OFFICE OF THE REVISOR OF STATUTES

REPORT CONCERNING CERTAIN OPINIONS OF THE SUPREME COURT AND COURT OF APPEALS

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2014 Court Opinions Report Summary -

Minnesota Statutes, section 3C.04, subdivision 3, requires the Office of the Revisor of Statutes to biennially report to the Legislature "any statutory changes recommended or discussed or statutory deficiencies noted in any opinion of the Supreme Court or the Court of Appeals of Minnesota." This report highlights the Minnesota Supreme Court and Minnesota Court of Appeals opinions identifying ambiguous, vague, preempted, constitutionally suspect, or otherwise deficient statutes.

The 2014 court opinions report includes 15 cases — 6 from the Minnesota Supreme Court and 9 from the Minnesota Court of Appeals. The cases identify the following deficiencies:

- 12 court opinions relating to **ambiguity** in state statutes;
- 1 court opinion relating to an **unconstitutional statute**;
- 1 court opinion relating to **federal preemption**; and
- 1 court opinion relating to a statute that **lacks a remedy**;

The report provides a summary of each deficiency noted by the Minnesota Supreme Court or the Minnesota Court of Appeals. Each summary includes the text of the applicable statutory provision, a statement of the issue identified, and a brief discussion of the court's opinion. Where possible, the words or phrase at issue have been underlined. Additionally, the full text of each court opinion discussing the respective statute can be found on the Office of the Revisor of Statute's website at:

https://www.revisor.mn.gov/revisor/pubs/scr2014.php.

2014 Court Opinions Table - This table lists sections, subdivisions, paragraphs, and clauses that have been held deficient by the Minnesota Supreme Court or the Minnesota Court of Appeals between October 1, 2012 and September 30, 2014.

Statute Citation	Issue	Court Opinion
13.02, subdivision 17	Ambiguity	*Minnesota Joint Underwriting Association v. Star Tribune* (NO. A13-2112)
15.99, subdivision 2, paragraph (a)	Ambiguity	*Motokazie! v. Rice County* (NO. A12-0735)
256B.0659, subdivision. 4, paragraph (b), clause (1), item (ii)	Ambiguity	*A.A.A. v. Minnesota Department of Human Services,* (NO. A11-1831)
268.035, subdivision 29, paragraph. (a), clause (12)	Preemption	*Engfer v. General Dynamics Advanced Information Systems, Inc.,* (NO. A13-0872)
268.095, subdivision 1, clause (3)	Ambiguity	*Wiley v. Dolphin Staffing,* (NO. A12-0383)
268.095, subdivision 3, paragraph (c)	Ambiguity	*Thao v. Command Center, Inc.,* (NO. A12-0068)
351.02, clause (4)	Ambiguity	*State v. Irby,* (NO. A11-1852)
518.14, subdivision 1	Ambiguity	*Rooney v. Sanvik,* (NO. A13-1875)
524.1-203, clause (32)	Ambiguity	*In the Matter of the Estate of Pawlik,* (NO. A13-1628)
604.02, subdivision 2	Ambiguity	*Staab v. Diocese of St. Cloud,* (NO. A12-1575, NO. A12-1972)
609.215, subdivision 1	Constitutionality	*State v. Melchert-Dinkel,* (NO. A11-0987)
609.2241, subdivision 2, clause (2)	Ambiguity	*State v. Rick,* (NO. A12-0058)
609.66, subdivision 1e, paragraph (b)	Ambiguity	*Hennepin County v. Hayes,* (NO. A11-1314)
611A.045, subdivision 1, paragraph (a)	Ambiguity	*State v. Riggs,* NO. A13-1189)
629.292	Lack of Remedy	*Resendiz v. State,* (NO. A12-1733)

Minnesota Statutes section 13.02, subdivision 17

Subject: Data practices; state agencies.

Court Opinion: *Minnesota Joint Underwriting Association v. Star Tribune Media Company, LLC*, 849 N.W.2d 421 (Minn. App. 2014). (NO. A13-2112)

Applicable text of section 13.02, subdivision 17:

> "State agency" means the state, the University of Minnesota, and any office, officer, department, division, bureau, board, commission, authority, district or agency of the state.

Statutory Issue: Because the plain and ordinary meaning of "agency of the state" in section 13.02, subdivision 17, does not necessarily include or exclude an association, the failure to define the phrase creates an ambiguity within the statute as to whether an association is included within the definition of "state agency."

Discussion: The central dispute between the parties was whether the Minnesota Joint Underwriting Association ("MJUA")—an entity created by statute—is an "agency of the state" for the purposes of the Minnesota Data Practices Act and its information disclosure requirements. Because the legislature's use of the word "association" when it named MJUA does not definitively demonstrate MJUA is not a state agency, and because the legislation creating the MJUA does not explicitly state whether MJUA is a state agency, the court looked to other sources in making its determination.

Most significantly, it analogized the legislative creation of MJUA to that of the Comprehensive Health Association ("CHA"), due to substantial similarities in the purpose for each entity—providing insurance coverage to individuals otherwise unable to obtain it through ordinary methods, and providing coverage though associations of all insurers doing business in the state. Given these important similarities, the court construed the statutes together to resolve the ambiguous language.

In finding the legislature did not intend to make MJUA an "agency of the state"—and is thus not a government entity subject to the Minnesota Data Practices Act—the court relied heavily upon its analysis that CHA is not considered a state agency for data practices purposes either. Specifically, the court emphasized specific provisions within CHA's enabling legislation that require compliance with the open meeting law as evidence demonstrating CHA is not a state agency generally subject to data practices requirements, stating it would be superfluous to require compliance with a law it would have otherwise automatically been subject to were it considered a "state agency."

Under a basic canon of statutory construction, if possible, no word, phrase, or sentence shall be deemed superfluous, void, or insignificant. In this instance, the legislature explicitly required CHA to comply with the open meeting law, which it would not have needed to do if it considered CHA to be a state agency. Consequently, because (1) the statutes creating MJUA and CHA can be read together to resolve any textual ambiguity, and (2) the legislature did not intend for CHA to be a state agency, MJUA is not an "agency of the state" under section 13.02, subdivision 17, and is not a government entity subject to the Minnesota Data Practices Act.

Minnesota Statutes section 15.99

Subject: Local government; zoning ordinances.

Court Opinion: *Motokazie! Inc., et al., v. Rice County, Minnesota*, 824 N.W.2d 341 (Minn. App. 2012). (NO. A12-0735)

Applicable text of section 15.99:

> "Request" means a written application related to zoning, septic systems, watershed district review, soil and water conservation district review, or the expansion of the metropolitan urban service area, for a permit, license, or other governmental approval of an action. A request must be submitted in writing to the agency on an application form provided by the agency, if one exists. The agency may reject as incomplete a request not on a form of the agency if the request does not include information required by the agency. A request not on a form of the agency must clearly identify on the first page the specific permit, license, or other governmental approval being sought. No request shall be deemed made if not in compliance with this paragraph.
>
> Except as otherwise provided in this section, section 462.358, subdivision 3b, or 473.175, or chapter 505, and notwithstanding any other law to the contrary, an agency must approve or deny within 60 days a written request relating to zoning, septic systems, watershed district review, soil and water conservation district review, or expansion of the metropolitan urban service area for a permit, license, or other governmental approval of an action.

Statutory Issue: The phrase "governmental approval of an action" in section 15.99, as applied to the particular facts of the case, is ambiguous.

Discussion: The controversy at issue was whether the procedural requirements of section 15.99 apply to a proposed text amendment to a zoning ordinance. In order to make that determination, the court needed to resolve a textual ambiguity as to whether a proposed text amendment to a zoning ordinance constitutes a request for "governmental approval of an action" under the statute.

To interpret the ambiguous phrase, the court applied the canon of statutory construction *ejusdem generis*; that is, it ensured all the words in the statute were given full effect by construing any general words of the statute as being restricted in meaning by the particular, more specific words preceding them. With respect to section 15.99, the court identified the words "permit" and license" as the specific, preceding terms providing the relevant context for its analysis. The court also noted Minnesota Supreme Court precedent, which indicates section 15.99 should be interpreted narrowly, against any penalty, and in favor of the public interest against any private interest. (Citing: *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W. 2d 536 (Minn. 2007).)

In declining to interpret section 15.99 so broadly as to interfere with a county's legislative powers, the court concluded that a text amendment to a zoning ordinance is not a "governmental approval of an action," because it is of a different character than a permit or license in two meaningful ways. First, it has general applicability, governing all properties of a specific type in the county, rather than applying only to the specific property to be permitted, licensed, or rezoned. Second, approval of a request does not allow an applying party to undertake an action; instead, the request is for the government to take an action. Thus, because the "governmental approval of an action" is restricted by the terms "permit" and "license," and because a text amendment to a zoning ordinance is distinct in character from either a "permit" or a "license," the amendment does not qualify as a "government approval of an action" under section 15.99.

Minnesota Statutes section 256B.0659, subdivision 4, paragraph (b)

Subject: Assessment for personal care assistance services; limitations

Court Opinion: *A.A.A. v Minnesota Department of Human Services,* 832 N.W.2d 816 (Minn. 2013). (NO. A11-1831)

Applicable text of section 256B.0659, subdivision 4, paragraph (b):

> (b) The following limitations apply to the assessment:
> (1) a person must be assessed as dependent in an activity of daily living based on the person's daily need or need on the days during the week the activity is completed for:
> (i) cuing and constant supervision to complete the task; or
> (ii) hands-on assistance to complete the task; and
> (2) a child may not be found to be dependent in an activity of daily living if because of the child's age an adult would either perform the activity for the child or assist the child with the activity. Assistance needed is the assistance appropriate for a typical child of the same age.

Statutory Issue: The term "hands-on assistance to complete the task" when applied to "mobility" in section 256B.0659, subdivision 2, is ambiguous.

Discussion: At issue was the eligibility for personal care assistance services due to dependence in mobility. The court determined that the phrase "hands-on assistance to complete the task" when applied to "mobility" is ambiguous because it is subject to two reasonable interpretations. The court used the canons of statutory construction to determine the phrase's meaning and considered: (1) the whole statute so that no word or phrase is superfluous; (2) the administrative interpretation of the statute; and (3) the occasion and necessity for the law.

First, the court determined that the plain and ordinary meaning of "mobility" means the physical ability to go from one place to another. Then, the court considered mobility to determine whether "hands on assistance to complete the task" is limited to the physical ability to complete the task, or includes both the physical and cognitive ability to move from location to location.

The court concluded that the Commissioner's interpretation of the phrase "hands-on assistance to complete the task" was reasonable and supported by the plain meaning of the statute as a whole. The appellant's interpretation would result in separate assessments under the statute for the same personal care assistant services based on increased vulnerability when physically mobile due to both physical and cognitive deficits. Finally, the court gave deference to the administrative interpretation, and noted that it was consistent with the occasion and necessity of 2009 amendments to the statute, particularly the goal to ensure that assessments of individuals' needs for personal care attendant services are reasonably consistent around the state.

The court held the word "mobility" does not "contemplate the increased vulnerability of an individual when physically mobile due to cognitive deficits because that is separately" addressed in another subdivision. The court also held that the Commissioner's interpretation of the phrase "hands-on assistance to complete the task—the physical ability to move from one location to another—was reasonable as it relates to the task of mobility.

Minnesota Statutes section 268.035, subd. 29, paragraph (a), clause (12)

Subject: Unemployment insurance; wages; supplemental payment plans

Court Opinion: *Engfer v. General Dynamics,* 844 N.W.2d 236 (Minn. App. 2014). (NO. A13-0872)

Applicable text of section 268.035, subdivision 29, paragraph (a), clause (12):

> (a) "Wages" means all compensation for employment...except:
>
> ...
>
> (12) payments made to supplement unemployment benefits under a plan established by an employer, that makes provisions for employees generally or for a class or classes of employees under the written terms of an agreement, contract, trust arrangement, or other instrument. The plan must provide supplemental payments solely for the supplementing of weekly state or federal unemployment benefits. The plan must provide supplemental payments only for those weeks the applicant has been paid regular, extended, or additional unemployment benefits. The supplemental payments, when combined with the applicant's weekly unemployment benefits paid, may not exceed the applicant's regular weekly pay. The plan must not allow the assignment of supplemental payments or provide for any type of additional payment. The plan must not require any consideration from the applicant and must not be designed for the purpose of avoiding the payment of Social Security obligations, or unemployment taxes on money disbursed from the plan;

Statutory Issue: The federal Employee Retirement Income Security Act (ERISA) preemption provision, 29 U.S.C. § 1144(a), preempts a portion of section 268.035, subdivision 29, paragraph (a), clause (12).

Discussion: The case concerned whether ERISA's preemption provision applies to the portion of section 268.035, subdivision 29, paragraph (a), clause (12), mandating that supplemental unemployment-benefit plans "provide supplemental payments only for those weeks the applicant has been paid regular, extended, or additional unemployment benefits."

The court explained that under section 268.035, subdivision 29, paragraph (a), if an ERISA plan provides supplemental payments in a week that the recipient is not receiving unemployment benefits, then the ERISA plan benefits are considered wages. Since those plan benefits are considered wages, the recipient would be ineligible to receive unemployment benefits during any week in which the recipient receives benefits under that ERISA plan.

The court noted the mandate in section 268.035, subdivision 29, paragraph (a), clause (12), effectively coerces a plan to "to adopt a 'certain scheme of substantive coverage' in order to provide supplemental-unemployment benefits in Minnesota that will not be deducted as wages, thereby diluting or eliminating the benefits intended by the plan." (Citing: *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.,* 514 U.S. 645, 668 (1990).)

The court concluded the effect of the mandate "illustrates a conflict between the state law and a fundamental aim of ERISA preemption: 'to avoid changing a national plan to conform to varying state regulations.'" (Citing: Koch v. Mork Clinic, P.A. 540 N.W.2d 526, 532 (Minn. App. 1995).) Therefore, the court held ERISA preempts the portion of section 268.035, subdivision 29, paragraph (a), clause (12), at issue.

Minnesota Statutes section 268.095, subdivision 1, clause (3)

Subject: Labor; unemployment benefits.

Court Opinion: *Wiley v. Dolphin Staffing-Dolphin Clerical Group*, 825 N.W.2d 121 (Minn. App. 2012). (NO. A12-00383)

Applicable text of section 268.095. subdivision 1, clause (3):

> An applicant who quit employment is ineligible for all unemployment benefits according to subdivision 10 except when:
>
> ...
>
> (3) the applicant quit the employment within 30 calendar days of beginning the employment because the employment was unsuitable for the applicant;

Statutory Issue: The plain language of section 268.095, subdivision 1, clause (3), does not specify when a "quit" has occurred, so the related 30-day unsuitability exception is susceptible to more than one reasonable meaning.

Discussion: The issue before the court was to determine when a "quit" has occurred for the purposes of the unsuitable employment exception contained in unemployment benefit eligibility statutes. At argument, each party presented a competing interpretation of the word "quit" under the statute. Under Wiley's interpretation, a "quit" occurs at the time the employee gives notice of quitting; under the Department of Employment and Economic Development's, a "quit" occurs on the employee's last day of work.

The court began its analysis by noting section 268.031, subdivision 2, requires it to interpret and apply unemployment-benefit statutes in favor of awarding unemployment benefits, and to narrowly construe any statutory provision precluding the award of benefits. It also examined the common law unsuitability exemption to benefit ineligibility, which permits an unemployed individual to take temporary employment without losing benefit eligibility if the employment proves unsuitable. Applied to the unemployment benefit context, the common law theory exists to not punish an unemployed individual for seeking employment and taking an unsuitable job for a short period of time.

Ultimately, the court construed the 30-day unsuitability exception as allowing an employee 30 days to identify employment unsuitability and provide notice of separation from the unsuitable employment. It further held that for the purposes of the exception, an employee giving notice to the employer is deemed to have "quit" at the time notice is provided.

Minnesota Statutes section 268.095, subdivision 3, paragraph (c)

Subject: Labor; unemployment benefits.

Court Opinion: *Thao v. Department of Employment and Economic Development*, 824 N.W.2d 1 (Minn. App. 2012). (NO. A12-0068)

Applicable text of section 268.095, subdivision 3, paragraph (c):

> If an applicant was subjected to adverse working conditions by the employer, the applicant must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting.

Statutory Issue: The meaning of the phrase "adverse working conditions" contained in section 268.095, subdivision 3, paragraph (c), is ambiguous.

Discussion: The primary issue presented to the court was whether a unilateral reduction of hours by an employer constitutes the type of "adverse working conditions" requiring an adversely-affected employee to complain prior to quitting. Both parties presented reasonable, plain language interpretations of the statute, each leading to entirely different conclusions. Thao asserted a reduction in hours is a "term" of employment—not a "condition"—so the pre-quit complaint requirement does not apply. The Department of Employment and Economic Development, on the other hand, argued "conditions" is a broad term that includes an involuntary reduction in hours, and that the complaint requirement applies to all employees/unemployment benefit applicants who allege they quit for a good, employer-caused reason.

To resolve the issue, the court examined the provision's relevant legislative history. In doing so, it determined certain 1999 amendments were intended to codify the common law; namely, by (1) including a statutory requirement that a quit based on adverse working conditions must be preceded by a complaint, and (2) omitting a parallel statutory complaint requirement with respect to a quit based on changes in wages, hours, or other terms of employment. A subsequent 2004 amendment removed the reference to "wages, hours, or other terms of employment," thus creating the ambiguity in the current version of the statute.

Relying on *Nichols v. Reliant Engineering and Manufacturing, Inc.*, 720 N.W.2d 590 (Minn. App. 2006), the court determined that "terms" and "conditions" are not synonymous under section 268.095. Instead, it deemed "conditions" to be the circumstances under which employees work—including the social and physical environment, relationships with co-workers, and whether certain safety measures are in place or utilized. "Terms" of employment are characterized by a separate set of features, including wages, hours, health insurance, and other items that are contractual in nature.

Given the difference between the two terms and the examined legislative history, the court decided the legislature never intended that a unilateral, significant reduction in hours by an employer be included as a type of "adverse working condition" requiring an affected employee to complain prior to quitting. Instead, the court held that an employee who quits due to her employer's unilateral reduction in hours need not first complain to the employer before quitting.

Minnesota Statutes section 351.02, clause (4)

Subject: Vacancy in office; state and local offices.

Court Opinion: *State v. Irby,* 848 N.W.2d 515 (Minn. 2014). (NO. A11-1852)

Applicable text of section 351.02, clause (4):

> Every office shall become vacant on the happening of...:
>
> ...
>
> (4) the incumbent's ceasing to be an inhabitant of the state, or, if the office is local, of the district, county or city for which the incumbent was elected or appointed, or within which the duties of the office are required to be discharged

Statutory Issue: The phrase "if the office is local" is ambiguous.

Discussion: Section 351.02 defines when a vacancy occurs for a state or local elected office. The court analyzed "whether a district court judgeship qualifies as a 'local' office" under section 351.02, clause (4).

The court acknowledged that a district court judgeship could reasonably be defined either as a statewide office or a local office, and therefore, the phrase "if the office is local" is ambiguous as applied to a district court judgeship.

The court explained that there is constitutional and statutory support for concluding that a district court judgeship is a statewide office. First, the court noted that the Minnesota Constitution provides that "judicial power of the state is exercised through its courts, including the 'district court.'" The court acknowledged its long held view that the district court is a constitutional court of original jurisdiction and "the one court with general jurisdiction" over all aspects of state law. Further, the court stated that "district court judges interpret and apply state law...and issue orders that have binding effect statewide."

Second, the court examined various state statutes that indicate district courts are courts of the state. For example, the court points out that judges are state employees, and "new judges are appointed by the state's chief executive – the Governor." In addition, the court also explains that in various election and campaign finance laws, the Legislature has made a distinction between a judicial office and a local office.

In contrast, the court explained that it is reasonable to conclude that a district court judgeship could also be considered a local office. The court recognized two reasons that this interpretation is reasonable. First, a district court judge's duties are discharged from a "district" of the state. Second, section 351.02 applies to "[e]very office" and does not specifically exclude a district court judgeship.

The court acknowledged that this interpretation "creates a significant constitutional tension" as it raised the issue as to "which branch of government – the legislative or judicial – has the final authority to remove and discipline judges." The court affirmed the judiciary's authority to discipline judges based on the court's inherent judicial power and explained that the Legislature's constitutional authority to discipline judges is limited to only the impeachment process.

In order to resolve the ambiguity, the court applied the canon of constitutional avoidance, which is a method of construing a "statute to avoid a constitutional confrontation." In the case before the court, if the court held that a district court judgeship was a local office, then the judge's office would have automatically become vacant when the judge moved out of the judge's district, notwithstanding the judiciary's inherent judicial power to discipline judges. Therefore, the court concluded that district court judgeships are not local offices for purposes of section 351.02, clause (4).

Minnesota Statutes section 518.14, subdivision 1

Subject: Marital dissolution; attorney fees

Court Opinion: *Rooney v. Sanvik,* 850 N.W.2d 732 (Minn. App. 2014). (NO. A13-1875)

Applicable text of section 518.14, subdivision 1:

> If the proceeding is dismissed or abandoned prior to determination and award of attorney's fees, the court may nevertheless award attorney's fees upon the attorney's motion.

Statutory Issue: The provision authorizing the court to award attorney fees is ambiguous because it does not state what fees may be awarded or to whom the fees may be awarded.

Discussion: Section 518.14 allows a court to award attorney fees "in an amount necessary to enable a party to carry on or contest" a divorce proceeding. The court analyzed whether or not an attorney could file a motion seeking a court order directing the opposing party, the husband, to pay for the remaining balance owed to the attorney by his client, the wife. The court held the portion of section 518.14 relating to awarding attorney fees to be ambiguous.

In order to resolve the ambiguity, the court used the canon of construction in section 645.16, clause (5)—determining legislative intent by considering the former law—to interpret the language of section 518.14. The court examined the language of section 518.14 as it existed in 1955, prior to the legislature's amendment that added the ambiguous language. In the previous law, the court stated that the "court's authority to award attorney fees in a divorce action came to an end upon dismissal of the action."

After the 1955 amendment, the Minnesota Supreme Court interpreted section 518.14, as amended, stating that it permits a court to "allow attorneys' fees for services rendered up to the time of the dismissal" and the "fees must be limited to compensation rendered" up until that time.

The court reasoned that the "1955 amendment reflects a legislative judgment that an attorney should be afforded an effective means to collect fees from an opposing spouse upon dismissal of divorce action."

Therefore, the court held "that when a party's motion for attorney fees under Minn. Stat. § 518.14, subd. 1, is pending upon dismissal of a divorce action, that party's right to seek contribution for attorney fees from the opposing party for fees generated up to the time of dismissal continues and may be asserted by the party's attorney."

Minnesota Statutes section 524.1-201, clause (32)

Subject: Probate; descent determination

Court Opinion: *In the matter of the estate of Pawlik,* 845 N.W.2d 249 (Minn. App. 2014). (NO. A13-1628)

Applicable text of section 524.1-201, clause (32):

> "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

Statutory Issue: The first sentence of section 524.1-201, clause (32) is ambiguous because it's unclear whether the qualifying phrase "having a property right in or claim against the estate of a decedent" modifies only "any others" or all the nouns in the series of the sentence.

Discussion: The court acknowledged that the first sentence in the definition of "interested person" in section 524.1-201, clause (32) can be read in two different ways.

First, the last antecedent canon provides that "a qualifying phrase ordinarily modifies only the noun or phrase it immediately follows." Under this canon, the phrase "having a property right in or claim against the estate of a decedent" modifies only the phrase "any others."

Second, the series-qualifier canon provides that "when several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all." Under this canon, the phrase "having a property right in or claim against the estate of a decedent" modifies "any others" plus the phrase "heirs, devisees, children, spouses, creditors, beneficiaries."

In resolving the ambiguity, the court explained that in order to be an interested person, one must have "a property right in or claim against the estate of a decedent." The court provided examples where a person could fall under the stated categories under section 524.1-201, clause (32), but would not be an interested person because that person did not have "a property right in or claim against the estate of a decedent."

Therefore, the court held that "the grammatical structure of the statutory provision and the comprehensive applicability of the qualifying phrase compel us to conclude that the qualifying phrase 'having a property right in or claim against the estate of a decedent' modifies all the nouns in the series."

Minnesota Statutes section 604.02, subdivision 2

Subject: Civil liability; appointment of damages among multiple tortfeasors.

Court Opinion: *Staab v. Diocese of St. Cloud*, 853 N.W.2d 713 (Minn. 2014). (NO. A12-1575; NO. A12-1972)

Applicable text of section 604.02, subdivision 2:

> Upon motion made not later than one year after judgment is entered, the court shall determine whether all or part of a party's equitable share of the obligation is uncollectible from that party and shall reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault. A party whose liability is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant on the judgment.

Statutory Issue: Section 604.02, subdivision 2, is ambiguous because it is subject to more than one reasonable interpretation regarding whether it applies to severally liable parties.

Discussion: The controversy before the court was whether section 604.02, subdivision 2, permits reallocation of unpaid damages to parties who are severally liable under subdivision 1. The court used multiple canons of statutory interpretation to resolve the ambiguity in the statute.

It began by applying the principle that a statute must be construed in a manner that gives effect to each of its provisions. Specifically, the court pointed to the subdivision 1's explicit directive that contributions to a damage award be made in proportion to the percentage of fault attributable to each party, stating the requirement would be rendered ineffective by a reading of subdivision 2 that compels a severally liable party to pay a contribution out of proportion to his or her percentage of fault.

It also applied the canon *expressio unius est exclusio alterius*—the expression of one thing is the exclusion of another. Applied to section 604.02, the canon precludes an interpretation of subdivision 2 that imposes joint and several liability because the legislature has clearly expressed a general rule of several liability—subject to four exceptions—in subdivision 1. To impose joint and several liability in such an instance would effectively create a fifth exception to the general rule.

The court also analyzed the statute's relevant legislative history. Under common law, parties whose concurrent negligence caused injury were joint and severally liable for resulting damages. Section 604.02, subdivision 2, on the other hand, was enacted and has been used as a mechanism to limit the amount of damages a jointly liable defendant could be required to pay. Examining the statutory section more broadly, the court again identified the 2003 amendment as guiding, since it made several liability the general rule, subject to four specific exceptions. The court further noted that each amendment to section 604.02 over the past 25 years has further limited joint and several liability, and not expanded it.

Finally, the court reviewed the purpose of the statute itself. Examining statements made during 2003 floor debates in both the Senate and the House of Representatives, the court cited the supporting members' emphasis on making Minnesota's tort system fair by requiring people and companies to pay for the harm they cause, but not the harm caused by others. It also noted the arguments presented by a dissenting member, who argued the proposed changes could make it difficult for tort victims to receive full compensation in some instances. These statements, the court asserted, highlighted the clear purpose of the statute—requiring severally liable parties in the Minnesota tort system to pay only for the harm of their own conduct, and not the harm caused by others.

Based on each of the analyzed factors–statutory construction, legislative history, and the underlying purpose of the statute—the court concluded that the uncollectible portion of a party's equitable share of damages cannot be reallocated to a party that is only severally liable under section 604.02, subdivision 2.

Minnesota Statutes section 609.215, subdivision 1

Subject: Criminal law; assisted suicide

Court Opinion: *State v. Melchert-Dinkel,* 844 N.W.2d 13 (Minn. 2014). (NO. A11-0987)

Applicable text of section 609.215, subdivision 1:

> Whoever intentionally advises, encourages, or assists another in taking the other's own life may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than $30,000, or both.

Statutory Issue: The words "advises" and "encourages" are unconstitutional under the First Amendment to the U.S. Constitution.

Discussion: The court began its opinion by recognizing that the language of section 609.215, subdivision 1 is a content-based restriction on speech. The court then considered whether the language of section 609.215, subdivision 1, falls under the traditional exceptions to the First Amendment: (1) speech integral to criminal conduct; (2) incitement; or (3) fraud. The court found that none of the exceptions applied to section 609.215, subdivision 1.

The court further analyzed section 609.215, subdivision 1 to determine whether the restriction on speech is justified by a compelling state interest that is narrowly tailored to that interest. The court concluded that the "prescription against assist[ing] another in taking the other's own life is narrowly drawn to serve the State's compelling interest in preserving human life." Therefore, the court rejected the argument that the "prohibition against *assisting* another in committing suicide facially violates the First Amendment." (Emphasis added)

The court then analyzed the constitutionality of the prohibition on advising or encouraging another in committing suicide under the strict scrutiny standard. In examining the meaning of both “advises” and “encourages” in the context of assisted suicide, the court explained that, unlike “assists,” the definitions of advise or encourage do not contain a requirement for “a direct, causal connection” to a suicide. Furthermore, the court noted that a prohibition on advising or encouraging another to commit suicide may include speech that is “tangential to the act of suicide.” The court went on to say that the “prohibition is broad enough to permit the State to prosecute general discussions of suicide with specific individuals or groups.”

Therefore, the court held that the prohibitions on advising or encouraging another to commit suicide “are not narrowly drawn to serve the State’s compelling interest in preserving human life,” and are therefore unconstitutional. The court severed and excised “advises” and “encourages” from the text of section 609.215, subdivision 1, but left the remainder of the subdivision intact.

Minnesota Statutes section 609.2241, subdivision 2, clause (2)

Subject: Crimes; knowing transfer of communicable disease

Court Opinion: *State v. Rick,* 835 N.W.2d 478 (Minn. 2013). (NO. A12-0058)

Applicable text of section 609.2241, subdivision 2, clause (2):

> It is a crime, which may be prosecuted under section 609.17, 609.185, 609.19, 609.221, 609.222, 609.223, 609.2231, or 609.224, for a person who knowingly harbors an infectious agent to transfer, if the crime involved:
> (1) sexual penetration with another person without having first informed the other person that the person has a communicable disease;
> (2) transfer of blood, sperm, organs, or tissue, except as deemed necessary for medical research or if disclosed on donor screening forms; or
> (3) sharing of nonsterile syringes or needles for the purpose of injecting drugs.

Statutory Issue: The word "transfer" in section 609.2241, subdivision 2, clause (2), is ambiguous.

Discussion: The case dealt with the crime of assault by communicable disease. The defendant had disclosed his communicable disease to his sexual partner. The controversy at issue in this case was whether the word "transfer" in section 609.2241, subdivision 2, clause (2), applies to sexual conduct.

The court observed that the word "transfer" is statutorily defined as a verb for the purposes of section 609.2241. However, the court found it confusing that the statute used the word twice, once as a verb, and once as a noun. The statute would violate the rules of grammar if the court applied the statutory definition of "transfer" to clause (2), which defines transfer in the context of the transfer of an infectious agent, not the transfer of blood, sperm, organs, or tissue.

In the absence of an applicable statutory definition, the court concluded that the word "transfer" in clause (2) was subject to more than one reasonable interpretation and therefore ambiguous. The word could be defined broadly according to its common meaning, which would cover the defendant's sexual conduct. In the alternative, the word could be ascribed a technical meaning and refer only to specific types of transactions such as donations for medical reasons.

To resolve the ambiguity, the court applied the rule of lenity and examined the relevant legislative history. First, the rule of lenity instructed the court to adopt the narrower of two reasonable definitions and resolve the ambiguity in favor of the criminal defendant. Second, the court found that the relevant legislative history confirmed the intent to criminalize different types of behavior that could spread a communicable-disease. That is to say, clause (1) criminalizes transmission of the disease through sexual conduct, and clause (2) criminalizes transmission of the disease through the donation or sale of blood, sperm, organs, or tissue for medical purposes.

The court held that the word "transfer" in subdivision 2, clause (2), does not apply to sexual conduct and applies only to the donation or exchange for value "of blood, sperm, organs, or tissue, except as deemed necessary for medical research or if disclosed on donor screening forms."

Minnesota Statutes section 609.66, subdivision 1e, paragraph (b)

Subject: Crimes against public safety and health; dangerous weapons; drive-by shooting

Court Opinion: *State v. Hayes,* 826 N.W.2d 799 (Minn. 2013). (NO. A11-1314)

Applicable text of section 609.66, subdivision 1e, paragraph (b):

> (a) Whoever, while in or having just exited from a motor vehicle, recklessly discharges a firearm at or toward another motor vehicle or a building is guilty of a felony and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than $6,000, or both.
>
> (b) Any person who violates this subdivision by firing at or toward a person, or an occupied building or motor vehicle, may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than $20,000, or both.

Statutory Issue: The phrase "violates this subdivision by" in section 609.66, subdivision 1e, is ambiguous.

Discussion: The question in the case was whether the defendant's conduct in shooting the victim was sufficient to constitute the offense of drive-by shooting. The court explained that the phrase "violates this subdivision by" is ambiguous because it is susceptible to more than one reasonable interpretation.

One interpretation, supported by the State, maintained the language creates a separate offense. This interpretation replaces the target elements in paragraph (a) with those from paragraph (b). Under this interpretation, the word "by" means "through the means or instrumentality of," and a person violates paragraph (b) by discharging a firearm at or toward an occupied building, an occupied motor vehicle, or a person while in, or having just exited, a motor vehicle.

Another interpretation, advanced by the defendant, argued that the language provides enhanced penalties for particular violations. Under this interpretation, the word "by" means "during the course of" and suggests that paragraph (b) operates only when all of the elements paragraph (a) have been satisfied.

The court held that the defendant's sentence enhancement interpretation was the better interpretation. When read together, the provisions of section 609.66, subdivision 1e, provide a textual clue that paragraph (a) creates and defines a criminal offense and that paragraph (b) is a sentencing provision. Paragraph (a) contains the phrase "is guilty of a felony." Paragraph (b), in contrast, states that persons that violate the subdivision "may be sentenced" to an enhanced term of imprisonment. The court noted that this structure resembles other Minnesota criminal statutes setting forth sentence enhancements.

The court acknowledged its interpretation leads to the strange result; namely, that a person who recklessly shoots at or toward another person while in or having just exited a motor vehicle, but does not also shoot at or toward a building or another motor vehicle, has not violated the drive-by shooting statute. However, because the court's role is limited to interpreting the statute and applying the most persuasive interpretation, its analysis of the statute ended there. The court noted that it is the "exclusive province of the [L]egislature to define by statute what constitutes a crime." (Citing: *State v. Forsman,* 260 N.W.2d 160, 164 (Minn. 1977).)

Minnesota Statutes section 611A.045, subdivision 1, paragraph (a)

Subject: Crime victims; procedure for issuing order of restitution; criteria

Court Opinion: *State v. Riggs,* 845 N.W.2d 236 (Minn. App. 2014). (NO. A13-1189)

Applicable text of section 611A.045, subdivision 1, paragraph (a):

> (a) The court, in determining whether to order restitution and the amount of the restitution, shall consider the following factors:
> (1) the amount of economic loss sustained by the victim as a result of the offense; and
> (2) the income, resources, and obligations of the defendant.

Statutory Issue: The application of the factors in section 611A.045, subdivision 1, paragraph (a) is ambiguous.

Discussion: The matter before the court concerned the application of the factors under section 611A.045, subdivision 1, paragraph (a), when ordering restitution, and whether the district court could use broad discretion to reduce the amount of restitution requested by apportioning some of the fault for the victim's injuries to the victim if the victim was the aggressor in the conflict.

The court found that the language in section 611A.045, subd. 1, paragraph (a), was subject to multiple reasonable interpretations. The language could mean that the district court must consider only the factors enumerated in the statute when it determines whether to award restitution and the amount of restitution. Or, the language could mean that the district court must consider at least those factors but may consider other factors as well. The court decided that the language is ambiguous in section 611A.045, subd. 1, paragraph (a).

The court reasoned that when the legislature omits something from a statute, it should be inferred that the omission was intentional. Section 611A.045, subd. 1, paragraph (a), directs the court to consider certain factors and does not state that other factors may be considered. Therefore the court held that the legislature deliberately omitted other factors from the restitution statute and the district court was in error when it considered the victim's fault when determining the amount of restitution.

Minnesota Statutes section 629.292, subdivision 2

Subject: Uniform Mandatory Disposition of Detainers Act

Court Opinion: *Resendiz v. State,* 832 N.W.2d 860 (Minn. App. 2013). (NO. A12-1733)

Applicable text of section 629.292, subdivision 2:

> The [final disposition] request shall be delivered to the commissioner of corrections or other official designated by the commissioner having custody of the prisoner, who shall forthwith:
>
> ...
>
> (b) send by registered or certified mail, return receipt requested, one copy of the request and certificate to the court and one copy to the prosecuting attorney to whom it is addressed.

Statutory Issue: The Uniform Mandatory Disposition of Detainers Act does not provide a remedy for a prison official's failure to send a speedy-disposition request to the correct prosecuting authority.

Discussion: The court first acknowledged that the use of the word "shall" in a statute typically "indicates that the act to be performed is mandatory." However, the court further explained that when a statute makes a duty mandatory but does not provide a remedy for the failure to carry out that duty, "the duty is merely directory."

Section 629.292 requires a prison official to send an imprisoned person's speedy-disposition request to the court and prosecuting authority. But the statute does not provide a remedy for a prison official's failure to send that request to the correct prosecuting authority. As a result, the court concluded that the requirement to send the request is directory, not mandatory.

The court recognized that under section 629.292, an imprisoned person could properly do everything the statute requires, but not be provided the relief contemplated by the UMDDA. The court noted that it is "not insensitive to or immune from a reaction that the statutory language at present does not supply an answer to the common-sense question raised by" the appellant. Therefore, the court "observe[d] that the legislature is the proper body to revisit and perhaps modify" the language to address the absence of a remedy in section 629.292.

Actions Taken –

The Minnesota Legislature recently responded to six statutory deficiencies raised by Minnesota appellate courts.

1. *In the Matter of the PERA Salary Determinations Affecting Retired and Active Employees of the City of Duluth,* 820 N.W.2d 563 (Minn. App. 2012) (NO. A11-1330)

> In *In the Matter of the PERA,* the Minnesota Court of Appeals held that the definition of "salary" in section 353.01, subdivision 10, was ambiguous as applied to "salary-supplement payments" The Legislature responded in Laws 2013, chapter 111, article 10, section 1, by expanding the definition of "salary' to include pension plan contributions provided by the employer.

2. *Martin v. Dicklich,* 823 N.W.2d 336 (Minn. 2012) (NO. A12-1588)

> In *Martin v. Dicklich,* the Minnesota Supreme Court held that sections 204b.12 and 204B.13, relating to the withdrawal of candidates and vacancies in nomination, were ambiguous when read together.
>
> The legislature responded to this issue in Laws 2013, chapter 131, article 5, sections 1 to 11, amending the conditions by which a vacancy in nomination exists. It also amended the procedures and timelines for filing a vacancy in nomination. Further, the Legislature repealed section 204B.12, subdivision 2a.

3. *Healthstar Home Health, Inc. v. Jesson,* 827 N.W.2d 444 (Minn App. 2012) (NO. A12-0591)

> In *Healthstar Home Health, Inc. v. Jesson,* the Minnesota Court of Appeals held Minnesota Statutes (2011) section 256B.0659, subdivision 11, paragraph (c), relating to the reduction in pay of a personal care attendant who is related to the recipient of the personal care services to 80% of the pay of a nonrelative personal care attendant, unconstitutional under the Equal Protection Clause of the Minnesota Constitution.
>
> The Legislature repealed the portion of section 256B.059, subdivision 11, paragraph (c) that was held unconstitutional in Laws 2014, chapter 291, article 8, section 6.

4. *Weir v. ACCRA Care, Inc.,* 828 N.W.2d 470 (Minn. App. 2013) (NO. A12-0764)

> In *Weir v. ACCRA Care, Inc.,* the court held Minnesota Statutes (2012), section 268.035, subdivision 20, clause (20), relating to making personal care assistants who provide direct care to an immediate family member ineligible for unemployment benefits, unconstitutional under the Equal Protection Clause of the Minnesota Constitution.
>
> The Legislature repealed section 268.035, subdivision 20, clause (20), in Laws 2014, chapter 251, article 2, section 5.

5. *State v. Ward,* 847 N.W.2d 29 (Minn. App. 2014) (NO. A13-1433)

> In *State v. Ward,* the court held that the phrase "served on supervised release" in Minnesota Statutes (1994) section 609.346, subdivision 5, paragraph (a), is ambiguous. The legislature repealed section 609.346 in Laws 1998, chapter 367, article 6, section 16.

6. *State v. Nelson,* 842 N.W.2d 433 (Minn. 2014) (NO. A12-0071)

> In *State v. Nelson,* the court held that the phrase "care and support" in Minnesota Statutes (2012) section 609.346, subdivision 1, is ambiguous. The Legislature responded in Laws 2014, chapter 242, section 1, changing the phrase "care and support" to "court-ordered support."

Appendix –

Principles of Legal Interpretation

The following principles of legal interpretation were applied by the court in various opinions mentioned in this report. This list is not exhaustive; rather, it highlights various principles used by the courts over the last 2 years. Additional statutory requirements pertaining to the interpretation of statutes can be found in Minnesota Statutes, chapter 645. Chapter 7 of the Revisor's Manual also contains a brief discussion on statutory construction.

Absurdity Doctrine –

"In ascertaining the intention of the legislature the courts may be guided by the following presumptions:

(1) the legislature does not intend a result that is absurd, impossible of execution, or unreasonable;"

Section 645.17, clause (1). See *Martin v. Dicklich,* 823 N.W.2d 336, 346 (Minn. 2012). (NO. A12-1588).

Considering the Former Law –

"When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters:

…

(5) the former law, if any, including other laws upon the same or similar subjects;"

Section 645.16, clause (5). See *Rooney v. Sanvik,* 850 N.W.2d 732, 736 (Minn. App. 2014). (NO. A13-1875).

Constitutional Avoidance Canon –

"The constitutional avoidance canon requires that [the court] avoid constitutional confrontations 'if it is possible to do so.'"

See *State v. Irby,* 848 N.W.2d 515, 521 (Minn. 2014). (NO. A11-1852). (Quoting: *State v. Gaiovnik,* 794 N.W.2d 643, 648 (Minn. 2011).

Deference to Administrative Interpretation –

"When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters:

…

(8) legislative and administrative interpretations of the statute.

Section 645.16. See *A.A.A. v Minnesota Department of Human Services,* 832 N.W.2d 816, 823 (Minn. 2013). (NO. A11-1831).

Ejusdem Generis –

[Latin – "of the same kind of class"]

"[G]eneral words are construed to be restricted in their meaning by proceeding particular words." See section 645.08, clause (3). See *Motokazie! Inc., et al., v. Rice County, Minnesota*, 824 N.W.2d 341, 349 (Minn. App. 2012). (NO. A12-0735).

"[W]here specific words enumerating members of a class are followed by general words capable of including the class and others the former would be rendered meaningless if the latter were given their full and natural meaning, since the latter include the former, and that the incompatibility should be reconciled by construing the general words as referring to the same kind as those enumerated by the specific words, and thus give meaning to both." See *Motokazie! Inc., et al., v. Rice County, Minnesota*, 824 N.W.2d 341, 349 (Minn. App. 2012). (NO. A12-0735), (quoting: *Emp'rs Liab. Assur. Corp. v. Morse,* 111 N.W.2d 620, 624-25 (Minn. 1961).

Expressio Unius Est Exclusion Alterius –

[Latin – "the expression of thing is the exclusion of another']

See *Staab v. Diocese of St. Cloud*, 853 N.W.2d 713, 718-719 (Minn. 2014). (NO. A12-1575; NO. A12-1972).

Last-Antecedent Canon –

Provides that "a qualifying phrase ordinarily modifies only the noun or phrase it immediately follows."

See *In the matter of the estate of Pawlik,* 845 N.W.2d 249, 252 (Minn. App. 2014). (NO. A13-1628).

Mandatory/Permissive Canon –

Mandatory words, such as "shall' or "must," typically indicate "that the act to be performed is mandatory." Permissive words, such as "may," allow for discretion.

See *Resendiz v. State,* 832 N.W.2d 860, 864 (Minn. App. 2013). (NO. A12-1733).

Rule of Lenity –

Instructs the court "to adopt the narrower of two reasonable interpretations of an ambiguous criminal statute and to resolve the ambiguity if favor of the criminal defendant."

See *State v. Rick,* 835 N.W.2d 478, 485-486 (Minn. 2013). (NO. A12-0058).

Series-Qualifier Canon –

Provides that "when several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all."

See *In the matter of the estate of Pawlik,* 845 N.W.2d 249, 252 (Minn. App. 2014). (NO. A13-1628).

Surplusage Canon –

No provision of a law shall be rendered superfluous.

See *State v. Nelson,* 842 N.W.2d 433, 438-439 (Minn. 2014). (NO. A12-0071).

See also section 645.16 **"**Every law shall be construed, if possible, to give effect to all its provisions."