

MINNESOTA

FALL 2024

Defense



LINDKE V. FREED: WHEN SOCIAL
MEDIA USE CONSTITUTES STATE
ACTION

THE ARGUMENT FOR MORE WOMEN ON
THE EIGHTH CIRCUIT: AN ADVOCATE'S
EXPERIENCE

ANNUAL AMICUS ASSEMBLY

MDLA OFFICERS and DIRECTORS

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Elizabeth Sorenson Brotten
250 Marquette Ave S, Ste 1200
Minneapolis, MN 55401
(612) 216-0265

VICE-PRESIDENT

Stephanie Angolkar
9321 Ensign Ave S
Bloomington, MN 55438
(952) 548-7216

TREASURER

Cally Kjellberg-Nelson
1740 West St. Germain, Ste 101
St. Cloud, MN 56301
(320) 200-4928

SECRETARY

Rachel Beauchamp
12800 Whitewater Drive, Suite 200
Minnetonka, MN 55343
(952) 525-6959

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Minneapolis, MN 55401

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EXECUTIVE DIRECTOR

Lisa Mortier
9505 Copley Dr.
Indianapolis, IN 46260
(612) 750-8606
www.mdla.org

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Yueying Li, Benjamin Anderson,
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All inquiries should be directed to MDLA - director@mdl.org

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ARTICLES FROM PAST ISSUES

Members wishing to receive copies of articles from past issues of *Minnesota Defense* should forward a check made payable to the Minnesota Defense Lawyers Association in the amount of \$5 for postage and handling. In addition to the articles listed below, articles dating back to Fall '82 are available. Direct orders and inquiries to the MDLA office, director@mdla.org.

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JOIN A COMMITTEE

MDLA committees provide great opportunities for learning and discussion of issues and topics of concern with other members in similar practices. Activity in committees can vary from planning CLE programs, to working on legislation, to informal gatherings that discuss updated practice information or changes in the law. Serving on a committee is one of the best ways to become actively involved in the organization and increase the value of your membership.

If you would like to join a committee's distribution list, please update your member profile on mdla.org specifying the appropriate committee under the "Practice Type" section. You will be automatically added to the distribution list.

To learn more about an MDLA committee, please visit www.mdla.org. Meeting times and dates for each committee are listed online.

Committees available include:

- Amicus Curiae
- Construction Law
- Diversity
- Editorial
- Employment Law
- Events Committee
- Governmental Liability
- Insurance Law
- Law Improvement
- Law Practice Management
- Long-Term Care
- Membership Committee
- Medical Liability and Health Care
- New Lawyers Committee
- Motor Vehicle Accident
- Products Liability
- Retail and Hospitality
- Technology
- Workers' Compensation
- Women in the Law

RETAIL AND HOSPITALITY

Focused on the defense of retailers, restaurants, and hospitality businesses against suits for:

- Minnesota Civil Damage Act
- Premises liability
- Falling merchandise
- Negligent security
- Food-borne illnesses
- Americans with Disabilities Act
- Minnesota Human Rights Act

For more information, email committee Co-Chairs Kelly Magnus - kmagnus@nilanjohnson.com or Brandon D. Meshbesh - brandon.meshbesh@lindjensen.com

THE PRESIDENT'S COLUMN

ELIZABETH SORENSON BROTTEN

FOLEY MANSFIELD



After an energizing start at the Trial Techniques Seminar ("TTS") in Duluth in August, I am excited to serve as your President as we begin another MDLA year. As it always does, TTS kicked off by honoring our Past Presidents at our President's Dinner. We were honored to have many Past Presidents in attendance as we took time to remember our 2023-2024 President, Brendan Tupa. We shared stories, laughs, and tears as we viewed a memorial slideshow assembled by former board member Katie Storms. The following day, we were honored to be joined by Brendan's wife, Cindy, and their daughters, Elle and Reese, as we presented them with Brendan's gavels and DRI award recognizing his service to MDLA.

As we remembered Brendan, it was abundantly clear that he poured his heart and soul into everything he did. Whether it was being a husband and father, advocating for his clients, spending time with his friends, supporting a political candidate, foil surfing, snowboarding, traveling, or serving MDLA, Brendan did it all with gusto. He was not afraid to take risks, and when doing so, was known to say, "What's the worst that could happen?"

As we start this new year, and in honor of Brendan, I challenge YOU to take those risks that may be holding you back from your personal or professional goals. (And I would not be a defense lawyer if I did not add that while taking these risks, you should exercise the level of care that a reasonable person—or maybe that Brendan—would under the circumstances.) What is it that you have always wanted to do? What are your goals? And what is holding you back? In your personal life, start that exercise program, get that new pet, or take that trip. And in your professional life, ask that potential client for work, ask what you need to do to become partner in your firm, or apply to that dream judicial position.

And when it comes to MDLA:

- Get involved with one of our committees. Attend committee CLEs and social events. Ask how you can step onto a path to committee leadership.

- Attend, or if you are more experienced, volunteer to assist with, our MDLA Trial Academy, which is returning November 7-8, 2024. Hilary Fox and Tessa McEllistrem have done a tremendous job bringing this intensive trial program back and we thank them for their efforts!

- Highlight your experience and expertise and request to speak at an upcoming committee CLE or seminar. Plans are already underway for the 2025 Mid-Winter Conference (January 24-26, 2025 at Chase on the Lake in Walker), planned by Rachel Beauchamp, and the 2025 TTS, planned by Stephanie Angolkar.

- If you have been involved in MDLA committees and events but are not sure what is next, consider applying for the MDLA board when the application process opens next summer.

After all: "What's the worst that could happen?"

MDLA provides tremendous resources to the Minnesota civil defense bar, and will continue to deliver unparalleled education, leadership, and connection opportunities, with an active and engaged membership. And on that note, I am thrilled to share that DRI, the voice of the defense bar nationally, has selected MDLA as the winner of this year's Rudolph A. Janata Award. DRI is recognizing MDLA for its commitment to developing new lawyers through our New Lawyers Boot Camp series and our Rising Leaders Seminar. Numerous past and current leaders of MDLA led these efforts, in a very intentional effort to pass on knowledge and experience within MDLA, to newer members. Whether you attended, organized, were an idea-generator, recruited attendees, sponsored, led a session, mentored, sent an associate, or spread the word about these events, everyone played a role in making them successful. MDLA will receive the award at DRI's Annual Meeting this fall. Congratulations MDLA!

JOIN A COMMITTEE

DIVERSITY & INCLUSION COMMITTEE

Seeking to promote diversity within its membership and the law firms in which its members work. We appreciate and embrace that our legal community and clientele come from a rich variety of diverse cultures, beliefs, perspectives and backgrounds. Through an open and inclusive membership, we hope to achieve a better understanding of the broader issues of diversity, as well as the cultural similarities and differences within our society, so that we may better serve the legal community and the people we represent.

- Annual Diversity Seminar
- Law Clerk Summer Program
- Law Student Attendance at Seminars

For more information, email committee Chair, Madison Fernandez - mfernandez@larsonking.com or Vice-Chair, Aaron Brown - abrown@larsonking.com

WOMEN IN THE LAW

The mission statement of the Women in the Law Committee is to connect the more than 200 women who are MDLA members by:

- Providing opportunities to develop and strengthen relationships, facilitating business growth and professional development;
- Supporting women's career advancement by providing a forum for leadership and professional development; and
- Raising awareness about issues of interest to women lawyers.

For more information, email committee chairs: Ashely Ramstad - ashley@iversonlaw.com, Vicky Hruby - VHruby@jllaw.com, Anissa Mediger - anissa.mediger@ci.stpaul.mn.us or Kaylin Schmidt - Kaylin.Schmidt@gtlaw.com.

MOTOR VEHICLE ACCIDENT

MDLA's Motor Vehicle Accident Committee consists of attorneys who primarily represent insurance carriers and their insureds in the defense of motor vehicle accident related claims. The attorneys associated with this committee typically defend claims involving no-fault, property damage, bodily injury and wrongful death issues. We focus on providing members with relevant speakers and regular updates on developments in this practice area. We also provide the members with a committee-specific listserv for communicating about relevant and emerging topics involving this practice area.

For more information, email committee chair Shannon Nelson - sanelson@arthurchapman.com

Save The Date

January 24-26, 2025

*Mid-Winter Conference
Chase on the Lake
Walker, MN*

RECAP: TRIAL TECHNIQUES SEMINAR



LIZ BROTTEN
TRIAL TECHNIQUES SEMINAR CHAIR

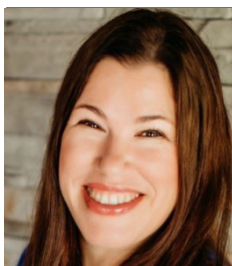
The theme for the 2024 Trial Techniques Seminar (TTS) was “Sailing the Stormy Seas: Trial Techniques for the Modern Lawyer,” and sailing the stormy seas was just what many attendees got to do Friday evening! TTS was held August 15-17, at the DECC in Duluth. The conference began on Thursday after the MDLA board meeting, with the Diversity, Equity, Inclusion & Belonging Welcome Reception where we kicked off another great seminar and introduced diverse law school attendees. The festivities continued with the President’s Reception and Dinner, as well as “dine-arounds” for attendees. A slideshow and memories in honor of President Brendan Tupa, who passed away this year, were shared at the President’s Dinner.

The conference continued on Friday with educational sessions on jury selection, avoiding nuclear verdicts through analyzing jury pools, trial ethics, using experts at trial, and direct and cross-examination at trial. Throughout the conference, MDLA also collected donations of school supplies and monetary donations again for its partnership with Companies to Classrooms in Duluth. Lind, Jensen, Sullivan & Peterson took home the prized apple for the most donations this year!

The MDLA Annual Meeting Lunch was held on Friday as well. This lunch was particularly special because Brendan Tupa’s family was in attendance and a slideshow of photographs and memories of Brendan were shared. President Tammy Reno presented the President’s Award and Gavel to

Brendan’s daughters. DRI State Representative Jessica Schwie passed the role onto Tony Novak, marking the end of a significant period of time Ms. Schwie has contributed to MDLA as a board member and past-president, and then DRI state representative. We hope to continue to see her in our prestigious group of past-presidents at our events! After going through MDLA business and reports from its officers, President Tammy Reno presented amicus brief awards to six teams of brief writers. Treasurer Stephanie Angolkar presented the Deb Oberlander Award, which recognizes an outstanding newer attorney, to Madison Fernandez. The new executive committee was elected and installed to include President Elizabeth Sorenson Brotten, Vice President Stephanie Angolkar, Treasurer Cally Kjellberg-Nelson, Secretary Rachel Beauchamp, and Past President Tammy Reno. New board members joining the MDLA Board of Directors include Ben Anderson, Molly Ryan, Lauren Nuffort, and Melaina Mrozek.

On Friday afternoon, attendees enjoyed various activities in Canal Park and beyond, before returning to the harbor to go aboard a chartered cruise on the Vista Fleet. Besides providing countless opportunities for jokes about a boat full of lawyers, this cruise gave lots of new views to the City of Duluth and the shipping channel. Due to rough weather, the cruise stayed in the channel as opposed to going into Lake Superior. Many continued to gather after the boat cruise, at various breweries and gathering spots in Canal Park after.



Stephanie Angolkar is an equity partner at Iverson Reuvers and is on the Executive Committee of MDLA. She is also President of The Infinity Project. Stephanie’s practice focuses on the defense of government liability, products liability, and complex litigation. She is a MSBA Certified Civil Trial Law Specialist and has been named a Super Lawyer in 2022, 2023, and 2024 and Rising Star in 2019 and 2020. She clerked for the Honorable Harriet Lansing and Kevin G. Ross of the Minnesota Court of Appeals.

On Saturday, the conference continued with a wellness presentation from our Canadian neighbor and DRI member, Laura Emmett, the new Rule of Evidence 107, closing arguments, and preserving the record for appeal. Thank you to all our talented speakers and to Elizabeth Sorenson Brothen for organizing a great conference! The conference provided a rich opportunity to improve trial and litigation skills for all practice areas, as well as continuing camaraderie opportunities for our members.

There will be further opportunity to improve trial skills at the upcoming MDLA Trial Academy, on November 7 and 8, 2024 in St. Paul, which will be our first post-pandemic trial academy!

Stephanie Angolkar, Iverson Reuvers



LINDKE V. FREED: WHEN SOCIAL MEDIA USE CONSTITUTES STATE ACTION

BY MARY HAASL AND JORDAN SODERLIND

The Supreme Court's recently-issued *Lindke v. Freed* opinion attempts to clarify whether a public official's actions on social media constitute a "state action" for First Amendment purposes. 601 U.S. 187 (2024). The opinion—which lays out a two-prong, fact-intensive inquiry—provides guidance to government attorneys when advising clients regarding government officials' actions on social media and whether such actions constitute state action or action as a private citizen.

The case centers around James Freed, the City Manager of Port Huron, MI. Prior to becoming a City Manager and while he was a college student, Freed created and operated a private Facebook page. Freed eventually converted his private page to public when his page neared the 5,000-friend limit imposed by Facebook. Converting the page to public meant that anyone could see and comment on his posts.

In 2014, Freed was appointed as the City Manager of Port Huron. Upon appointment, Freed updated his Facebook page to reflect his new position. Freed added his title, the city's general email address, and the city website link to his Facebook page, and updated his profile picture to a photo of himself in a suit with a city lapel pin. Freed's description read: "Daddy to Lucy, Husband to Jessie and City Manager of Port Huron, MI." Freed continued to operate his Facebook page himself. While Freed's posts were primarily personal—sharing many photos of his daughter, wife, and dog—Freed also posted job-related information including news regarding the city's leaf-pickup efforts, reconstruction of the city's boat launch, and press releases from other officials. Freed's posts occasionally requested feedback from the public. For example, on one occasion Freed posted a link to a city survey about housing. Freed often responded to comments on his posts, including those left by city

residents regarding community matters, and occasionally deleted comments that he thought were "derogatory" or "stupid."

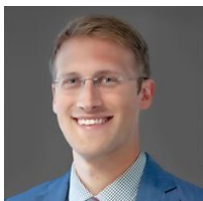
During COVID-19, Kevin Lindke, a fellow Facebook user and citizen unhappy with the city's approach to the pandemic, commented on some of Freed's posts. For example, in response to one of Freed's posts, Lindke commented that the city's approach to the pandemic was "abysmal," and when Freed posted a photo of himself and the mayor picking up takeout from a restaurant, Lindke complained that city leaders were eating at expensive restaurants "instead of talking to the community." Freed deleted Lindke's comments and eventually blocked Lindke from the Facebook page, which meant Lindke could see Freed's posts but could no longer comment on them.

Lindke sued Freed under 42 U.S.C. § 1983 alleging that Freed had violated his First Amendment rights. Lindke argued that Freed acted in his official capacity when he silenced Lindke's speech. The District Court found that Lindke's claim failed because Freed managed his Facebook page in his private capacity and only state action can give rise to liability under Section 1983. The Sixth Circuit affirmed.

In a unanimous decision, the Supreme Court vacated and remanded for further proceedings consistent with its opinion. In issuing its opinion, the Supreme Court did not wholly adopt either the lower Sixth Circuit's standard—which focused primarily on whether the official "perform[ed] an actual or apparent duty of [their] office"—or the Second and Ninth Circuit standard—which primarily considered the appearance of the account. Instead, the Supreme Court devised a two-prong test



Mary Haasl is an associate attorney at Ratwik, Roszak & Maloney, P.A. Mary primarily practices in the areas of municipal law, labor and employment law, school law, and litigation.



Jordan Soderlind is a partner at Ratwik, Roszak & Maloney, P.A. Jordan's practice focuses on school law, municipal law, labor and employment law, and litigation. Jordan currently serves as the Co-Chair of the MDLA Governmental Liability Committee.

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where “a public official’s social-media activity constitutes state action under § 1983 only if the official (1) possessed actual authority to speak on the State’s behalf, and (2) purported to exercise that authority when [they] spoke on social media.”

The Court notes several considerations in applying the two-prong test. Namely, under prong one, courts must consider (1) whether the official who posted was “possessed of state authority” to speak on the government entity’s behalf on a particular matter, and (2) whether the alleged censorship was connected to speech on a matter that was within the official’s “bailiwick.” To determine whether a public official has actual authority to speak on the government entity’s behalf, courts must consider both the written law prescribing an official’s powers (statutes, ordinances, and regulations), and recognized traditions of official authority (customs and usage). The official must have actual authority “rooted in written law or longstanding custom to speak for the State.”

The Court emphasizes the importance of considering the actual authority of each employee implicated by the state-action doctrine. The Court notes, for example, that if Freed had posted a list identifying restaurants in violation of a health-code, and subsequently deleted comments by other users, that would not constitute state action unless Freed, as the City Manager, was responsible for public health. The Court further cautions that courts should not “rely on ‘excessively broad job descriptions’” to conclude an employee possesses state authority because employee’s “possess[ion] of state authority” relates to the individual’s actual authority, and not whether the conduct “could fit within the job description.”

As it relates to prong two of the test—or rather, whether an employee “purported to exercise that [state] authority in the relevant posts”—the Court notes several additional considerations or factors that inform the analysis. Namely, (1) whether the page was designated as either personal or official, (2) whether the information or announcement was not made available elsewhere, or whether the post simply shared otherwise available information, and (3) whether the individual posted to fulfill, or was in furtherance of their “responsibilities pursuant to state law.” For example, if the information was only made available through the post, or if government resources were used in making the post, such factors would make it more likely that the individual was exercising official authority.

Although the analysis under prong two is fact-intensive and fact-specific, the Court again addressed factors that weigh the analysis and measures that public officials could take to limit the potential exposure. For example, the Court points out that a label or disclaimer (i.e. “the views expressed are strictly my own” or “this is the personal page of ____”) provides a heavy presumption (although rebuttable) that posts made on the page are personal. In contrast, posts by government officials that cite to a source of authority (i.e. “pursuant to Minn. Stat. § ____, I am ____”), makes it clear that the official purports to exercise their state authority. The

Court cautions that a public official “who fails to keep personal posts in a clearly designated personal account exposes [themselves] to greater potential liability.” While adding a disclaimer that the account is personal may carry weight in the analysis, such a disclaimer does not insulate a post that actually amounts to official business.

Lastly, the type of action undertaken by a state official is important. Here, the Court bifurcates the two types of action taken by Freed: (1) removing Lindke’s comment, and (2) blocking Lindke from posting. In considering the removal of Lindke’s comment, courts would only consider the content of the post at issue. However, given that “blocking” on Facebook exists on a “page-wide basis,” a court would need to consider each of Freed’s posts under the analysis to determine whether Freed engaged in state action with respect to any post on which Lindke wished to comment.

As social media usage by government employees is extremely common, the Lindke decision has the potential to affect all government entities. The decision creates an opportunity for government entities and their attorneys to reconsider and address whether and to what extent an employee is authorized (or not) to speak on the entity’s behalf, and whether changes to policies and practices are necessary to limit potential exposure.

Thank You

for your service

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Workers' Compensation



Shayne Hamann



Steve Erffmeyer

Arthur Chapman is proud to have two shareholders on the MDLA Board of Directors. Shayne's practice is focused in automobile and No-Fault litigation and Steve's practice focuses in the areas of commercial transportation and general liability.

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Minneapolis, MN
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ArthurChapman.com
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THE ARGUMENT FOR MORE WOMEN ON THE EIGHTH CIRCUIT: AN ADVOCATE'S EXPERIENCE

BY STEPHANIE ANGOLKAR

One October morning in 2021, I prepared to return to in-person oral arguments before the Eighth Circuit in St. Paul, Minnesota. After checking in for my argument, I entered the courtroom, observing I was the only woman in the room. That only changed when the court clerk entered at the start of arguments. The panel clearly had been looking forward to returning to in-person arguments and was very active.

Appellate attorneys often sit in the gallery during the arguments of other cases. One of the cases argued was the appeal of a sex trafficking conviction. *United States v. Taylor*, 44 F.4th 779 (8th Cir. 2022). The engaged panel asked questions about the meaning of a “happy ending.” These questions, which can be listened to online, addressed such details as the placement of a hand towel and other hypotheticals. I do not need to tell you the panel was all-male because you know the odds of that in the Eighth Circuit—where we have only one female judge.

So there I sat, trying to identify this feeling I was experiencing. It was a sensitive case, so of course they would need to ask some sensitive questions about the details, right? But I could not help wondering, would the makeup of this audience before the Court change the way the questions were asked? The very detailed hypotheticals? Then I started to wonder how these questions might change if there were a woman arguing. Would they be asked the same way? And what if there was a woman among the three judges? Would the questions change? Would they be asked differently? Then my thoughts went even bolder... what if there were three women on the panel?

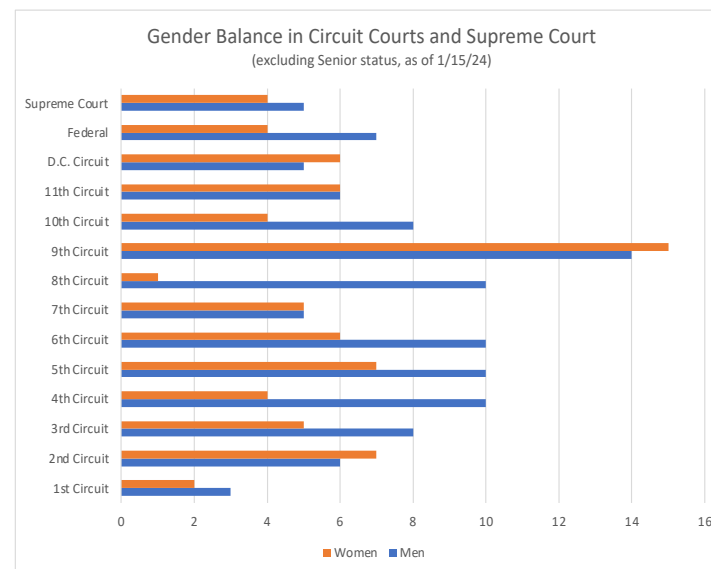
The argument ended, and it was time to leave. I pushed the thoughts and questions about more women on the bench aside. However, the argument that morning started me on a quest to join a long-standing argument: the argument for more women on the Eighth Circuit.



Stephanie Angolkar is an equity partner at Iverson Reuvers and is on the Executive Committee of MDLA. She is also President of The Infinity Project. Stephanie's practice focuses on the defense of government liability, products liability, and complex litigation. She is a MSBA Certified Civil Trial Law Specialist and has been named a Super Lawyer in 2022, 2023, and 2024 and Rising Star in 2019 and 2020. She clerked for the Honorable Harriet Lansing and Kevin G. Ross of the Minnesota Court of Appeals.

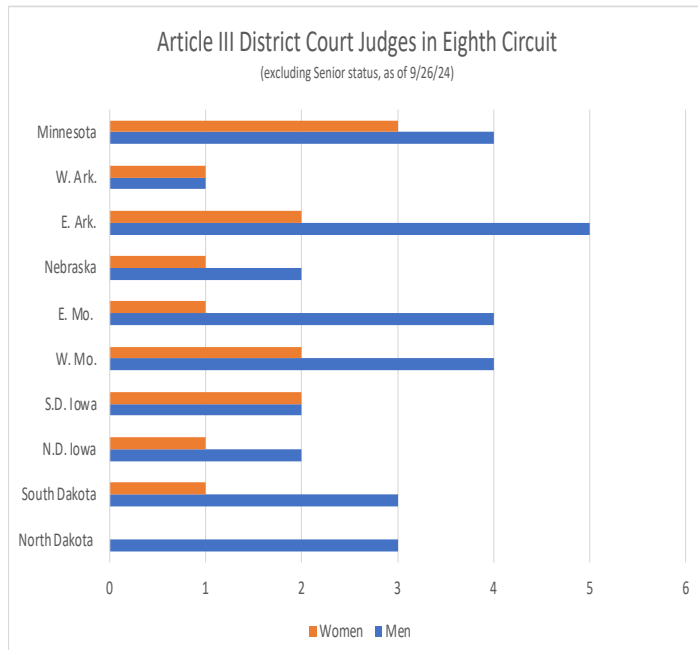
Gender Balance on the Courts

The Eighth Circuit Court of Appeals has only one female judge. In its history, only two women have served: Judge Diana Murphy (deceased) and Judge Jane Kelly. Since Judge Kelly's appointment in 2013, four white men have been appointed. In contrast, other Circuit Courts of Appeal reflect more gender balance.

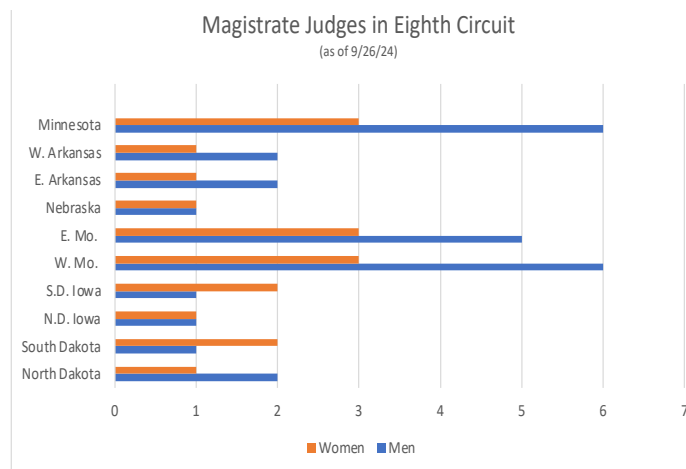


The Eighth Circuit Court of Appeals serves the region including North Dakota, South Dakota, Nebraska, Minnesota, Iowa, Missouri, and Arkansas. Within those states' federal district courts, too, there is still work to be done to improve gender balance.

The Argument for More Women continued on page 12



At the magistrate judge level, gender balance in the states within the Eighth Circuit is progressing:



In some cases, a woman's perspective can influence the result. In *Safford Unified School District v. Redding*, a case involving the strip-search of a 13-year-old-girl, the Supreme Court Justices questioned the seriousness of the charge during oral arguments. Only Justice Ruth Bader Ginsburg expressed deep concern. Justice Ginsburg is believed to have influenced the 8-1 vote, and she later explained, "They have never been a 13-year-old girl." Hayes, Hannah, *Diversity on the Bench: Why It Matters in a Polarized Supreme Court*, American Bar Association, (August 17, 2022), (available at: <https://www.americanbar.org/groups/diversity/women/publications/perspectives/2022/august/>)

diversity-the-bench-why-it-matters-a-polarized-supreme-court/).

There are many studies and resources analyzing the impact of gender on decisions of the courts. See, e.g. Haire, Susan and Laura Moyer, *Gender, Law, and Judging*, Oxford Research Encyclopedias, (April 26, 2019) (available at: <https://oxfordre.com/politics/display/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-106#:~:text=In%20an%20analysis%20of%20sex,recent%20cohorts%2C%20the%20effect%20disappears.> A diverse bench also improves public confidence in the courts. There is something powerfully affirming for the public to see judges that look like them or have a relatable background.

The Infinity Project

The argument for more women in the Eighth Circuit was amplified in 2007. That year, Judge Mary Vasaly, Marie Failinger, Lisa Brabbit, and Sally Kenney founded The Infinity Project in Minnesota. Their mission was to increase gender diversity on the Eighth Circuit bench. The Infinity Project believes it is necessary to have a bench reflecting society as a whole so that judicial decisions take into account varied life experiences and points of view.

The Infinity Project has a busy Applicant Support Committee, recently honored with a Minnesota Lawyer "Attorneys of the Year" award for diversity, equity, and inclusion efforts. This committee assists women applying for judicial positions, whether it be brainstorming sessions, application and cover letter feedback, or mock interviews.

The Committee works with women and diverse candidates applying for judgeships at state and federal levels in multiple states within the Eighth Circuit. The Infinity Project hopes its efforts supporting women at multiple levels will grow the pipeline to the Eighth Circuit, and these efforts could be more formally replicated in other states. This is particularly important since federal judges often have prior judicial experience. For example, the Honorable Wilhelmina Wright served at all levels of the judiciary in the State of Minnesota before her appointment by President Biden to the United States District Court of Minnesota, and she was a strong contender when he considered an appointment to the United States Supreme Court.

Let's think about those appearing before the Court. Let's think about the demographics of who is appearing before the Court. Are there concerns about the legitimacy of Courts and ethics of judges? How does it feel to appear in a judicial system that more accurately reflects the diversity of our communities? When there is more balance, it feels like a

system working for all of us, resulting in more trust from all of us.

I speak from my own perspective as a female attorney. I treasure a moment from a jury trial several years ago, where myself, female co-counsel, female opposing counsel, and Judge Ann Montgomery were addressing a trial matter outside the presence of the jury. I do not even remember what it was about. What stands out to me is that we were all women in the courtroom at that time. It is a moment I have yet to replicate in practice. When I appear before a woman judge or am working with other women attorneys in my heavily male-dominated practice area, there is a boost in my self-esteem that affirms and validates my presence in this profession and practice area.

Lived experiences impact judicial philosophies. And the makeup of our bench has an influence on those appearing before it, their trust in the system, and an influence on their own feelings of self-worth and possibility.

At a time when diversity, equity, and inclusion efforts are under attack, it is important to reflect on why these efforts are important. It is not about evening out numbers or meeting a ratio, though certainly data points help. Rather, if we view a judicial branch that more closely reflects the diversity of our society, we add legitimacy, buy-in, and ownership by the public in this system.

How You Can Help

If you are curious about learning more about the Infinity Project, you may learn more at www.theinfinityproject/minnesota. The Infinity Project is a non-partisan organization which solely relies on donations to cover expenses.

(A version of this article was originally published in the MSBA Bench + Bar in April 2024.)

JOIN A COMMITTEE

MDLA committees provide great opportunities for learning and discussion of issues and topics of concern with other members in similar practices. Activity in committees can vary from planning CLE programs, to working on legislation, to informal gatherings that discuss updated practice information or changes in the law. Serving on a committee is one of the best ways to become actively involved in the organization and increase the value of your membership.

EDITORIAL COMMITTEE

MDLA's Editorial Committee is responsible for publication of its quarterly magazine, Minnesota Defense. If you would be interested in publishing in the Minnesota Defense or serving as an editor, please contact us at director@mdla.org.

For more information, email committee chairs Rachel Beauchamp - rbeauchamp@cousineaulaw.com or Ryan Paukert - rpaukert@meagher.com

GOVERNMENT LIABILITY

Attorneys who work with municipalities on a wide range of government liability issues. The Committee typically meets quarterly with a CLE type format. An annual update regarding recent case law decisions, focusing on issues that pertain to cities, counties and other municipalities, is given in the winter at the League of Minnesota Cities in St. Paul. Other meetings rotate among the firms. The December holiday party is always enjoyable.

- Quarterly CLE
- Winter Annual Update of Case Law Decisions
- Representing Cities
- Representing Counties
- Representing other Municipalities
- Annual Holiday Party

For more information, email committee Co-Chairs Jordan H. Soderlind- jhs@ratwiklaw.com or Julia Kelly - julia@iversonlaw.com

ANNUAL AMICUS ASSEMBLY

Over the past year, amicus requests to MDLA have remained steady; MDLA provides amicus support for cases on appeal where the legal issue will be of substantial interest to MDLA and its members. Since August 2024, four significant decisions were released in cases for which MDLA participated on an amicus basis:

Reichel v. Wendland Utz, LTD: Expanding the Basis of Attorney Negligence Claims Arising Out of Representation in a Litigated Matter

On September 18, 2024 the Minnesota Supreme Court issued a significant decision in *Reichel v. Wendland Utz, LTD*, No. A23-0015, 2024 WL 4219942 (Minn. Sept. 18, 2024), concluding that a lawyer in a litigated matter can be liable to a client for “corrective fees” incurred by the client because of malpractice during the representation, even if the ultimate outcome of the litigation is successful. The facts of the case were somewhat egregious, involving individual and corporate defendants in a family business dispute, who claimed they spent nearly \$1 million in extra attorney fees because their original lawyers at Wendland Utz mishandled the case, lost or hid information, failed to respond to written discovery, failed to file a brief in opposition to a contempt motion, and caused the district court to issue orders awarding attorney fees to plaintiff to be paid by defendants’ counsel. If that was not enough, a new attorney from the same firm advised that because “bridges had been burned” with the district court, the corporate defendants would be better off filing Chapter 11 bankruptcy for purposes of “litigating the issues in a fresh forum.” After the conclusion of the bankruptcy matter, the underlying case proceeded against the individual defendant only, with those claims successfully dismissed on summary judgment. The clients then sued their lawyer and Wendland Utz under multiple theories, including professional negligence.

Wendland Utz filed a motion for partial summary judgment on the professional negligence claim, conceding negligence for purposes of the motion. Nevertheless, relying on the general rule that a plaintiff in a legal malpractice matter must establish that “but for” the law firm’s conduct, the client would have been successful in the defense of the underlying action, see *Guzick v. Kimball*, 869 N.W.2d 42, 47 (Minn. 2015), they argued the claim could not proceed because the underlying resolution of the case was successful. The district court agreed. But in so doing, because other claims remained outstanding, the district court granted a Rule 54.02 motion for partial final judgment, reasoning that clarification was needed on “an issue of first impression in Minnesota courts: Whether a lawyer who negligently thrusts a client into other or ongoing ‘same-case’ litigation (not merely a transactional matter) is entitled to recover the legal fees as damages even though the ultimate result is

‘successful.’” On this issue the Court of Appeals affirmed the dismissal of the professional negligence claim, agreeing with the district court that a professional negligence suit premised on a litigated matter requires “the loss or destruction of a cause of action” that “would have otherwise been successful.” *Reichel v. Wendland Utz, LTD*, No. A23-0015, 2023 WL 5838837 (Minn. Ct. App. Sept. 11, 2023).

By the time the case reached the Supreme Court the procedural posture was rather convoluted, but that is a side issue. The Court agreed it had jurisdiction over the substantive issue of whether professional negligence claims may proceed against attorneys who—although they ultimately achieved a favorable result for the client—caused the client to expend substantial and unnecessary attorney fees.

In answering this question in the affirmative the Court discussed the two similar, yet different, standards which it has historically used to assess professional negligence, based on whether the underlying case involved a litigated matter resulting in loss or damage to a cause of action, or a transactional matter. As to the former, the client has the burden of proving that, but for the attorney’s negligence, the client would have been successful in the prosecution or defense of the action. The Court referred to this as the “case-within-a-case” standard, which is a “descriptor of the but-for causation element unique to malpractice claims based on loss or damage to a client’s cause of action that ‘could have been won at trial.’” As to transactional matters the Court observed the standard is different, not because of the “transactional” nature of the matter, but because such claims do not arise out of the negligent loss of a claim or defense in litigation. Thus, as the Court recognized in *Jerry’s Enterprises, Inc. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, “in an action for legal malpractice arising out of representation in transactional matters,” a plaintiff may establish but-for causation by showing that “but for [the] defendant’s conduct, the plaintiff would have obtained a more favorable result.”

While Wendland Utz asked the Court to conclude that only the “case-within-a-case” standard could apply because the claim arose out of a litigated matter, the Court concluded that the case at bar was more analogous to the circumstances which prompted the decision in *Jerry’s*; that is, involved a plaintiff alleging something other than the loss of a claim or a defense, but alleged harm occurred “despite a legal victory.”

Thus, the Court held as follows: “[I]n a professional negligence claim such as that presented here, when the plaintiff alleges some type of harm other than the negligent loss of a claim or defense in litigation, the case-within-a-

Amicus Assembly continued on Page 15

case methodology is inapplicable, and the plaintiff must rather demonstrate that the alleged harm would not have occurred absent the defendant's negligence." In approving this extension of the transactional standard, the Court relied on authority from other jurisdictions, as well as Restatement (Third) of the Law Governing Lawyers § 53 cmt. b (Am. Law Inst. 2000), which states: "The plaintiff in a previous civil action may recover without proving the results of a trial if the party claims damages other than the loss of judgment. For example, a lawyer who negligently discloses a client's trade secret during litigation might be liable for harm to the client's business caused by the disclosure."

And in so doing the Court specifically stated it was "unpersuaded" by the argument advanced by the MDLA in its amicus brief (as well as by amici the Minnesota Firm Counsel Group), that "our holding today will open the floodgates to a wave of unmeritorious professional negligence claims against lawyers." It stated: "We find unwarranted the assertions of amici that the straightforward application of the but-for causation element for professional negligence claims will hold attorneys ultimately liable merely because their clients' cases "could have been litigated more cheaply." It went on to observe that "[a]n attorney who acts in good faith and in an honest belief that his advice and acts are well founded ... is not answerable for a mere error of judgment," but that "a professional must use reasonable care to obtain the information needed to exercise his or her professional judgment, and failure to use such reasonable care would be negligence, even if done in good faith."

And in comments portending further difficulty in securing dismissal of claims on summary judgment, the Court stated that the question of whether a lawyer acted with "some level of reasonable care" will often be a fact issue that may be more difficult to resolve in pretrial motion practice, that "when facts are alleged that raise a genuine issue of material fact about whether an attorney's actions were reasonable, it would be inappropriate to dismiss them artificially using [a] bright-line rule," and that "the contention that [an ordinary negligence] standard would create unlimited liability for lawyers is simply untrue; it would subject them to trial, but not necessarily to ultimate liability."

Ultimately, the Court called its ruling "narrow," and declined to elaborate on how the critical element of causation might be applied on remand under the unique factual circumstances of this case. Despite the Court's dismissal of the concerns raised by MDLA and other amici, this decision certainly seems to have the potential of increasing the number of malpractice claims arising not because an attorney failed to receive a good result, but because it cost too much to get there. And the decision clearly signals, again, the disfavor with which the Court views summary judgment as an effective tool to resolve claims short of trial.

Bill Davidson wrote the amicus brief for MDLA.

Alonzo v. Menholt: Tort of Negligent Selection of an Independent Contractor

In July 2024 the Minnesota Supreme Court issued its decision in *Alonzo v. Menholt*, 9 N.W. 3d 148 (Minn. 2024). This case concerned whether Minnesota should recognize a new tort: negligent selection of an independent contractor. The Supreme Court concluded, as a matter of first impression, that this tort exists in Minnesota.

Factually, this case concerned Defendant Menholt Farm's hiring of an independent contractor, Braaten Farms, to haul sugar beets during harvest season. Menholt had a longstanding relationship with Braaten; and during the season in question, Braaten assigned a W2 employee, Lopez, to drive a truck for Menholt. In the course of delivering sugar beets from point A to point B, Lopez crossed a center line and struck a vehicle operated by Alonzo, who sustained serious injuries and later died. Lopez was later discovered to have had a suspended license, an outstanding felony arrest warrant, and multiple past DWI convictions.

Alonzo sued Menholt, asserting it negligently selected Braaten as an independent contractor, and specifically failed to inquire as to how Braaten screened its employees. Menholt successfully brought a motion for summary judgment, which was affirmed by the Court of Appeals. In reversing in part, and affirming in part, the Court concluded that Minnesota recognizes a claim for negligent selection of an independent contractor. In so doing, the Court specifically called out the amicus brief filed by the MDLA—both at oral argument and in its opinion—as rightfully and properly raising a concern that recognizing this new tort would create an undue burden to "vet" contractors hired to perform occasional and seasonal work that the hiring parties themselves cannot perform (either due to lack of time or lack of skill). The Chamber of Commerce also submitted an amicus brief, arguing that this new tort could be catastrophic for small businesses who need to retain independent contractors to perform tasks which the business owners do not have the expertise to perform. The Court thus sought to define the contours of this new tort in such a way as to impose "few additional burdens, if any" on parties held to this standard of care. In particular, it concluded that the degree of care required is fact-dependent, turning on (1) "the danger to which others will be exposed if the contractor's work is not properly done," and (2) "the character of the work to be done—whether the work lies within the competence of the average [person] or requires special skill and training." The Court suggested that this standard is intended to apply only in cases where independent contractors are hired to perform specialized tasks, and those tasks—performed negligently—were ultimately the proximate cause of injury.

It remains to be seen whether this decision changes the tort landscape, and does, in fact, open the Pandora's Box about which MDLA and the Chamber of Commerce warned

in their amicus briefs. In point of fact, the Court was not in agreement as to whether, under the facts of that case, Menholt had breached this new duty of care in a situation where he, as he had done several times in the past, relied on his longtime business associate, Braaten, to provide a qualified truck driver during the busy sugar beet season. Because the panel was evenly divided as to this factual issue, it simply affirmed the Court of Appeals' conclusion that the facts justified a grant of summary judgment.

Jeff Markowitz and Harrison Berg wrote the amicus brief for MDLA.

Demskie v. U.S. Bank Nat'l Ass'n: Minnesota Reaffirmed as a Notice-Pleading State

Demskie v. U.S. Bank Nat'l Ass'n, 7 N.W. 2d 382 (Minn. 2024), involved claims for breach of fiduciary duty and unfair prejudicial conduct in the context of a corporate buy-out, under Minn. Stat. § 302A.751 by beneficial owners of a closely-held corporation. As teed up by the defendant bank before the lower courts, this case also addressed whether, on Rule 12 motions to dismiss (as well as on Rule 12 motions for judgment on the pleadings), Minnesota should continue to follow the dictates of its prior decision in *Walsh v. U.S. Bank*, or join many state courts nationwide and adopt the "plausibility" standard articulated by the U.S. Supreme Court cases in *Twombly* and *Iqbal*.

In *Walsh v. U.S. Bank*, the Minnesota Supreme Court held that Minnesota is a notice-pleading state and "does not require absolute specificity in pleading, but rather requires only information sufficient to fairly notify the opposing party of the claim against it." 851 N.W.2d 598, 604–05 (Minn. 2014) (citation omitted).

In *Demskie*, the Court reiterated its reliance on the standard announced in *Walsh*, and was not willing to endorse the federal standard.

Jeff Markowitz and Sequoia Butler from the Arthur Chapman firm, wrote the amicus brief for MDLA.

Rygwall v. ACR Homes, Inc.: Sufficiency of Affidavit under Minn. Stat. § 145.682

Rygwall v. ACR Homes, Inc., 6 N.W. 3d 416 (Minn. 2024), concerns the question of the standard to be met by a defendant in a medical malpractice case, when the issue turns on the sufficiency of the plaintiff's mandatory expert-substantiated causation opinion(s) required by Minn. Stat. § 145.682. While the Court reversed the lower courts' decision that summary judgment was warranted, and while the Court was asked to (but did not) alter the ability of defendants to obtain summary judgment, the Court's decision may ultimately alter the way lower courts approach summary judgment.

Factually, this case involved the death of a disabled woman, Amy Rygwall, who was in the care of a group home. At lunch one day Amy experienced what appeared to be a choking incident involving difficulty breathing. After Defendant's nursing staff evaluated Amy and concluded she was not in urgent distress, the decision was made to have her evaluated by urgent care. Amy's condition began to deteriorate as the afternoon progressed, and upon arrival at urgent care the paramedics were called. At the ER, Ms. Rygwall was diagnosed with acute respiratory distress. She passed away two weeks later.

Plaintiff filed suit claiming negligence, asserting Defendant should have sought emergency care immediately, and—submitting two physician affidavits—asserted that its failure to secure emergency care sooner caused the decline that resulted in Ms. Rygwall's death. Defendant brought a motion for summary judgment, arguing that Plaintiff's expert affidavit did not sufficiently establish causation. In particular, the affidavit did not opine on what specific course of action should have been taken in order to thwart Rygwall's decline and ultimate death.

After the Court of Appeals affirmed, Plaintiff successfully sought review on the grounds that the Minnesota Supreme Court had eroded standards for causation in motions for summary judgment in medical malpractice cases. Defendant countered that since the passage of the statute the Supreme Court had endorsed the proposition that a "higher level" of causation was required. In its decision, the Supreme Court expressly recognized its jurisprudence had caused confusion over the causation standard. It ruled that—just as with any other negligence-based claim which requires expert opinion to allow the jury to draw reasonable inferences without speculating—a plaintiff in a medical malpractice case must submit an expert affidavit that "outlines a chain of causation," which includes an opinion on causation that is supported with reference to specific facts in the record connecting the conduct of the defendant provider to the injury suffered by the harmed patient. Furthermore, to support a summary judgment motion in a medical malpractice case where expert testimony is needed, the expert must provide an opinion with proper foundation and enough information about the specific case to reassure the court that the jury will have sufficient information to draw a reasonable inference—without speculating—that the provider's conduct caused the plaintiff's injury. Then turning to the specific facts of that case, the Court concluded that Plaintiff's expert physicians had provided enough foundation upon which the jury could conclude, without speculating, that Defendant's failure to secure emergency care for Ms. Rygwall sooner caused her death. There was a dissent by now-retired Justice Anderson, joined by now-Chief Justice Hudson, agreeing with the causation standard, but concluding that the expert affidavits were insufficient to establish the necessary chain of causation as they did not expressly define what "should have" occurred with

Rygwall's care and treatment as the day unfolded.

While the opinion in this case served to clarify what the "bar" is for establishing entitlement to summary judgment in medical malpractice cases, it remains to be seen whether this decision really changes anything—or changes everything. While Appellant had sought a decision that would have eroded the defense bar's ability to obtain summary judgment, the Court seemed to hold the line to recognize it may be appropriate in some circumstances. That said, it gave much greater scrutiny to the facts and reached a conclusion that at least two justices agreed was not supported by the record.

Julia Nierengarten and Louise Behrendt from the Meagher & Geer firm, wrote the amicus brief for MDLA.

COMING UP

At present there are three cases pending before the Minnesota Supreme Court in which MDLA has appeared or will be appearing on an amicus basis.

Minor Doe v. Best Academy: This case concerns the parameters of municipal discretionary act immunity in a case involving a negligent hiring claim filed against a charter school, arising after a teacher at the school was accused of sexually abusing a minor child. While the case was argued before the Court on October 31, 2023, no decision has yet been released.

Ken Bayliss, Dyan Ebert, and Elle Lannon, from the Quinlivan firm, wrote the amicus brief on behalf of MDLA.

Lund v. Calhoun Orange, Inc., No. A23-0149, 2023 WL 8368507 (Minn. Ct. App. Dec. 4, 2023): This case concerns a disabling injury sustained by former Hennepin County District Court Judge Fred Karasov, after he had a cardiac event and collapsed during an aerobics exercise class at an Orange Theory Fitness franchise. The specific negligence alleged on the part of Orange Theory was that while it had an automated external defibrillator (AED) device on site, and while staff retrieved it after Judge Karasov collapsed, staff did not insist that the two nurses providing emergency CPR at the scene stop what they were doing to use the AED device. Orange Theory originally obtained partial summary judgment on the language contained within the exculpatory clause of its membership agreement; and the case then proceeded to a jury trial on plaintiff's claim of "willful and wanton" negligence—defined as the failure to use reasonable care when a person is in a position of peril. The jury reached a defense verdict. In the meanwhile, the Supreme Court reached its decision in *Justice v. Marvel, LLC*, 979 N.W. 2d 894 (Minn. 2022), in which it concluded that language in an exculpatory agreement must be strictly construed; and that language purporting to release a defendant from "any and all claims" did not release a defendant from liability for its own negligence. Plaintiff appealed the grant of summary

judgment on the negligence claim; although the Court of Appeals concluded the exculpatory language in the Orange Theory membership agreement did not pass the strict construction test, it went on to conclude that the indemnification provisions of the agreement specifically referred to the member's obligation to indemnify Orange Theory for its own negligence, that such language passed the strict construction test, and that summary judgment was thus appropriate on this alternative ground. While there was some thought that the Court would not, so soon after *Justice v. Marvel*, accept another exculpatory clause case for review, it did in fact accept review.

Paul Magyar from the Foley and Mansfield firm wrote the amicus brief for MDLA.

Bobby Lykins v. Anderson Contracting, Inc., and SFM Mutual Ins. Co., Workers' Compensation Court of Appeals Case No. WC23-6532 (Mar 8, 2024): This is a workers compensation claim, in which MDLA was asked to appear as an amicus party on behalf of both the defendant employer, Anderson Contracting, and the defendant work comp insurer, SFM Mutual Ins. Co. The committee agreed to accept this case for amicus participation upon the recommendation of Katie Storms, Tim Jung and Mark Fredrickson from the Lind Jensen firm, as well as from amicus committee member Jeff Lindquist, who practices in this area. The at-issue WCCA decision references an open-ended proposition regarding whether an employee "appears to be incapacitated," and it has apparently created quite a bit of noise in the WC community. The concern is that the decision leaves attorneys in a difficult position where they can be second guessed on their assessment of whether "the employee appeared to be incapacitated"—an assessment which attorneys are ill-equipped to make in the first place. The case concerns the standards attorneys will need to use in order to assess "incapacity"; the potential for second-guessing that assessment; the impact to clients of having settlements overturned; and potential civil liability. There are also implications for the clients of MDLA lawyers, creating a significantly increased risk of vacating prior settlements, injecting uncertainty into the settlement process, impinging on the autonomy of the parties in settlement, and could be a deterrent to settlement.

David Nirenstein, from the Fitch Johnson firm, has agreed to be the writer.

Thank you to all those attorneys who have contributed their time and talents in writing amicus briefs on behalf of MDLA!

THE BOOK REPORT: THE FIRE NEXT TIME BY JAMES BALDWIN

BY RACHEL BEAUCHAMP

The Unlearning Racism Book Club in partnership with MDLA's Diversity Equity Inclusion and Accessibility read its second book and met regarding the same in July 2024. "The Fire Next Time," by James Baldwin is a book found in many African American studies courses, and more importantly, is regularly referenced in posts, articles, and TikToks encouraging white-presenting individuals to take responsibility for unlearning racism and to start by reading this book. It is referenced and listed so often, it feels like a piece of essential scaffolding that must be read and understood to even begin this work. And now that I have read it, I understand the assignment

The Fire Next Time is a fairly short read, which is a great intro - in busy times and addressing heavy and emotional topics, shorter books feel so inviting and *possible*. Author James Baldwin is an important historical figure in literature and the fight for equality on multiple fronts; he was a Black man active in civil rights, and his sexual identity remains the subject of speculation - should he be identified as "gay" because that is the title that likely would have been used during his lifetime? Should he be identified as bi or pan, because we know more about human sexuality and Baldwin's relationships with both women and men? Should the sexuality and identity of past historical figures be discussed at all when they are not here to contribute? This ongoing analysis of an issue that is functionally irrelevant to anyone's *present* lives, but is hugely important in addressing the ongoing need for acceptance of whole humans without shame or prejudice, is a perfect segway into the ongoing relevance and importance of The Fire Next Time.

A 1963 book, The Fire Next Time is unequivocally a deeply personal memoir and simultaneously and equally a deeply relatable call for civil rights on a national and international level. Confession: I mostly loathe poetry, and I often dislike philosophy and non-fiction books. I usually read for pleasure, I want a plot. And I do not just want a plot; I want a linear plot, preferably from one point of view, and telling a story - not navel-gazing or trying to explain the "why" of things without being solution-oriented. So I was a little concerned this would be a slog to read. However, Baldwin's writing is beautiful and emotive all on its own without reference to the content and the book is a great read if you love and want nothing more than an amazingly well-written personal story that shows a snapshot of a pivotal

time from an underrepresented point of view.

However, The Fire Next Time is recommended over and over and over not only for its inherent excellence, but because its content remains absolutely, unfortunately, painfully, relevant in the present. Reading this book in 2024, my overwhelming feeling and experience was one of pure frustration; there is simply no reason that this book written more than 60 years ago should be so entirely relevant to American racial issues present today. And yet, that is what I felt over and over and over again. It opened my eyes to understanding the Nation of Islam's belief in Black separateness and cultural superiority, as a direct and entirely logical response to white culture's centuries of oppression against Black and Brown humans rooted in a direct belief in Black *inherent inferiority*. This concept of "the one drop rule" (hypodescent) that any amount of Black blood makes a person "Black" was critical in the concentration and retention of white power based on a societal belief in inherent wrongness and cultural inferiority of Blackness.

In 2024 white Americans may not consciously think about the way that history frames the ongoing conversations and racial issues in America today; particularly when white Americans say "enslavement ended hundreds of years ago" and the last 20 plus years of social discussion have framed "diversity" as a positive - without actively doing anything to specifically undo and address the *results* of centuries of racial trauma and oppression. Changes in the law to stop legalized white supremacy is barely opening a door; it does nothing to undo the ongoing results from past wrongs, that continue to impact the present. Reading this book, Baldwin's everyday experiences in Harlem, and Chicago, are eminently relatable and could be happening yesterday or today and likely still tomorrow. Unsurprisingly, the lists, TikToks and articles were right; The Fire Next Time is essential reading for everyone, of every racial background, because it emotionally connects the big picture to the individual. It is these moments of connection on an emotional level that can change the narrative until some day, hopefully, The Fire Next Time will be a snapshot to show what was, instead of still an explanation of what is.

To join the Unlearning Racism Book Club and stay informed of the books and zoom meetings, please email director@mdla.org.



Rachel Beauchamp is a shareholder at Cousineau Malone P.A. where she specializes in commercial trucking, insurance coverage, and civil litigation. She serves as Secretary on the MDLA Board of Directors Executive Committee, as Executive Editor of MN Defense Magazine, and is moderating the Unlearning Racism Book Group.

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DRI CORNER

The Voice of the Defense Bar

BY JESSICA SCHWIE

KENNEDY & GRAVEN, CHTD

MDLA DRI State Representative



Hello from DRI! I am writing this as we head into the 2024 MDLA Trial Techniques Seminar (TTS) in Duluth. By the time you read this, it might be after the event but one of the treasures of being a part of MDLA and DRI is the continuity of the relationship with all of those that make up the associations. Through our connections, we can inspire one another in our practice of law and if we put pen to paper through publications and presentations we can leave lasting impacts. I was saddened by the loss of MDLA President Brendan Tupa. I loved his color, sense of style, and smile. He tried many more cases than I and was always willing to share trial tactic tips and I was moved when reading his posthumous publication in MDLA that memorialized some of those tips for all of us. We each bring a unique voice when advocating for our clients. In the unity of our association, let us remember his voice and consider his approach when expressing our own voice as we continue forward.

As we turn the page to the next chapter of MDLA, I am eager to attend TTS in August and DRI's Annual Meeting in Seattle in October 2024. At both meetings, I plan to opt for the fun events that will put me on a boat with the sun shining on my face, the wind blowing through my hair, and maybe the smell of whisky not far away. From time to time, I am on a committee where we talk about whether to pay for a lawyer to attend this event, that event, or another. Often the debate is over the content of the seminar presentations. Do not get me wrong, the content can be a great reason to attend, but for me that is not where the real learning and fine tuning takes place. For me, it is in the hallways walking to and from the event, in the elevators, at a dining table, at a museum, or on a boat—wherever it is that I am able to informally

share an idea with another lawyer or client. If I just wanted the content, I could go to one of those on-line CLEs. Nah, I want personal relationships, war stories, and the time to talk about what is specifically confronting me and another, followed by a laugh. I hope that I can share a laugh with you at one of the upcoming events. If these two upcoming events do not meet either your fancy or your schedule, DRI is hosting two seminars in Chicago in September—Long-term Care and Automotive.

If you are not a member of DRI, DRI is running their special partnership membership program again. Members of MDLA can join DRI for the first time at no cost for the first year. DRI membership can be an important supplement to your MDLA membership, providing additional materials and insights through extensive expert databases, electronic community discussion groups sharing vicarious legal research, and the Center for Public Policy providing amicus and legislative support. If you have not considered being a member of DRI, now is a good time to try it.

Further in time, DRI will have more seminars, including the Government Liability Seminar in February 2025 in San Antonio, Texas. By then, MDLA Past President Tony Novak of Larson King will have taken over as the next DRI State Representative tenure. I am confident that you will be in good hands. As we transition, for more information on the membership opportunities, upcoming meetings and access to resources, visit dri.org or reach out to me at jschwie@kennedy-graven.com and I will get you connected until the torch is officially passed to Tony. Since this will be my last chat with you as DRI State Representative, I will now close with a farewell. Thank you for letting me be of service to this thoughtful, dignified community. It has filled my heart.

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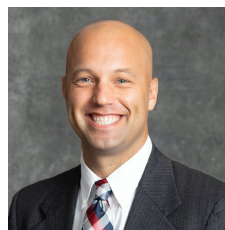
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Anthony Earley

Account Executive | Minneapolis, Minnesota
Mobile 517.331.2024
Anthony.earley@lexitaslegal.com

lexitaslegal.com
800-676-2401



Minnesota Defense Lawyers Association
9505 Copley Dr.
Indianapolis, IN 46260
(612) 750-8606
www.mdla.org