareholder of a closely held corporation who facilitates indirect transfers of corporate stock by the corporation to his spouse to hinder his creditors from collecting on judgments against him violates the Minnesota Uniform Fraudulent Transfer Act. Minn. Stat. §§ 513.41–.51 (2012).

### **Local Government**

***In re Environmental Impact Statement*, 849 N.W.2d 71 (Minn. App. June 16, 2014) (A13-0745, A13-1198).**

To determine whether the cumulative potential effects of a proposed project results in significant environmental effects, the responsible governmental unit must consider, (1) whether the cumulative potential effect is significant, (2) whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect, (3) the degree to which the project

complies with approved mitigation measures specifically designed to address the cumulative potential effect, and (4) the efforts of the proposer to minimize the contributions from the project.

## **Probate**

***In re Guardianship and Conservatorship of Durand*, 845 N.W.2d 821 (Minn. App. Mar. 3, 2014), review granted (Minn. Apr. 29, 2014) (A13-1415).**

Minnesota Statute section 524.2-212, which requires a protected surviving spouse to receive court authorization before filing an elective-share petition, does not violate equal protection rights under the Minnesota Constitution because protected and non-protected spouses are not similarly situated.

***In re Estate of Pawlik*, 845 N.W.2d 249 (Minn. App. Apr. 14, 2014), review denied (Minn. June 25, 2014) (A13-1628).**

A creditor who has a property right in or claim against a decedent's estate is an interested person under Minn. Stat. § 524.1-201(32) (2012), and therefore has standing to petition for a determination of descent under Minn. Stat. § 525.31 (2012). A judgment creditor of an heir has a property right in a decedent's estate if the judgment can be satisfied by the heir's inherited property.

## **Real Estate & Property Rights**

***Koski v. Johnson*, 837 N.W.2d 739 (Minn. App. Sept. 23, 2013), review denied (Minn. Dec. 17, 2013) (A12-2274).**

Minnesota Statutes section 504B.331 (2012) requires strict compliance, not merely substantial compliance.

***Gen. Mills Fed. Credit Union v. Lofgren*, 839 N.W.2d 766 (Minn. App. Dec. 2, 2013) (A13-0781).**

When the custodian of an individual retirement account (IRA) brings an interpleader action allowing the district court to determine a controversy between parties who each claim to be the rightful beneficiary of the IRA, the district court, acting in equity, may determine that the named beneficiary is not the rightful beneficiary if the evidence establishes that the IRA owner has substantially complied with the IRA custodian's procedures for changing the IRA beneficiary or has done all that the owner reasonably believed was required by the custodian to change the IRA beneficiary.

***Deutsche Bank Nat'l Trust Co. v. Hanson*, 841 N.W.2d 161 (Minn. App. Jan. 6, 2014) (A13-0370).**

When a land possessor's lawsuit contesting the foreclosure purchaser's ownership interest involves no issues that are essential to the purchaser's separate eviction proceeding, the district court does not abuse its discretion by denying the possessor's motion to stay the eviction proceeding pending the outcome of the ownership litigation.

***Rosso v. Hallmark Homes of Minneapolis, Inc.*, 843 N.W.2d 798 (Minn. App. Mar. 10, 2014), review denied (Minn. May 20, 2014) (A13-1304).**

"Substantial completion," as used and defined in Minn. Stat. § 541.051, subd. 1(a) (2012), to determine the event triggering commencement of the ten-year statute of repose for claims arising out of improvements to real property, hinges on the extent to which the structure's physical condition nears completion so that it may be used or occupied for the intended purpose of its construction, not on the issuance of a certificate of occupancy.

***Bass v. Equity Residential Holdings, LLC*, 849 N.W.2d 87 (Minn. App. June 30, 2014) (A13-2177).**

The housing court, as a division of the district court, has jurisdiction to award monetary damages that are authorized under Minn. Stat. §§ 504B.00-.471 (2012 & Supp. 2013).

## **Remedies**

***Cnty. of Scott v. Johnston*, 841 N.W.2d 357 (Minn. App. Dec. 30, 2013) (A13-0535).**

1. In an eminent-domain proceeding, the fact that a property owner is entitled to an award of reasonable attorney fees and other related fees and expenses under Minn. Stat. § 117.031 (2012), because the final award is more than forty percent greater than the last written offer of the condemning authority, does not preclude the district court from considering evidence of the amount involved and the results obtained in its determination of the reasonableness of the fees and expenses requested.

2. In evaluating the reasonableness of requested attorney fees and related expenses, a district court's findings are clearly erroneous if they are not supported by evidence in the record.

***Kinworthy v. Soo Line R.R. Co.*, 841 N.W.2d 363 (Minn. App. Dec. 30, 2013), review granted (Minn. Mar. 18, 2014) (A13-0915).**

Postverdict, prejudgment interest is not available in a Minnesota state-court action brought under the Federal Employers' Liability Act (FELA), 45 U.S.C. § 51 (2006).

***Zirnhelt v. Carter*, 843 N.W.2d 270 (Minn. App. Mar. 3, 2014) (A13-1053).**

(See page 4 for an additional syllabus point for this case)

2. When a conciliation court claim is removed to district court for trial de novo pursuant to Minn. R. Gen. Pract. 521, the district court is not limited by the jurisdictional amount of conciliation court in awarding damages.

## **Torts**

***Clark v. Connor*, 843 N.W.2d 785 (Minn. App. Jan. 21, 2014) (A13-1110).**

The dog-attack statute, Minn. Stat. § 347.22 (2012), does not preclude the allocation of fault between a dog owner and a co-tortfeasor under the comparative-fault statute, Minn. Stat. § 604.02 (2012).

***Ptacek v. Earthsoils, Inc.*, 844 N.W.2d 535 (Minn. App. Mar. 31, 2014) (A13-1335).**

Minn. Stat. § 604.101 (2012) exhaustively states the economic-loss doctrine in Minnesota and abrogates the common-law economic-loss doctrine.

***Pfeiffer ex rel. Pfeiffer v. Allina Health Sys.*, 851 N.W.2d 626 (Minn. App. July 21, 2014), review denied (Minn. Oct. 14, 2014) (A13-1919).**

A curative expert affidavit filed by a medical-malpractice plaintiff under the safe-harbor provision of Minnesota Statute § 145.682, subd. 6(c) (2012) is not subject to the filing deadlines detailed in general rule of practice 115.03.

***Shariss v. City of Bloomington*, 852 N.W.2d 278 (Minn. App. Aug. 18, 2014) (A13-2293).**

A snowplow driver's decision to drive his snowplow in reverse, when not actively engaged in snow-removal operations, involves the execution of a ministerial duty that is not protected by common-law official immunity or vicarious official immunity.

## **Unemployment Benefits**

***Rubin v. Winona State Univ.*, 842 N.W.2d 469 (Minn. App. Feb. 10, 2014) (A13-0871).**

When the record contains evidence of an employee's position description, a determination of whether the employee was in a major policy-making or advisory position under Minn. Stat. § 268.035, subd. 20(15) (2012), must not be based solely on the employer's designation of employee status in its internal plan for salary and employee benefits.

***Neumann v. Dep't of Emp't & Econ. Dev.*, 844 N.W.2d 736 (Minn. App. Mar. 17, 2014) (A13-1007).**

Minn. Stat. § 268.085, subd. 16(a) (2012), requires that an unemployment law judge consider existing conditions in an applicant's labor market area before determining that an applicant is ineligible for unemployment benefits because the applicant has failed to actively seek employment.

***Eley v. Southshore Invs., Inc.*, 845 N.W.2d 216 (Minn. App. Apr. 7, 2014) (A13-1525).**

An unemployment-law judge does not abuse her discretion by refusing to grant an additional evidentiary hearing where an unemployment-benefits applicant argues that she failed to participate at a scheduled evidentiary hearing because she was mistaken regarding the hearing date, but the record shows that the Minnesota Department of Employment and Economic Development timely sent notice of the hearing date by mail to the applicant at her address of record and that the hearing date was available on the applicant's online unemployment-benefits account.

***Icenhower v. Total Auto., Inc.*, 845 N.W.2d 849 (Minn. App. Apr. 28, 2014), review denied (July 15, 2014) (A13-1287).**

An unemployment-law judge's decision to not issue a subpoena under Minn. Stat. § 268.105, subd. 4 (2012), and Minn. R. 3310.2914, subp. 1 (2013), is reviewed for an abuse of discretion.

## **PART II – CRIMINAL CASES AND CASES ON RELATED SUBJECTS**

### **Appellate Procedure & Review**

***State v. McKinney*, 840 N.W.2d 429 (Minn. App. Dec. 9, 2013) (A13-1720).**

If the state files a sentencing appeal pursuant to rule 28.05 of the Minnesota Rules of Criminal Procedure, the state's failure to serve the notice of appeal on the state public defender's office in a timely manner requires dismissal of the appeal.

### **Constitutional Law**

***State v. Tayari-Garrett*, 841 N.W.2d 644 (Minn. App. Jan. 13, 2014), review denied (Minn. Mar. 26, 2014) (A12-1915).**

A pro se party who repeatedly testifies while not under oath during her opening statement, closing argument, and examination of witnesses, waives her Fifth Amendment protection. In such a case, the prosecutor does not violate appellant's right to remain silent by reminding the jury that the pro se party's unsworn testimony is not evidence.

### **DWI & Implied Consent**

***State v. Bernard*, 844 N.W.2d 41 (Minn. App. Mar. 17, 2014), review granted (Minn. May 20, 2014) (A13-1245).**

The Fourth Amendment does not prohibit the state from criminalizing a suspected drunk driver's refusal to submit to a breath test for alcohol content when the circumstances established a basis for the officer to have alternatively pursued a constitutionally reasonable nonconsensual test by securing and executing a warrant.

***State v. St. John*, 847 N.W.2d 704 (Minn. App. May 19, 2014) (A13-1175).**

1. Under the Minnesota Impaired Driving Code, third-degree driving while impaired (under the influence) is not an included offense of second-degree driving while impaired (refusal to submit to chemical test).

2. For sentencing purposes, third-degree driving while impaired (under the influence) is a more serious offense than second-degree driving while impaired (refusal to submit to chemical test).

***State v. Miller*, 849 N.W.2d 94 (Minn. App. June 30, 2014) (A13-1689).**

(See page 18 for additional syllabus point)

2. Law-of-the-case doctrine does not operate to allow a decision from a civil implied-consent case to govern issues in a criminal matter arising from the same set of circumstances.

***Stevens v. Comm’r of Pub. Safety*, 850 N.W.2d 717 (Minn. App. July 14, 2014) (A13-1855).**

Minnesota’s implied-consent statute does not violate the unconstitutional-conditions doctrine by authorizing the commissioner of public safety to revoke the driver’s license of a person who has been arrested for driving while impaired and has refused to submit to chemical testing.

### **Evidence**

***State v. Beane*, 840 N.W.2d 848 (Minn. App. Dec. 30, 2013), review denied (Minn. Mar. 18, 2014) (A12-2222).**

(See pages 20 and 24 for additional syllabus points for this case)

2. A district court’s decision to admit relationship evidence in a domestic-assault case is not reversible error when the appellant fails to establish that the admission of the evidence resulted in unfair prejudice.

***State v. Wenthe*, 845 N.W.2d 222 (Minn. App. Apr. 7, 2014), review granted (Minn. June 25, 2014) (A12-0263).**

(See page 24 for additional syllabus points for this case)

3. Evidence of an adult complainant’s sexual history may be admitted into evidence, despite rape-shield laws, when the state has opened the door by eliciting testimony from the complainant that portrays herself as sexually inexperienced.

***State v. Griffin*, 846 N.W.2d 93 (Minn. App. May 12, 2014), review denied (Minn. Aug. 5, 2014) (A13-0400).**

(See page 2 for additional syllabus point for this case)

1. A criminal defendant relying solely on statistical evidence to challenge the constitutionality of a jury panel’s composition as not having been drawn from a fair cross-section of the community must make at least a prima facie demonstration that the underrepresentation of a distinctive group is attributable to “systematic exclusion.”

***State v. Thiel*, 846 N.W.2d 605 (Minn. App. May 27, 2014), review denied (Minn. Aug. 5, 2014) (A13-1346).**

Evidence that another state authorized a person to possess and use marijuana for a medical purpose is not relevant in a Minnesota trial on a charge that the person possessed a controlled substance in violation of Minnesota law.

***State v. Welle*, 847 N.W.2d 52 (Minn. App. May 27, 2014), review granted (Minn. Aug. 5, 2014) (A13-0256).**

If other-acts evidence introduced to rebut a claim of self-defense is not relevant to disproving the elements of that claim and if the prejudicial effect of the evidence outweighs its probative value, the district court abuses its discretion by admitting the evidence, and the defendant is entitled to a new trial.

***State v. Expose*, 849 N.W.2d 427 (Minn. App. July 14, 2014), review granted (Minn. Sept. 24, 2014) (A13-1285).**

Minnesota law does not recognize a “threats exception” to the statutory psychologist-client testimonial privilege in Minnesota Statutes section 595.02, subdivision 1(g) (2012). Absent a client’s knowing and intentional waiver of the privilege, a psychologist may not testify in a criminal trial about threats of physical violence made by the client during an individual therapy session.

### **Guilty Pleas**

***State v. Cubas*, 838 N.W.2d 220 (Minn. App. Oct. 15, 2013), review denied (Minn. Dec. 31, 2013) (A13-1188).**

When ruling on a motion for plea withdrawal under Minn. R. Crim. P. 15.05, subd. 2, the district court must give due consideration to the defendant’s reasons in support of the motion, as well as any potential prejudice to the prosecution.

***State v. Klug*, 839 N.W.2d 723 (Minn. App. Nov. 18, 2013) (A13-0554).**

1. A district court’s decision to decline to accept a plea agreement presented on the day a trial is set to begin is a permissible exercise of its discretion.

2. Where a defendant who maintains his innocence testifies that he believes that the state’s evidence is sufficient to convict him, and the district court reasonably concludes, based on its assessment of the state’s evidence and the testimony of the defendant, that there is a strong possibility that a jury would convict, the factual basis is sufficient to support a plea pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970).

3. A district court does not abuse its discretion by denying a post-sentence plea withdrawal when the defendant neither formally moves for withdrawal nor makes more than a passing reference to the possibility of proceeding to trial.

***State v. Miller*, 849 N.W.2d 94 (Minn. App. June 30, 2014) (A13-1689).**

(See page 16 for additional syllabus point)

1. A district court may not sua sponte vacate a defendant's guilty plea without substantial and compelling reasons or notice and the opportunity for all parties to be heard.

### **Postconviction**

***Frisch v. State*, 840 N.W.2d 426 (Minn. App. Dec. 9, 2013), review denied (Minn. Sept. 16, 2014) (A13-1121).**

Minnesota Rule of Criminal Procedure 28.02, subdivision 4(4), which permits this court to stay an appeal and remand a case to a district court for postconviction proceedings, does not apply to an appeal from the denial of a postconviction petition.

***Matakis v. State*, 842 N.W.2d 689 (Minn. App. Feb. 18, 2014), review granted (Minn. Apr. 15, 2014) (A13-1040).**

A postconviction court does not abuse its discretion by denying a petition for postconviction relief without an evidentiary hearing when the petition does not plead any facts which, if true, would support the relief sought, even when the petition promises that a later affidavit will include the relevant facts.

### **Pretrial Procedure**

***State v. Carlson*, 845 N.W.2d 827 (Minn. App. Apr. 7, 2014), review denied (Minn. June 17, 2014) (A13-0416).**

A complaint warrant identifying the defendant of a burglary as "John Doe," an unknown male, with a unique DNA profile satisfies the particularity requirements of the warrant clause of the Fourth Amendment and the "reasonable certainty" requirement of Minn. R. Crim. P. 3.02, subd. 1. As a result, criminal prosecution is not time-barred when a John Doe DNA complaint is filed within the applicable statute of limitations period.

***State v. Wood*, 845 N.W.2d 239 (Minn. App. Apr. 7, 2014), review denied (Minn. June 17, 2014) (A13-1048).**

The Minnesota Rules of Criminal Procedure do not require formal service of a misdemeanor or petty misdemeanor complaint.

### **Search & Seizure**

***Hoekstra v. Comm’r of Pub. Safety*, 839 N.W.2d 536 (Minn. App. Nov. 25, 2013) (A13-0682).**

The meaning of “covers” in Minn. Stat. § 169.64, subd. 10(a) (2010), includes equipment or material that only partially covers a headlamp, tail lamp, or reflector.

***State v. Eichers*, 840 N.W.2d 210 (Minn. App. Dec. 2, 2013), *aff’d on other grounds*, 853 N.W.2d 114 (Minn. 2014) (A13-0121).**

1. An airmail package is not seized, under U.S. Const. amend. IV or Minn. Const. art. I, § 10, when a police officer removes the package from an airport conveyor belt for a brief visual inspection.

2. When a police officer prolongs the removal of a package from an airport conveyor belt for the purpose of subjecting it to a narcotics dog sniff, the officer’s action constitutes a seizure under U.S. Const. amend. IV and Minn. Const. art. I, § 10, and, to be a constitutionally reasonable seizure, the officer must have a reasonable, articulable suspicion to believe that the package contains contraband.

3. To be a constitutionally reasonable search, a narcotics dog sniff of the exterior of an airmail package must be supported by a law-enforcement officer’s reasonable, articulable suspicion that the package contains contraband.

4. Under the totality of circumstances, a police officer has reasonable, articulable suspicion to believe that an airmail package contains contraband when he articulates the facts on which his suspicion is based, including his training and experience and the bases of his inferences.

***State v. Rohde*, 839 N.W.2d 758 (Minn. App. Dec. 2, 2013), *rev’d*, 852 N.W.2d 260 (Minn. 2014) (A13-0610).**

Police may impound a vehicle for revoked license registration and plates, and for no insurance, when the driver does not ask to make her own towing arrangements.

***State v. Stall*, 845 N.W.2d 246 (Minn. App. Apr. 14, 2014) (A13-1041).**

A state patrol employee who is not a trooper lacks the statutory authority to stop drivers and their motor vehicles.

## **Sentencing & Restitution**

***State v. Hicks*, 837 N.W.2d 51 (Minn. App. Sept. 3, 2013), review granted (Minn. Nov. 12, 2013) (A12-1107).**

A defendant's concealment of his murdered victim's body may constitute the aggravating factor of particular cruelty, justifying an upward departure from a presumptive sentence.

***Wells v. State*, 839 N.W.2d 775 (Minn. App. Dec. 2, 2013), review denied (Minn. Feb. 18, 2014) (A13-0338).**

The presence of offender-related mitigating factors supporting a downward dispositional departure does not require the district court to stay execution of both sentences when a Minn. Stat. § 609.035 exception to multiple sentences applies.

***State v. Beane*, 840 N.W.2d 848 (Minn. App. Dec. 30, 2013), review denied (Minn. Mar. 18, 2014) (A12-2222).**

(See pages 16 and 24 for additional syllabus points for this case)

3. On remand for resentencing of multiple convictions, a district court may impose a sentence for a conviction that was not previously sentenced, provided that (1) the overall sentence imposed on remand is no more onerous than the overall sentence initially imposed, and (2) any new sentence for a previously sentenced conviction is no more onerous than the sentence initially imposed for that conviction.

***Orozco v. State*, 841 N.W.2d 632 (Minn. App. Jan. 6, 2014), review granted (Minn. Mar. 18, 2014) (A13-0427).**

A motion to correct a sentence under Minn. R. Crim. P. 27.03, subd. 9, is properly construed as a petition for postconviction relief when the sentence was imposed pursuant to a plea agreement and granting the requested correction would allow the defendant to retain the benefit of a reduced charge and avoid the burden of the agreed-upon sentence.

***State v. Miller*, 842 N.W.2d 474 (Minn. App. Feb. 10, 2014), review denied (Minn. Apr. 15, 2014) (A13-0264).**

1. When the district court finds that multiple assailants acted together and that their separate but indivisible conduct inflicted various injuries on their assault victim, it does not abuse its discretion by holding the defendants jointly and severally liable for restitution.

2. The district court acts within its discretion by sua sponte ordering a rehearing on restitution and compelling the state to produce new witnesses necessary for the district court to make adequate findings to vindicate the victim's statutory right to restitution.

***State v. Ge Her*, 843 N.W.2d 590 (Minn. App. Mar. 10, 2014), review granted (Minn. Apr. 29, 2014) (A13-1586).**

1. A conditional-release term imposed under Minn. Stat. § 243.166, subd. 5a, is part of the statutory-maximum sentence for risk-level-III offenders convicted of violating registration requirements and does not implicate the rules set forth in *Apprendi* and *Blakely*.

2. An offender's designation as risk level III under Minn. Stat. § 244.052, subd. 3(e), is analogous to a prior conviction or probation status and is not a fact that is constitutionally required to be found by a jury.

***State v. Riggs*, 845 N.W.2d 236 (Minn. App. Apr. 7, 2014), review granted (Minn. June 17, 2014) (A13-1189).**

When determining whether to order restitution and the amount of restitution under Minn. Stat. § 611A.045, subd. 1(a) (2010), the district court shall consider only the amount of economic loss sustained by the victim as a result of the offense and the defendant's income, resources, and obligations.

***Washington v. State*, 845 N.W.2d 205 (Minn. App. Apr. 7, 2014) (A13-1524).**

An offender may file a motion to correct sentence pursuant to the first sentence of rule 27.03, subdivision 9, only if the offender challenges the sentence on the ground that it is "unauthorized by law" in the sense that the sentence is contrary to an applicable statute or other applicable law. If an offender wishes to challenge a sentence for any other reason, the offender must do so pursuant to chapter 590 of the Minnesota Statutes.

***State v. Ward*, 847 N.W.2d 29 (Minn. App. Apr. 14, 2014), review granted (Minn. June 17, 2014) (A13-1433).**

Supervised release is the portion of an executed sentence when the offender is released into the community under supervision. When an offender's supervised release is revoked and the offender is returned to prison, the offender is not serving on supervised release, and the offender's conditional release should not be reduced by the time spent in prison after supervised release was revoked.

***State v. Ayala-Leyva*, 848 N.W.2d 546, (Minn. App. May 19, 2014), review granted (Minn. Aug. 5, 2014) (A13-0401).**

(See page 25 for additional syllabus points for this case)

3. A greater-than-double durational sentencing departure must be supported by severe aggravating factors, and factual findings to support those factors must be found by a sentencing jury absent waiver of *Blakely* proceedings by a defendant.

***State v. Franklin*, 847 N.W.2d 63 (Minn. App. May 27, 2014), review granted (Minn. Aug. 5, 2014) (A13-1129).**

A felony conviction that is deemed to be a conviction for a misdemeanor under Minn. Stat. § 609.13, subd. 1(2) (2012), is not treated as a prior felony conviction when applying the career-offender statute, Minn. Stat. § 609.1095, subd. 4 (2012).

***Maiers v. Comm’r of Corrections*, 847 N.W.2d 524 (Minn. App. June 2, 2014), review denied (Minn. Aug. 19, 2014) (A13-1956).**

Because Minn. Stat. § 169A.276, subd. 1(d) (2006), requires the court to provide “that after the person has been released from prison the commissioner shall place the person on conditional release for five years” and Minn. Stat. § 244.05, subd. 1b(a) (2006) requires that every inmate “shall serve a supervised release term upon completion of the inmate’s term of imprisonment,” the five-year term of conditional release is concurrent to the term of supervised release.

***State v. Nodes*, 849 N.W.2d 85 (Minn. App. June 16, 2014), review granted (Minn. Sept. 16, 2014) (A13-1772).**

1. A “prior sex offense conviction” as defined by Minn. Stat. § 609.3455, subd. 1(g), exists only after a formal judgment of conviction has been recorded.

2. No conviction presently before the sentencing court is a “previous or prior sex offense conviction” under Minn. Stat. § 609.3455, subd. 7(b).

### **Sex Offender Commitment**

***State v. Haukos*, 847 N.W.2d 270 (Minn. App. May 27, 2014) (A13-1571).**

To trigger the sex-offender-registration requirement under Minn. Stat. § 243.166, a criminal sexual conduct charge must be supported by probable cause.

***In re Civil Commitment of Spicer*, 853 N.W.2d 803 (Minn. App. Aug. 18, 2014) (A13-2120).**

The district court’s findings of fact lack particularity and do not adequately demonstrate the district court’s consideration of the factors relevant to determining whether appellant satisfies the criteria for commitment as an SDP or an SPP.

## **Substantive Criminal Law**

***State v. Broten*, 836 N.W.2d 573 (Minn. App. Sept. 3, 2013), review denied (Minn. Nov. 12, 2013) (A13-0192).**

Proof of bodily harm is not required for a conviction of malicious punishment of a child under Minn. Stat. § 609.377, subd. 1 (2010). Minn. Stat. § 609.377 (2010) is not unconstitutionally vague.

***State v. Weyaus*, 836 N.W.2d 579 (Minn. App. Sept. 3, 2013), review denied (Minn. Nov. 12, 2013) (A12-1723).**

The definition of dangerous weapon found in CRIMJIG 13.10 (2006) accurately conveys the substance of the definition of dangerous weapon found in Minn. Stat. § 609.02, subd. 6 (2010).

***State v. Stahosky*, 836 N.W.2d 769 (Minn. App. Sept. 16, 2013) (A12-1875).**

A person may be found to have committed aggravated forgery and satisfy the “intent to defraud” requirement of Minn. Stat. § 609.625, subd. 1 (2010), when the person signs a document under an assumed name or the name of another and the document creates, terminates, transfers, or evidences genuine, legal rights, privileges, or obligations.

***State v. Essex*, 838 N.W.2d 805 (Minn. App. Nov. 4, 2013), review denied (Minn. Jan. 21, 2014) (A12-2268).**

When there is evidence that the defendant had intent to commit second-degree assault and took action that was a substantial step toward the commission of second-degree assault, evidence that the defendant actually brandished a dangerous weapon is not necessary to support a conviction of attempted second-degree assault.

***State v. Pederson*, 840 N.W.2d 433 (Minn. App. Dec. 9, 2013) (A12-2221).**

A conviction of obstructing legal process under Minn. Stat. § 609.50, subd. 1(1) (2010) requires that a person’s conduct obstructs or hinders the lawful execution of legal process or the apprehension of another person in connection with that process.

***State v. Schmid*, 840 N.W.2d 843 (Minn. App. Dec. 23, 2013), review granted (Minn. Apr. 15, 2014) (A13-0337).**

Entering a deer-hunting area and concealing oneself behind a hunting blind while possessing a weapon loaded with ammunition suited to hunt deer constitutes “pursuing” deer under Minnesota Statutes section 97A.015, subdivision 47 (2010), which requires a deer-hunting license under section 97B.301.

***State v. Beane*, 840 N.W.2d 848 (Minn. App. Dec. 30, 2013), review denied (Minn. Mar. 18, 2014) (A12-2222).**

(See pages 16 and 20 for additional syllabus points for this case)

1. One entry of an apartment without consent, followed by assaults against multiple victims while in the apartment, supports only one first-degree burglary conviction.

***State v. Salyers*, 842 N.W.2d 28 (Minn. App. Jan. 21, 2014), review granted (Minn. Mar. 26, 2014) (A13-0597).**

A person who possesses a gun cabinet also possesses the guns inside for the purpose of applying the statutes that criminalize being a felon in possession of a firearm, possessing a sawed-off shotgun, and possessing a firearm having an obliterated serial number, Minnesota Statutes sections 609.165, subdivision 1b(a), 609.67, subdivision 2, and 609.667(2) (2012).

***State v. Wenthe*, 845 N.W.2d 222 (Minn. App. Apr. 7, 2014), review granted (Minn. June 25, 2014) (A12-0263).**

(See pages 16 and 24 for additional syllabus points for this case)

2. The crime of clergy sexual conduct during the course of a single meeting requires proof that the defendant has knowledge of the religious or spiritual purpose of the meeting.

***Barrow v. State*, 845 N.W.2d 555 (Minn. App. Apr. 21, 2014), review granted (Minn. July 15, 2014) (A13-1520).**

To “sell” under Minn. Stat. § 152.01, subd. 15a (2008), includes the giving of physical control of a controlled substance for the purpose of concealing the substance from law enforcement.

### **Trial Procedure**

***State v. Wenthe*, 845 N.W.2d 222 (Minn. App. Apr. 7, 2014), review granted (Minn. June 25, 2014) (A12-0263).**

(See pages 16 and 24 for additional syllabus points for this case)

1. Where there is evidence of alternative acts of sexual conduct occurring on different days, and each act may support the single-meeting element of clergy sexual conduct, the jury must unanimously agree on the act that constitutes the offense.

***State v. Ayala-Leyva*, 848 N.W.2d 546, (Minn. App. May 19, 2014), review granted (Aug. 5, 2014) (A13-0401).**

(See page 21 for additional syllabus points for this case)

1. When defense counsel offers no proposed jury instruction and leaves the wording of the instruction to the district court's discretion, the court does not commit plain error when it refuses to instruct the jury that it must unanimously agree on which of many overt acts were committed in furtherance of a conspiracy to commit controlled substance crime.

2. A prosecutor commits misconduct when a subpoenaed defense witness is arrested prior to testifying at trial, in violation of Minn. Stat. § 634.08 (2012), but that misconduct is not prejudicial when the witness is immediately released, defense counsel is given an opportunity to interview the witness and decides to not call him at trial, and the witness's testimony would not have resulted in a more favorable verdict.

***State v. Martin*, 849 N.W.2d 99 (Minn. App. July 7, 2014), review denied (Minn. Sept. 24, 2014) (A14-0044).**

A district court order that stays the imposition of a sentence and provides for the vacatur of a guilty plea and the dismissal of criminal charges at a later date is governed by the caselaw that applies to a stay of adjudication. Accordingly, if a prosecutor does not agree to such an order, a district court may issue the order only if the district court finds that the prosecutor has committed a clear abuse of discretion in the exercise of the charging function.