

THE 43<sup>RD</sup> ANNUAL

# Probate & Trust Law Section Conference

## Conference Highlights

- Comprehensive review of all recent Minnesota probate and trust cases
- Legislative updates and insights
- Presentations by national experts and outstanding local faculty
- Specialty panel discussions: New Lawyer, Small Estate, Large Estate, Probate, Capacity, Special Asset Groups, Elder Law and Trust Officers
- Sessions focused on small estates, large estates, trusts, drafting and administration issues
- And much, much more!

## Exceptional Guest Speakers

- ★ **Ronald D. Aucutt**  
Vibes from the Turmoil of Washington D.C., Part 2
- ★ **John Baker**  
30 Years of Farm Business Transition Planning – The Good, the Bad, the What?
- ★ **Sean Carter**  
Popular speaker and “Humorist at Law” presents three valuable ethics sessions
- ★ **James D. Lamm**  
Planning for Digital Property
- ★ **Stephanie Loomis-Price**  
Defending Transfer Tax Returns with Closely Held Interest

Monday & Tuesday  
June 12 & 13, 2017  
Saint Paul RiverCentre

## Special Features

- New Legal QuickSheet on Levels of Capacity
- Helpful materials to reference after the conference
- Opportunity to have your professional headshot photo taken
- Earn all your specialty credits: ethics and elimination of bias
- Mix and mingle with your colleagues at the networking breaks and evening reception

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# DAY 1 – JUNE 12, 2017

7:15 – 7:50 a.m.

REGISTRATION & CONTINENTAL BREAKFAST

*Sponsored by The Northern Trust Company*

7:50 – 8:00 a.m.

WELCOME & INTRODUCTION

*Mavis J. Van Sambeek*

8:00 – 8:50 a.m.

## 2017 Non-Tax Case Law Update

A review of all Minnesota published and unpublished probate and trust cases and national published probate and trust cases that provide relevant insight to our practice of law in Minnesota.

*Robert A. McLeod*

8:50 – 9:50 a.m.

## MAIN PLENARY

### Thinking About the Grader When You Write Your Paper – Defending Transfer Tax Returns with Closely Held Interest

Topics will include: defending transfers of interests in closely held entities in audits; protecting and asserting privileges throughout the process; counseling clients during IRS examination of transfer tax returns with limited partnerships; and responding to IRS requests to protect clients' interests.

*Stephanie Loomis-Price*

8:50 – 9:50 a.m.

## ALTERNATE PLENARY

### New Lawyer Panel: What We Didn't Learn in Law School

The panelists will discuss important practical and substantive aspects of representing clients in the areas of estate planning and estate administration that a new lawyer will face but may not have learned about in law school. The topics for discussion will include: building a practice and managing client relationships and expectations; surviving your first probate administration; structuring an estate plan to minimize the impact of transfer taxes; fundamentals of administering trusts and estates; and preparing your first estate or gift tax return.

*Rachel M. Dahl, Kiley E.P. Henry, Megan M. Martin & Kimberly A. Prchal  
Adam Rohne, moderator*

9:50 – 10:20 a.m.

NETWORKING BREAK

*Sponsored by Alerus Investment & Fiduciary Services*

10:20 – 11:20 a.m.

## BREAKOUT SESSION A – "SUPER" BREAKOUTS

### 101) Yelp, I've Fallen for Social Media and I Can't LinkedOut: Avoiding the Ethical Pitfalls of Social Media

**1.0 ethics credit applied for**

Facebook, Twitter, LinkedIn, and the other social media tools have become ubiquitous in our high-tech society. And while social media can undoubtedly help lawyers enhance their networks of colleagues, clients and prospective clients, it can also ensnare the unwary in a web of ethical violations, such as breaches of confidentiality, incompetence, unauthorized practice of law and more.

*Sean Carter*

### 102) Post-Death Distributions from Retirement Accounts

Discussion of tax rules regarding inherited IRAs and other retirement accounts. A practical guide to fool-proof distributions for all attorneys and a discussion of complex planning options including distributions of retirement accounts through trusts for experienced attorneys.

*Bryan Jamison*

### 103) The Capacity Panel – Everything You Always Wanted to Know about Capacity but Forgot to Ask

Different levels of capacity (marital, testamentary, contractual, etc.); capacity considerations in estate planning (capacity assessments, red flags); clients with diminished capacity (Rules of Professional Conduct, powers of attorney, conservatorships); and litigating capacity (will, trust and other estate plan contests; diminished capacity and susceptibility to undue influence; financial exploitation of vulnerable adults).

*Kirstin E. Helmers, Susan A. King & Jennifer A. Lammers*

### 104) 30 Years of Farm Business Transition Planning – The Good, the Bad, the What?"

Understanding the components of a farm business succession plan; People v. Business – prerequisites for people and business; the difficulties in intra family communication; where are we, where do we want to be, and how to get there; and managing the process by finding the critical path.

*John R. Baker*

### 105) Specialty Asset Groups Panel

Topics that will be covered include real estate; oil and gas; closely held business; and farm and ranch.

*John C. Carmean, Patience J. Felt, James Myhra & Jill Zenner  
Edgar W. Cowling, moderator*

11:20 – 11:35 a.m. BREAK

11:35 a.m. – 12:35 p.m.

## BREAKOUT SESSION B

### 201) Lies, Damn Lies and Legal Marketing: The Ethics of Legal Marketing

**1.0 ethics credit applied for**

Like all professionals, lawyers must market their services. Yet, unlike other professionals, lawyers must do so according to the most demanding ethical standards. In this ethics session, legal humorist Sean Carter will demonstrate the "dos" (and mostly "don'ts") of legal marketing. Using real-life (and often, comical) examples of legal marketing, Sean will demonstrate how to stay within our ethical boundaries when it comes to websites, blogs, social media and more.

*Sean Carter*

### 202) Elder Law Panel

Join us for a lively panel discussion of at least five hot button topics in Elder Law – with the potential repeal of the ACA, discussions of Block Grant Programs, CMS refusal to approve state plan amendments for waiver programs, and annual legislative and policy changes affecting the persons with disabilities and the elderly – there will be much to discuss.

*Randy F. Boggio, Jeffrey W. Schmidt & Julian J. Zweber  
Cathryn D. Reher, moderator*

### 203) Gun Trusts – Drafting Considerations and Helping Clients Avoid the Accidental Felony

Identify basic classifications of firearms and related federal acts; understanding the practical benefits of a gun trust; the new federal regulations (41F) and impact on gun trusts; key drafting considerations; and BATFE processes and key forms (1,4,5,20).

*Kyle J. Pettersen-Scott*

### 204) Residency Wars: Return of the Legislature

What does it really take to leave Minnesota? This presentation will cover the 2017 legislative proposals, recent court opinions, identify issues individuals should consider before attempting to change their residency, and offer tips on how to best prepare for and survive a Minnesota residency audit given recent changes in residency audit techniques. The presentation will also answer questions including "do I have to fire my Minnesota attorneys, bankers, and accountants in order to make a residency change," "where can I get a 'checklist' that tells me exactly what I need to do," and "what if my spouse wants to remain a Minnesota resident?"

*Masha M. Yevzelman*

## 205) Life and Death of an Estate and Trust Dispute

Exploring best practices in planning and drafting to avoid litigation-based risks; how and when to collaborate with litigation counsel as an estate planner; current trends in litigation of estates and trusts disputes; how and when to collaborate with appellate counsel; and winning an appeal.

*Matthew J. Frerichs, Eric J. Magnuson & Denise S. Rahne*

## 206) GST Tax for the Trust Administrator

After reviewing foundational GST concepts, this session explains the different types of transfers, providing examples and pointing out issues for the trustee on each type. Going further, the session addresses the GST exemption, the allocation of the exemption, and the inclusion ratio that every trustee needs to understand. From a practical standpoint, the session provides tangible trustee administration tips related to GST matters.

*Marya P. Robben*

## 207) Unsuspecting Probate Issues – Lessons Learned in Probate Administrations

Conducting initial meetings with the Personal Representative; issues that come up when opening a probate – medical assistance, divorce, copy of a will, missing heirs, marriage, out of state, bonds, minor kids, Personal Representatives; real estate issues – cleaning up what the decedent left behind; and a panel discussion with case studies of various probates they have worked on.

*Margaret D. Green, Jamie F. Held, Jennifer S. Santini & Jayne E. Sykora*

## 208) An Introduction to Trust Income Taxation

Trusts are an important, and pervasive, part of financial planning. This is an overview aimed at the *non-specialist* planner, covering the basics of trust income taxation (including the new 3.8% surtax). We'll look at grantor trusts, "simple" and "complex" non-grantor trusts (which will encompass just about every trust you'll deal with). For each of these, we'll review the basic tax rules, common planning opportunities, and common traps to avoid.

*John Goldsbury*

12:35 – 1:30 p.m. INSTITUTE LUNCHEON (provided)  
*Sponsored by First Trust Company*

1:30 – 2:30 p.m.

## BREAKOUT SESSION C

### 301) Show Me the Ethics!: The Ethical Way to Bill for Legal Services

#### 1.0 ethics credit applied for

While it is important for lawyers to be compensated for our services, it is even more important for lawyers to use ethical billing and collection practices in securing such compensation. Drawing on examples provided by current and past nominees from his annual Ethy Awards for the worst ethical behavior, legal humorist Sean Carter will provide a poignant reminder of how NOT to bill clients and collect fees. And in the process, he will reinforce the relevant legal ethics principles underlying such practices, such as avoiding excessive or unreasonable fees, the necessity for written fee agreements, the proper use of retainers, and more.

*Sean Carter*

### 302) Trust Officer Panel

Hear from an experienced panel of trust officers with key insights on the following topics: the UTC in practice from a corporate fiduciary perspective; discretionary distributions (use of budgets, doing a "deeper dive" into the definition of maintenance and support, etc.); the acceptance process of new accounts (trust language considerations, unique assets, concentrations, etc.); and corporate fiduciary policies surrounding the aging process (powers of attorney, vulnerable adults, the need for guardians and/or conservators, etc.).

*Carissa W. Brown, Barbara Mitchell, Sarah N. Sunday & Ann M. Wilczynski*  
*Trisha A. Vicario, moderator*

### 303) Probate Pitfalls

If you practice in the area of estate administration, it is critical that you know how to open and work a probate estate in an efficient manner. It is important

to the client because nothing, with the possible exception of paying legal fees, is more frustrating than a time delay. It is important to you because your reputation and the good will of the client are at stake. This session includes many practice tips on how to open and administer your first probate and gives suggestions for how to avoid such probate pitfalls as: notice requirements; bonding issues; real estate transfers; minors; widows and stepchildren; creditors' claims; feuding heirs; personal property battles; and getting paid.

*Suzanne M. Sandahl*

### 304) Financial Exploitation of Vulnerable Adults: When Taking Care Becomes Taking Advantage

Identifying, assisting victims, litigating, and prosecuting against financial exploitation of vulnerable adults from a civil and criminal perspective.

*Anton Cheskis & Susan B. Crumb*

### 305) Top 10 Frequently Encountered Income Tax Issues for Estate Planners Reprise... With an Extra for Good Measure, and a Dash of Trump

This session will provide a refresh of general fiduciary income tax principles and an understanding of the impact that income tax issues have on planning decisions and on estate and trust administration.

*Kelli A. Hill & Marcia E. Urban*

### 306) So What's the Fair Market Value... And Have You Thought About Your Fiduciary Duties? Considerations When Appraising and Transferring Nonmarketable Assets

A discussion of the requirements of and common pitfalls in the appraisal process, including the potential effect of proposed Section 2704 Regulations, as well as the dangers of ignoring fiduciary duties in the valuation context, and how fiduciary duties should be considered and addressed when analyzing and structuring transactions.

*Caitlin E. Abram & Daniel R. Donovan*

### 307) What Estate Planners Need to Know About Drafting Buy-Sell Agreements

This session will cover provisions necessary in buy-sell agreements; optional provisions includable in buy-sell agreements; provisions/wording to avoid; common mistakes in drafting; and special language for interfamily transfers.

*Srihari S. Panjini*

### 308) Dealing with the 23.8% Tax on Trust Capital Gains: 21 Ways (and Counting) to Have a Trust's Capital Gain Taxed to the Beneficiary

Historically, having a trust's capital gains taxed to the beneficiaries has been a challenge. With the recent increase in the long-term capital gain rate (i.e., the addition of a top bracket of 20%) and the advent of the 3.8% surtax, there will be a renewed focus on that area. This presentation explores several ways this can be achieved. The regular income tax treatment of capital gains is not a new matter; the surtax treatment of trusts is. So, this presentation will first review the new 3.8% surtax and how it applies to trusts and beneficiaries. The rest (and majority) of the presentation will then explore how a trust's capital gains can be taxed to the beneficiary.

*John Goldsbury*

2:30 – 2:45 p.m. BREAK

2:45 – 3:45 p.m.

## BREAKOUT SESSION D

### 401) The Small Estates Panel – Debating and Discharging Dastardly Dilemmas

A point-counterpoint discussion of the pros and cons of a beneficiary designation-based estate plan (TODs, TODs and PODs); the pros and cons of using wills vs. revocable trusts; drafting tips to ensure smooth post-death administration; and an update on changes to Medical Assistance rules.

*Peter M. Hendricks, Bryan Jamison & Mary Frances M. Price*  
*James T. McNary, moderator*

### 402) Supported Decision-Making: An Emerging Alternative to Guardianship – Not Your Grandmother's Guardianship

What is supported decision-making and who does it benefit; can supported decision-making eliminate the need for guardianship; tension guardianship presents

# DAY 1, CONTINUED

between helpful tool and infringement on civil rights; situations where guardianship may be overly burdensome and overly protective; review support decision-making legislation passes in other states and Canada; and understanding how the “person-centered” approach of supported decision-making protects individual rights while still protecting those vulnerable to maltreatment.

*John A. Kantke & Anita L. Raymond*

## 403) Apportionment: Estate Size Matters – Understanding Your “Standard” Apportionment Clause and When You May Need to Change It

Get answers to the following questions: What is it? How does it work? Why should I care? When will I ever use it?

*Sharma Foley Affeldt & Julie A. Westbrook*

## 404) Planning and Drafting in an Era of Potential Estate Tax Repeal – Is Estate Tax or Capital Gains Tax the Name of the Game?

An overview of status and likelihood of federal estate tax reform; status of the Minnesota estate tax; how to draft irrevocable trusts, wills and revocable trusts for maximum flexibility; and structuring gift and sale transactions in an era of potential estate tax repeal.

*Peter S. Hatinen & Gail R. Lust*

## 405) TOD Deeds and Partition Actions

Transfer on death deeds (TODDs) can be a useful tool for estate planning attorneys, but TODDs are not a “one size fits all” solution. This session will give you tips on talking to clients about when a TODD is appropriate. The presenters will also discuss what happens when a TODD goes awry and winds up in court via a partition action.

*Charles H. Andresen & Kimberly A. Prchal*

## 406) Charitable Giving and Humanities: Comparing Private Foundations, Donor Advised Funds and Charitable Trusts

Gain a more technical understanding of private foundations, donor advised funds, and charitable trusts (CRTs, CLTs); and understanding when these strategies are appropriate.

*Sheryl G. Morrison*

## 407) The Nuts and Bolts of S-Corps in an Estate

What elections need to be made and when do they need to be made? How is S-Corp stock treated for tax purposes, and more.

*Brooke M. Orr*

## 408) Gray Area Thinking™ – A Toolset for Interacting with Diverse Humans

**2-hour session | 2.0 elimination of bias credits applied for**

All humans habitually categorize and group others who are “different” from “us,” which often lends to black and white thinking, as in “good” versus “bad” or “native” versus “immigrant” and a host of other isolating labels. With this presentation, attorney Ellen (Ellie) Krug offers a toolset – Gray Area Thinking™ – for interacting in a mindful and compassionate way with the diverse humans who are our clients, colleagues, opposing parties and their counsel, and all the other humans we encounter as part of our legal practices.

*Ellen (Ellie) Krug*

3:45 – 4:00 p.m. BREAK

4:00 – 5:00 p.m.

## BREAKOUT SESSION E

### Gray Area Thinking™ – A Toolset for Interacting with Diverse Humans (cont.)

## 501) Probate Panel – Have You Ever Encountered This?

This panel of experienced probate practitioners will pose for the audience not-so-common questions that arise for attorneys and paralegals during the administration of a decedent’s estate, and then use the Voting Response

System to poll the audience for responses, discuss the collective answers. Questions will address issues with will validity; administering probate vs. non-probate assets; handling creditor’s claims; adversarial beneficiaries; and opening and closing issues. If you have specific questions that you would like the panel to pose and address, please e-mail them to [probatequestions@minncle.org](mailto:probatequestions@minncle.org).

*William R. Asp, Andrea S. Breckner, Cynthia R. Costello, Daniel R. Donovan, Julie Peterson, Michael P. Sampson & Peggy Zdon  
Susan J. Link, moderator*

## 502) Residential Real Estate and the Probate Process

What does the “Silver Tsunami” look like in Minnesota and how does that affect the probate process; profile of a typical PR and their mindset; first things first – get the property secured and complete initial due diligence; disposition options – balancing time, money, and estate needs; listing and purchase contract considerations: deed types, seller’s disclosures, etc.; and special circumstances – negative equity, personal property gone wild (AKA hoarders), and more.

*Susan T. Peterson & Steve Wilhelmly*

## 503) South Dakota Trusts: Pulling Back the Curtain – From Soup to Nuts – A Survey of SD Trust Techniques and Tips

The charms of the Directed Trust Model; special purpose entity perpetuates trust advisor and trust protector positions; remodeling a vintage trust via decanting, reformation or modification; and distinctively South Dakotan – domestic asset protection trusts, special spousal property trusts, and privacy laws.

*Patrick G. Goetzinger & Heath R. Oberloh*

## 504) Creditors’ Claims and the Insolvent Estate

Best practices and analysis will include: the insolvent estate; notice of probate to creditors; payment of legitimate claims – protecting against barred or improper claims; estate administration, creditors’ claims and priority for payment.

*William G. Cottrell & George E. Warner, Jr.*

## 505) Finding Fiduciaries – It’s Not as Basic (Or as Simple) as You Think

Estate planners frequently counsel clients that have family dissension, discord or dysfunction. A prudent planner seeks to identify potential sources of conflict within the client’s family and attempts to plan around them. The selection of appropriate fiduciaries can diminish the potential for intra-family conflict. This presentation will discuss the issues the planner should review with the client as she selects agents, executors, and trustees.

*James T. McNary*

## 506) How to Get Your Probate and Trust Matters Settled: The Mediators’ Perspective

Three experienced mediators discuss considerations, tactics and strategies for successful mediation of probate and trust matters, including when to mediate, the advocate’s role in preparing the clients for mediation, approaches that impede successful mediation, what the mediator needs to know from the opposing parties, and much more.

*Judge John W. Borg, retired, James M. Crist & Judge Michael T. DeCourcy, retired  
Rodney J. Mason, moderator*

## 507) Medical Assistance Update

Elections have consequences. One consequence of the last election is the possibility of major changes in the medical assistance program, or maybe not. This session will summarize changes in the medical assistance program since last year’s Conference; potential changes which did not happen, might still happen or might not happen at all. Results of the 2017 Legislature affecting medical assistance will be reported to the extent they emerge in time for reporting at this year’s Conference. In the meantime, DHS continues to refine, correct and perhaps modify policies announced in the new medical assistance Eligibility Policy Manual (the EPM) and new Bulletins.

*Julian J. Zweber*

5:00 – 6:00 p.m.

**INSTITUTE RECEPTION**

*Sponsored by Abbot Downing & The Wells Fargo Private Bank*



# DAY 2 – JUNE 13, 2017

7:30 – 8:00 a.m.

CONTINENTAL BREAKFAST

Sponsored by BNY Mellon Wealth Management

8:00 – 9:00 a.m.

## BREAKOUT SESSION F

### 601) Large Estates Panel – Groundhogs' Day:

#### Estate Planning During Another Era of Uncertainty

What steps are clients with large estates taking in light of the current and anticipated tax environment; what are the most pressing non-tax issues facing clients with large estates; and how will planners who focus on transfer tax planning adapt their practices if major changes to the tax system are adopted?

*Jolene M. Cutshall, Eileen M. Day & Sonny F. Miller*

*Cameron R. Seybolt, moderator*

### 602) Drafting and Planning for Muslim Clients

#### 1.0 elimination of bias credit applied for

Overview of the origins of Islamic estate planning; fraction system for division; practical application of Islamic estate system in Minnesota; and challenges to application.

*Imani S. Jaafar*

### 603) Putting the Success in Cabin Succession Planning:

#### Drafting the Cabin Trust and Other Tools

What information do you need to facilitate the cabin planning discussion; when is a cabin trust appropriate; alternatives to cabin trusts – case studies and pitfalls and impediments; drafting the cabin trusts – drafting checklist and using the DW&TA Form and other alternatives; and essential steps in funding the cabin trust.

*Leigh D. Mathison & Ruthanne H. Vos*

### 604) Litigation of Probate and Trust Disputes

Join this distinguished panel for a timely discussion of recent developments in probate and trust litigation.

*Hon. Elizabeth V. Cutter & Hon. Jennifer L. Frisch*

*Alan I. Silver, moderator*

### 605) A Day in the Life of a Lawyer: How Your Daily Technology Habits Affect You, Your Clients and Your Law Practice

This session will cover ethical obligations of competence and confidentiality; how you use technology can compromise client confidentiality obligations – being aware is half the battle; and the lawyer's obligation to oversee staff and vendors, and the security of their work product and files.

*Emily E. Duke*

### 606) Trust Administration of Your Dreams:

#### Utilizing Key Provisions of the Minnesota Trust Code

Drafting non-judicial settlement agreements; providing proper notice to beneficiaries; modifying irrevocable trusts; establishing directed trusts; and filling trustee vacancies without court involvement.

*Cindy R. Costello & Diana M. Ringuette*

### 607) That's Not What Mom or Dad Wanted:

#### The Role of Settlor's Intent in Long-Term Trusts

The settlor's intent is supposed to be the most important aspect of administration of a trust. However, settlor's intent doesn't often arise until you hear the claim "that is not what mom or dad wanted". This course discusses the changing nature of settlor intent in the context of the new trend to prioritize the wishes of the beneficiaries. It also gives some practical considerations for insuring the settlor's intent is maximized while preserving flexibility to adjust for changing circumstances.

*Pamela Lucina & John T. Welsh*

9:00 – 9:30 a.m.

NETWORKING BREAK

9:30 – 9:45 a.m.

SECTION MEETING

9:45 – 10:15 a.m.

### 2017 Legislative Update

A fast-paced review of estate planning related developments in the 2017 legislative session.

*Lauren G. Barron & Jason W. Schuller*

10:15 – 11:15 a.m.

### Planning for Digital Property: "The Future Ain't What It Used to Be"

What is digital property and why should I care; four main obstacles with digital property; planning ahead; new Minnesota law on fiduciary access to digital property; protecting your privacy, identity, reputation, and copyright; and tips for dealing with digital property.

*James D. Lamm*

11:15 – 11:30 a.m.

BREAK

11:30 a.m. – 12:30 p.m.

### Vibes from the Turmoil of Washington, D.C. – Part 2: An Up-to-the-Minute Report from Inside the Beltway

Last year's presentation focused on the difficulty of predicting changes in the estate tax law in a turbulent election year. This year's presentation will reevaluate the prospects of change five months into the Trump Administration. Is the federal estate tax really dead? Or is it really permanent? What is going on with basis? Or valuation discounts? What on earth is happening at the IRS? How does any of it matter?

*Ronald D. Aucutt*

12:30 – 1:15 p.m.

### The Minnesota Estate Tax: Where Are We Now? – Odysseus Enters the Twilight Zone

What are the new Minnesota estate tax laws; how do they interact with federal law changes; update on domicile and residency issues; and how does all this change our advice to our clients?

*Terry L. Slye*

1:15 p.m.

CONFERENCE ADJOURNS

# FACULTY & PLANNERS

• **Mavis J. Van Sambeek**  
**Probate and Trust Law Section Chair**  
Lindquist & Vennum LLP  
Minneapolis

**Caitlin E. Abram**  
Faegre Baker Daniels LLP  
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**Sharma Foley Affeldt**  
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• **Andrew M. Baese**  
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**Judge John W. Borg, retired**  
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**Sean Carter**  
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**Anton Cheskis**  
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**Patience J. Felt**  
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**Matthew J. Frerichs**  
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**Judge Jennifer L. Frisch**  
Second Judicial District  
Saint Paul

• **Jennifer L. Gilk**  
Gilk Legacy Law PLLC  
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**Patrick G. Goetzinger**  
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**Megan M. Martin**  
Gray Plant Mooty  
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**Leigh D. Mathison**  
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