# 2026 MNA CONVENTION
# LEGAL UPDATE
## January 30, 2026

## *NOTEWORTHY LEGAL ISSUES AND DEVELOPMENTS FROM THE PAST YEAR OF INTEREST TO MINNESOTA JOURNALISTS*

### A. OPEN RECORDS (aka DATA PRACTICES)

*In 2025, there were a number of cases involving the Minnesota Government Data Practices Act (MGDPA) decided by the Minnesota appellate courts and the Minnesota federal district court. However, only two of those cases have some potential consequence for the news media and public access; they are summarized below.*

#### 1. Controversy Flares Over Disclosure of Identities of Undercover Officers

***Minneapolis Police and Peace Officers Association vs.***
***Minnesota Board of Peace Officer Standards and Training***
**Minn. App. Aug. 5, 2025 (2025 WL 2268144)**

**Factual Background.** In response to a data request, the Minnesota Board of Peace Officer Standards and Training disclosed the names and birthdates of at least 257 undercover police officers. But §13.43 of the MGDPA (governing "personnel data") classifies the identities and other information about undercover officers as private data. After learning about the disclosure, the Minnesota Police and Peace Officers Association filed a lawsuit against the Board, alleging that by disclosing the undercover officers' data the board violated the MGDPA.

In June, a state district court judge issued an Order denying the Board's motion to dismiss the case. In particular, the Court concluded that the data at issue are "personnel data" as defined by Minn. Stat. §13.43, subd. 1, and thus classified as private data. The Board then filed a petition with the Court of Appeals seeking discretionary review of the district court decision.

**Decision.** The Court of Appeals agreed to consider the petition, acknowledging the importance of the case. "The Board asserts that Minn. Stat. §13.43 does not apply to the data the Board maintained here in light of the Supreme Court's "single-purpose reading" of Minn. Stat. §13.43, subd. 1, in *KSTP-TV v. Metropolitan Council*, 884 N.W.2d 342, 346-48 (Minn. 2016), and Minn. Stat. § 13.41, which more generally governs licensing agency data under the MGDPA,

including the Board." "Regarding the [district court's] MGDPA decision [about application of the personnel data statute], we are persuaded that it implicates an unsettled and important legal issue which may also have broader applicability."

The potential significance of the case was emphasized when in July, Minnesotans for Open Government and a news media coalition made up of American Public Media Group; Axios Media Inc.; Hubbard Broadcasting, Inc., on behalf of its station KSTP-TV; The Invisible Institute; Pro Publica, Inc.; Star Tribune Media Company LLC; and TEGNA Inc., on behalf of its station KARE-11 (the coalition), filed requests for leave to file briefs as amici curiae. According to the Court, "[t]he coalition's motion indicates that it is most closely aligned with the position of the Board." No final decision has been issued by the Court of Appeals.

## 2. Court of Appeals Favors Request of Alpha News for Access to Body Camera Data of Sen. Mitchell Arrest

***Alpha News v. City of Detroit Lakes***
**20 N.W.3d 627 (Minn. App. 2025)**

**Factual Background:** Last year, Alpha News filed an action in Becker County District Court pursuant to the Data Practices Act seeking access to body-worn-camera and dash-camera recordings relating to the April 2024 arrest of a state senator Nicole Mitchell. Although body-camera data that is part of an active criminal investigation is usually confidential, any person can "bring an action in the district court located in the county where the data are being maintained to authorize disclosure of investigative data." Minn. Stat. §13.82, subd. 7. Disclosure is warranted under the statute if "the benefit to the person bringing the action or to the public outweighs any harm to the public, to the agency or to any person identified in the data." *Id.*

Here the district court determined that because the requested data were active criminal investigative data, "the rights of an accused in an active criminal proceeding outweigh the public's interest" in accessing the data before the criminal trial. Alpha News then appealed, and asked the Court of Appeals to expedite the processing of the appeal, but the Court of Appeals declined. However, the appeal went forward, and in April the Court did issue a decision, which was quite favorable.

**Decision.** In its decision, the Court of Appeals focused on the issue of how the "public benefit" language in the statute should be interpreted : "Central to this case, the MGDPA provides that, if criminal investigative data are classified as confidential or protected nonpublic, "any person may bring an action in the district court located in the county where the data are being maintained to authorize disclosure of investigative data." The district court may order that all or part of the data be released after the data are "examined by the court in camera," and the court has considered "whether the *benefit* to the person bringing the action or *to the public* outweighs any harm to the public, to the agency or to any person identified in the data."

After examining the question, the Court said "we hold that the plain meaning of a "benefit ... to the public" under subdivision 7 is that which has a helpful or useful effect on the community or people as a whole, or that which otherwise promotes or enhances the well-being of the community or people as a whole, and is not constrained by subdivision 15, or any other provision of the MGDPA. In so holding, we need not define the outer reaches of what constitutes a benefit to the public, as it is within the district court's discretion to assess the nature of the asserted benefit and, if the benefit falls within the plain meaning of the statute, to determine the weight it should receive compared against the weight of any identified harms."

The Court commented that here "the district court's discussion of the asserted public benefit includes some language that indicates it narrowly construed the phrase "benefit ... to the public." If it did so, the Court indicated that would be contrary to the interpretation of the statute which the Court adopted. But the Court concluded that "Because we cannot discern from the district court's memorandum whether it applied a meaning of "benefit ... to the public" that is consistent with our interpretation of that phrase, we reverse the district court's decision and remand for consideration of Alpha News's motion in light of this opinion."

## 3. Data Practices Advisory Opinions

*Of the 11 total advisory opinions issued by the Commissioner of Administration in 2025, seven of them dealt with issues involving public access to data. Those opinions are summarized below.*

**A. Investigative Report about Superintendent who Resigned is Public; Resignation Letter is not.** A school board authorized an investigation into concerns related to its former superintendent. A few months later, the investigator submitted his final report. Shortly thereafter, the school board conducted a special meeting, which included a closed session pursuant to Minn. Stat. §13D.05, subd. 2(b) for preliminary consideration of allegations against the superintendent. The board took no official action with respect to the results of the investigation at this meeting. A few days later, the superintendent submitted a letter of resignation. Two reporters then requested the investigative report and the resignation letter.

The District denied both requests, and an advisory opinion was requested. The Commissioner held that the investigative report was public data, because when the superintendent resigned, the complaint against her remained pending, since the school board had not determined whether it would discipline her or formally close the pending complaint. Therefore, all data related to the complaint against the superintendent was public under §13.43, subd. 2(f) of the MGDPA. That statute provides for access to certain complaint data where the government employee is a high ranking official, even when the official resigns before any final discipline is imposed.

However, the Commissioner determined that the resignation letter was not public, because §13.43, subd. 2, which lists personnel data that is public, does not designate data contained in an employee's resignation letter as public data. ***Advisory Opinion No. 25-003; I.S.D. No. 93 (Carlton).***

**B. Data about a Future Customer of Municipal Electric Utility are Public.** Citizen sought government data related to the development of a data center within the City by an entity called Cloud HQ. The City denied the request for 294 files relating to "Electric Data," because the City believed the Electric Data were classified as nonpublic pursuant to Minn. Stat. §13.685 ("Municipal Utility Customer Data"). The City operates a municipal electric utility, and Cloud HQ's development site lies within the City's electric service territory. The City then requested an advisory opinion.

In the Opinion, the Commissioner noted that §13.685 classifies data on municipal electric utility customers as private or nonpublic data. But the Commissioner said a customer is someone that has purchased or has a contract or agreement to purchase electric utility services. However, the City referred to Cloud HQ as a "future customer" in its request to the Commissioner. "This implies that Cloud HQ has not yet purchased electric utility services but intends to do so in the future. If Cloud HQ is a customer of the City's electric utility services, data about it will be classified [as private] under §13.685. However, until such purchase or agreement, these data are not about a customer and are presumptively public data under Chapter 13."

Furthermore, the Commissioner concluded that construction plans, communications, and similar data related to a city providing electric utility services to a future customer are also public data. ***Advisory Opinion No. 25-004; City of Chaska*.**

**C. Agency's Failure to Include Email Attachments in Response to Request for Emails Violated Data Practices Act.** Citizen asked for an advisory opinion regarding the response of the Department of Iron Range Resources & Rehabilitation's (IRRR) to his public data request. At issue was the citizen's request for "all emails" related to specific topics. The agency's response did not include documents attached to the responsive emails. The agency's email retention policy then automatically destroyed several of the emails and attachments before the agency provided access to the missing responsive documents. The agency maintained that the requester was not clear that the request for "all emails" applied to the attached documents.

However, in the Advisory Opinion, the Commissioner said that documents attached to an email are part of the email itself. Therefore, the agency did not respond appropriately when it failed to provide access to email attachments. Further, the agency could not remedy the situation because the email auto-delete policy destroyed responsive data. The Commissioner encouraged government entities to ensure they have procedures in place to retain official records and data responsive to a request when using email auto-delete policies.

The Commissioner also offered a comment about auto-delete email retention policies: "These types of automatic data deletion tools are not prohibited by the Data Practices Act. However, all government entities have obligations under the Official Records Act and Records Management Statute to create and retain records documenting their official activities. Government entities are also obligated to provide access to data that are responsive to a data request before any destruction."

"The Commissioner encourages government entities that use technology to automatically delete emails to establish appropriate procedures that allow them to identify and retain email data responsive to a pending data request as well as any official records that may be contained in emails prior to any deletion. These procedures can help ensure government data and official records are not inadvertently destroyed in violation of the Data Practices Act, Official Records Act, or Records Management Statute." ***Advisory Opinion No. 25-005; Department of Iron Range Resources & Rehabilitation (IRRR).***

**D. School District Failed to Comply with MGDPA in Response to Citizen's Request for Emails.** Citizen submitted a data request to school district in June, 2024, for "*all emails, text messages and voicemail messages sent or received by you, other school district staff, and members of the School Board pertaining to school bus transportation, Centerline Charter bus company, electric school buses, the U.S. Environmental Protection Agency, [the citizen], Sonita van der Leeuw and the Roseville Area High School Students for Climate Action. My request is for the time frame of May 1, 2022 through June 17, 2024."*

The District first communicated with the citizen regarding this request in July 2024, and he then received emails from the District updating him about the status of his request on August 6 and 12. The District also said "it was experiencing technical issues with running such a broad search of its email servers and also mentioned that the amount of data responsive to [the citizen's] request was substantial."

By December 9, the District had produced approximately 115 emails for review. Furthermore, the citizen noticed that it appeared the District had narrowed its search to only emails containing the phrase "electric bus," without his approval. The District said that this had been done "due to concerns from the technology staff about the volume of emails that a broader search would generate." The District added that "staff are required to review and redact all emails that [the citizen] requested with the broader search." The citizen then requested an advisory opinion.

In the Opinion, the Commissioner pointed out that "the Data Practices Act requires government entities to establish procedures to respond to requests from members of the public in an appropriate and prompt manner and within a reasonable amount of time. The Commissioner has previously stated that an appropriate, prompt, and reasonable response will depend on the complexity of the request and the amount of responsive data."

Further, Minnesota Statutes, §13.03, subd. 1 requires government entities to "keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use. The Data Practices Act does not contain an exception allowing a government entity to deny access to data because a request results in a large amount of data that must be compiled and reviewed. The Minnesota Supreme Court, in *Webster v Hennepin Cnty,* 910 N.W.2d 420, 431 (Minn. 2018) stated:"

*"Section 13.03, subdivision 2(a), dictates that government data be made available and that personnel responsible for making it available establish procedures that insure it is made available. It follows, then, that when the procedures are followed and the requested data are not made available appropriately or promptly, the "established procedures" do not insure that government data are properly available."*

"Taken together, the District has not complied with the Data Practices Act because it has not responded appropriately to [the citizen's] data request." ***Advisory Opinion No. 25-006; I.S.D. No. 623, Roseville.***

**E. Long Delay in Responding to Citizen's Request for Public Data Violated MGDPA.** A member of the public asked whether a city responded appropriately to four requests for public data made between September 1, 2023 and September 13, 2024. She had received no response from the City as of July 2025. After the requesters sought an advisory opinion, the City indicated that it was working with her and had begun providing data to the requester.

In the Opinion, the Commissioner readily concluded that the City failed to comply with the MGDPA. "Access [to the data] comes after more than a year and many months from her initial data requests, which is neither prompt nor timely given the scope of the data requested. Additionally, the City did not offer further information about the processing of the requests or access to data despite requester's attempts to learn about the status of the requests and efforts to resolve her concerns informally. Therefore, the City's current responses to [the citizen's] data requests are not appropriate, prompt, or within a reasonable amount of time." ***Advisory Opinion No. 25-007; City of Fertile*.**

**F. Hennepin County Sheriff's Office Violated MGDPA in Response to Media Request for Transcript of 911 Call.** Several media organizations sought an advisory opinion as to whether the Hennepin County sheriff's office (HCSO) responded appropriately to a request for a 911 call transcript. The HCSO argued that portions of the transcript were active criminal investigative data under §13.82, subd. 7, and health record data under the Minnesota Health Records Act, Minn. Stat. §144.293, and were therefore not public. HCSO subsequently provided the media requesters with a redacted transcript.

In response to a request for an advisory opinion, the Commissioner said that "it has been the Commissioner's longstanding opinion that a 911 call is a request for service data under §13.82, subd. 3. As such, §13.82, subd. 4 acts as an exception to the always public classification of request for service data in §13.82, subd. 3, by creating a private classification of the [911 call] audio recording while continuing to ensure public access to the call in the form of a transcript." "As the parties note, §13.82, subd. 7 excludes "request for service data" from the not public classifications of active investigative data.

Furthermore, HCSO's argument that sections of the 911 transcript constitute health records, "because a portion of the call captures communications with a medical dispatcher for the

purpose of conveying health information regarding the injuries to medical providers . . . is not persuasive."

"Therefore, HCSO did not respond appropriately" to the request for a transcript of the 911 call by providing only a redacted transcript. ***Advisory Opinion No. 25-009; Hennepin County Sheriff's Office.***

**G. Data Maintained by County-Based "Purchasing Entity" was Not Public.** Itasca Medical Care (IMCare), a county-based purchasing entity, sought an advisory opinion as to whether it was subject to the requirements of Minn. Stat. §13.46 ("Welfare Data"), after receiving a request from a media member for data it maintained. The purchasing entity denied the request, stating that §13.46 classified the data as not public welfare data. The requester disputed whether the purchasing entity was part of the "welfare system" under the definitions in §13.46. But the Commissioner concluded that the purchasing entity was subject to the requirements of §13.46 because it contracted with the Minnesota Department of Human Services to perform a government function. Therefore, the purchasing entity fell within the definition of "welfare system" as defined in §13.46, subdivision 1(c). ***Advisory Opinion No. 25-011, Itasca Medical Care*.**

## B. THE MINNESOTA OPEN MEETING LAW

*In 2025, there were no court decisions of any significance to the news media issued involving the Minnesota Open Meeting Law.*

### Open Meeting Law Advisory Opinions

*Of the 11 total advisory opinions issued by the Commissioner of Administration in 2025, four of them dealt with issues involving the Open Meeting Law. Those opinions are summarized below.*

**A. Township Board Violated OML by not Publicly Voting on Supervisor Selection.** A township board held a special meeting to interview candidates for an open supervisor position. While interviewing the three candidates, the two supervisors and the town clerk filled out score sheets for each candidate. These scoring sheets were sealed and provided to the town clerk at the end of the interviews. At the next meeting of the Board, the individual receiving the highest score from the scoring sheets was present and appointed to fill the vacancy. This appointment was done by a public vote. A local resident then asked for an advisory opinion addressing whether the Board's procedure complied with the Open Meeting Law. The resident said that "[d]uring the January meeting or any other time it was not disclosed how the Supervisors and the Clerk voted."

In evaluating the issue, the Commissioner acknowledged that the law does not prescribe a specific process for township boards to fill a vacancy, "and the process the Board followed here

may allow for some efficiencies and accurate calculations. However, the process the Board created did not comply with the requirements of the OML." "The OML requires public bodies to conduct most official business during an open meeting, and votes conducted during an open meeting must be done in public and recorded in the minutes or journal of votes."

The Township noted that the appointment of the individual to the supervisor position was conducted at an open meeting, to which the Commissioner responded as follows: "However, the *selection* of this individual occurred outside an open meeting. Specifically, it appears the decision by the Board occurred when the scoring sheets from the December 12 meeting were tallied, which occurred at some point between December 12 and January 9. Because these scoring sheets determined who the Board would appoint to the position, the sheets communicated the vote of each Supervisor and were required to be public at the December 12 open meeting."

"The Commissioner appreciates that the scoring sheets may be available to requesters outside a meeting. However, the obligation to vote publicly in the meeting remains, and so the results of those sheets needed to be disclosed during the December 12 meeting."
***Advisory Opinion No. 25-001; Woodrow Township Board of Supervisors***

**B. Commissioner Couldn't Determine if County Board Violated OML in Off-Site Visit.** Citizen sought advisory opinion on whether the Murray County Board of Commissioners complied with the Open Meeting Law when commissioners gathered to tour a county-owned building after a regular meeting. During the regular meeting, there was no reference to such a planned visit by the commissioners. "The Board adjourned their regular meeting, they did not recess the meeting, and then proceeded to then meet at the county-owned facility."

In responding to the opinion request, the Commissioner said she could not determine for certain whether the Board complied with the Open Meeting Law. "If the Board adjourned its February 4 regular meeting, then the Board violated the Open Meeting Law because it did not appropriately notice a special meeting as required by section 13D.04, subdivision 2." However, "if the Board announced the time and place and recorded in the meeting minutes where it would reconvene before recessing the February 4 meeting, then the Board did not violate the Open Meeting Law because it met the requirements of section 13D.04, subdivision 4(a)."
***Advisory Opinion No. 25-002; Murray County Board of Commissioners***

**C. City Council Violated OML by Holding an Emergency Meeting to Discuss a Matter that didn't Constitute an Emergency.** A member of the public asked for an advisory opinion as to whether the Twin Lakes City Council violated the Open Meeting Law when it held an emergency meeting to approve a wastewater services contract. According to the meeting minutes, "*Mayor Prestholt opened the meeting, stating we were there to hire MMS to do our water and sewer sampling and to keep us in compliance with the State. The Minnesota Pollution Control Agency gal . . . . has been talking with the Mayor and she told him that we have to get this done as soon as possible. The Mayor said there is an open window for draining the sewer ponds as the water is correct and right. He said we've got to get the samples taken and mailed in."*

In the Opinion, the Commissioner commented that "an emergency meeting is reserved for issues requiring immediate action, typically involving public safety." "The Commissioner has previously stated that public bodies should hold emergency meetings only in rare circumstances where public safety is at risk. Examples of emergency situations would include holding a meeting to respond to a natural disaster, or a health epidemic caused by an event such as an accident or a terrorist activity."

"From the information provided, it does not appear that the City's need to sign a contract required immediate attention, or that waiting the three days required to notice and hold a special meeting would jeopardize public safety." Therefore, "the Council's decision to hold an emergency meeting on June 3 to discuss this contract did not comply with the OML."
***Advisory Opinion 25-008; Twin Lakes City Council***

**D. School Board Violated OML when a Quorum of Board Met at a Private Residence.** A member of the public asked whether the school board of Minnewaska Area Schools violated the Open Meeting Law when a private group of residents hosted an informational meeting about an upcoming school bond referendum for Minnewaska Area Schools. Invitations stated the meeting "will provide the latest information as well as have Superintendent Rankin and school board members present."

The Board did not advertise the event nor provide any notice on its website or other locations. The Board chair and three other Board members (a quorum) were present at the event. A transcript of the meeting provided in the advisory opinion request shows the host introduced the Board members. The superintendent presented to the group and discussed financial investment in the school district, including possible changes to curriculum and facilities. He also answered questions from attendees about funding. After the superintendent's presentation, a speaker briefly discussed curriculum and job pathways for students. At the end of the meeting, a Board member provided information on how attendees could vote on the bond issue.

In its comments to the Commissioner when notified of the citizen's opinion request, the Board stated: *"The Board did not deliberate toward decisions, receive testimony as a body, or transact official business at the private gathering. There was no roll call, agenda, motions, votes, or direction to the administration. . . .The District did not organize the event. Any comments by the Superintendent were informational in nature; board members' presence alone did not constitute Board action."*

But in her Opinion, the Commissioner said that while the Board did not take any official action at this event, "formal action . . . is not required for a meeting to occur under the OML." "There are only two elements that determine whether a gathering is subject to the OML: 1) a quorum or more of members of the public body are present, and 2) those members discuss, decide, or receive information related to the official business of that public body."

Here, the Commissioner determined that the Board violated the OML because four of the seven Board members were present and received information related to official school business. "Although the Board did not take formal action or organize the event, the gathering met the definition of a meeting under the OML. Since this meeting was not properly noticed and was not open to the public, the Commissioner concluded that the Board did not comply with the requirements of the OML." ***Advisory Opinion 25-010; I.S.D. No. 2149 (Minnewaska Area Schools).***

## C. LIBEL (DEFAMATION)

### 1. Online Criticism of Business did not Involve a Matter of Public Concern under UPEPA

***Paragon Restorations, LLC vs. Robinet Productions, LLC***
**____ N.W.3d ____ (Minn. 2025) (2025 WL 3749913)**

**Factual Background:** In September 2024, Jonn Robinet and Robinet Productions LLC contracted with Paragon to provide photography and videography services. But after a disagreement, Robinet posted the following internet review of Paragon: "I worked with Paragon in a contract capacity, working with them was incredibly painful, unprofessional, I was denied payment for works and services provided. If you are a contractor or business owner, do not work with this company." Paragon then sued Robinet and Robinet Productions for defamation.

The defendants responded by asking the District Court for expedited relief, seeking dismissal of the defamation claim under the recently enacted Minnesota Uniform Public Expression Protection Act (UPEPA), Minn. Stat. §§554.07 - 554.20 , which would allow them to obtain a statutory award of costs, attorney fees, and expenses. The District Court refused, and defendants appealed.

**Decision:** In its decision, the Court of Appeals described UPEPA as "a uniform anti-SLAPP (strategic lawsuit against public participation) statute." "UPEPA and anti-SLAPP laws generally are procedural statutes 'designed to prevent substantive consequences: the impairment of First Amendment rights and the time and expense of defending against litigation that has no demonstrable merit.' " A special motion for expedited relief under UPEPA allows a party to request that the district court dismiss a defamation lawsuit, or part of such a lawsuit, as long as the party does so "[n]ot later than 60 days after a party is served with a complaint."

In denying the defendants' request for expedited relief, the District Court concluded that the speech at issue was not on a matter of public concern, which the statute requires before such relief can be granted. Importantly, if a special motion for expedited relief is approved under UPEPA, the Court can award costs, attorney fees, and expenses to the defendant.

However, the Court of Appeals agreed with the District Court on the "public concern" issue. "In a civil action based on speech that is not in, or on an issue under consideration or review in, a legislative, executive, judicial, administrative, or other governmental proceeding, to prevail on a

special motion for expedited relief under UPEPA, a moving party must establish pursuant to the free-speech provision that the cause of action is based on speech on a matter of public concern."

The Court rejected defendants' argument that as a matter of law, "negative business reviews and other commercial speech fall within a 'matter of public concern' under" the statute. Instead, replied the Court of Appeals, "[w]hether a civil action is based on speech 'on a matter of public concern' and thus within the scope of [UPEPA] ... is determined, consistent with common law interpretation of the phrase in the defamation context, on a case-by-case basis given the totality of circumstances, taking into consideration the content, form, and context of the speech, as well as any other pertinent factors."

Here, said the appellate court, "the district court correctly determined that [defendants] did not establish under the free-speech provision that Paragon's defamation claim is based on speech on a matter of public concern. Thus, the district court correctly denied [defendants'] special motion for expedited relief under UPEPA."

## 2. Libel Lawsuit Against Associated Press Still Not Resolved

***Reger v. Associated Press***

**U. S. District Court (Minn.) 2025 WL 2978745**

**Factual Background.** More than two years after it was commenced, this case continues to clunk along. It arises from an article published by the Associated Press on June 16, 2022. Plaintiff Reger was an executive with an oil and gas company, and was found civilly liable for securities fraud, though a civil claim for insider trading was rejected by the jury.

The *Star Tribune* then published an article accurately explaining the lawsuit and verdict. Shortly thereafter, the AP published a short article on the same topic. Unlike the *Star Tribune* article, however, and despite citing to that article, the AP story contained several errors. Plaintiff Reger alleges that these errors wrongfully stated and implied that he was convicted of criminal activity rather than held civilly liable, thus causing substantial harm to his personal and business reputation. In his lawsuit against the AP, Reger alleges defamation, defamation by implication, defamation per se, and intentional infliction of emotional distress.

Early in the litigation, the AP had asked the Court to dismiss the action for failure to state a valid legal claim. But in a decision filed on April 17, 2024, the Court allowed the defamation claims to move forward, though it did dismiss the intentional infliction claim. The Court held that Reger's civil Complaint provided sufficient factual allegations to support each of the defamation counts, that it was therefore inappropriate to dismiss them at an early stage of the litigation, and that further development of the actual facts was necessary. Since then, the parties have engaged in extensive discovery—the often contentious process used in civil litigation to sort out the relevant facts.

**Decision.** Recently, the case was back in front of the federal court, as the result of the AP's claim that the defendant and a third party that had been subpoenaed weren't cooperating. However, nothing in the Court's decision related to the merits of the case.

It does remain plausible that once this factual discovery has been completed, the Court will conclude that the defenses raised by the AP, including the argument that Reger is a "public figure" and thus must prove "actual malice," will be sufficient to cause the case to be thrown out.

### 3. Strange Editor's Note in Federal Court Defamation Case Ruling – Maybe AI?

***Kasso v. Police Officers' Federation of Minneapolis***
**U. S. District Court (Minn.) 2025 WL 2963375**

**Factual Context.** Plaintiff here is a former Minneapolis police officer. In her lawsuit, she alleges several legal claims against the defendant Police Officers' Federation, including defamation.

In October, the case came before the Court on the plaintiff's claim that non-party City of Minneapolis failed to comply with her subpoena requesting the production of certain documents and electronically stored information. The Court issued an Order granting in part and denying in part plaintiff's motion to compel compliance with her subpoena.

However, something strange occurred in the Court's Order, as described in the following editor's note added by Westlaw to the electronic version of the Court's decision:

***Editor's Note:*** *This decision contains discussion of citation references that are incorrect or do not actually exist. These invalid citations appeared in the original court opinion and have been preserved as written since they are part of the official record. Any links to these invalid citations have been removed.*

No explanation is provided for how the "invalid citations" appeared in the decision. Maybe it was mischief by AI?

### 4. Libel Action Against Mike Lindell and His Company Headed for Trial on Actual Malice

***Smartmatic USA Corp. v. Lindell***
**___ F.Supp.3d ___ (D. Minn.) 2025 WL 2778074**

**Factual Background:** Manufacturer of electronic voting devices brought lawsuit against Mike Lindell and his corporation, based on statements he made in which Lindell claimed that the manufacturer's electronic voting machines had been used to tilt the outcome of the presidential election against Donald Trump. Smartmatic claimed these comments were defamatory.

**Decision.** Last fall, in response to motions for summary judgment, the Court held that Smartmatic had established most of the elements of a defamation action, including that

statements made by Lindell were defamatory. "Under Minnesota law, statements by Lindell that 'these [electronic voting] machines [are] the biggest fraud in [the] election' and the machines 'stole' the election were defamatory per se. Furthermore, Lindell's statements conveying that manufacturer's electronic voting machines 'stole' the presidential election or otherwise manipulated ballots that changed the outcome of the election, that the machines were connected to the internet and, therefore, susceptible to hacking, and that Smartmatic designed its machines to manipulate ballots and change election results, 'were false and thus capable of being defamatory.'"

However, the Court concluded that there remained "genuine disputes of material facts concerning actual malice." The Court noted that "[t]o satisfy the actual-malice standard, a false publication must have been made with 'knowledge that it was false' or with 'reckless disregard of whether it was false.' To defame with reckless disregard, the defendant must have made the false publication with a high degree of awareness of ... probable falsity, or must have entertained serious doubts as to the truth of [the defendant's] publication."

Lindell argued that there is no evidence of actual malice because he "believed that the statements were truthful, and that [he] continues to believe the statements were truthful." But the Court noted that "a defendant "cannot ... automatically insure a favorable verdict by testifying that he published with a belief that the statements were true" or by professing "good faith." The Court nonetheless concluded that "genuine fact disputes exist in the record as to whether the statements were made with knowledge that they were false or made with reckless disregard to their falsity."

Unless there's a settlement, the case will now likely proceed to a jury trial on the issue of actual malice.

## 5. <u>Decision in Libel Lawsuit by Former Employee Summarizes Key Libel Law Rules</u>

***Krause v. Integra Lifesciences Corporation***

**U. S. District Court (Minn.) 2025 WL 2654165**

**Factual Background.** In this case, plaintiff alleged that her former employer, Integra LifeSciences Corporation and certain corporate executives, committed a variety of legal offenses, including defamation. Integra asked the Court to dismiss the defamation claims. The Court agreed to do so, offering a primer on some important libel law principles.

In analyzing the defamation claims, the Court observed that "to adequately plead defamation under Minnesota law, a plaintiff must allege: (1) there was a published statement of fact; (2) of and concerning the plaintiff; (3) which was false; and (4) the factual statement damaged the plaintiff's reputation and "lowered her estimation in the community. A statement is defamatory when it 'tend[s] to injure the plaintiff's reputation and expose the plaintiff to public hatred, contempt, ridicule, or degradation.' To be 'of and concerning' a plaintiff, the statement need not identify the plaintiff by name but must 'reasonably be understood to apply to a particular plaintiff.' As a result, statements that are merely vague and

general references to a comparatively large group, without mentioning the plaintiffs, do not constitute an actionable defamation. And statements that require the listener to engage in 'further inquiry' to determine the referenced individual (or individuals) are not defamatory."

The Court then applied these principles to the statements at issue, and determined that the plaintiff "did not adequately allege that the May 2024 Statement was defamatory because the statement cannot reasonably be read as 'of and concerning' her. That vague statement could refer to any number of changes Integra made to both the operations and quality departments. Certainly, it is possible that Krause was part of the group of individuals referenced in that statement, but without 'further inquiry,' a reasonable listener would not know or understand De Witte to be identifying Krause specifically."

"The May 2024 Statement also fails to meet the remaining defamation factors. For instance, De Witte's statement that the 'right focus and capabilities [are] applied to Boston' is not a 'published statement of fact,' but instead an opinion made by De Witte in response to a specific question an investor asked of him. The First Amendment protects opinion from defamation liability. A nonactionable opinion is a statement 'that cannot be reasonably interpreted as stating a fact' and 'cannot be proven true or false.' De Witte's statement that Integra made changes 'to ensure the right focus and capabilities' were applied at the Boston facility lacks any degree of specificity and simply reflects De Witte's own opinion about the direction of the company's operations and quality leadership teams."

Based on its analysis concluding that none of the statements at issue were actionably defamatory, the Court dismissed the plaintiff's defamation claims.

## 6. <u>Another Painful Outcome for Online Critic of Dental Practice</u>

***J&D Dental vs. Hou***
**26 N.W.3d 491 (Minn. App. 2025)**

**Factual Background:** Dental office and dentist brought defamation action against former patient (Hou), arising from multiple negative reviews that patient posted online regarding her experience and treatment. For example, Hou posted the following Google review:
"I want to give a negative rating! Anyone who cares about their dental health should avoid this practice! I was fooled by the 5-star rating and chose J&D Dental and [the dentist] has damaged three of my teeth! My treatment involved fillings on teeth 8 & 9 and a crown on tooth 4, which not only failed to solve the problems but led to more serious dental issues. Subsequent evaluations by multiple respected dentists have confirmed that the work performed was substandard. I initially reported significant discomfort in my front teeth following fillings on teeth 8 & 9. I deeply regret choosing J&D Dental, as the physical and structural damage caused by [the dentist] to my teeth is permanent!"

The District Court denied the patient's special motion for expedited relief to dismiss the defamation claims pursuant to the Uniform Public Expression Protection Act (UPEPA), and the

patient appealed. She argued that that her statements in the online reviews were on a matter of public concern, and therefore within the scope of UPEPA protections.

**Decision.** However, the Court of Appeals rejected her argument, holding that her comments were not on a matter of public concern. According to the Court, "speech on a 'matter of public concern' has taken on a special meaning. The United States Supreme Court has observed that 'Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public. The arguably inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern.'"

The Court of Appeals continued: "We conclude that the 'overall thrust and dominant theme' of Hou's speech was to discuss her personal grievance with J&D Dental and not to speak 'to broader public issues' or discuss 'a matter of public import.' Thus, the content of Hou's speech does not favor concluding that her speech is on a matter of public concern." The Court therefore denied her appeal.

## 7. Court Awards Defendants UPEPA Attorney's Fees in Defamation Case

***Anderson vs. Anderson***
**Minn. App. July 22, 2025 (2025 WL 2090526)**

**Factual Background.** Plaintiffs in this case filed a lawsuit for defamation and civil conspiracy, which the District Court concluded was basically frivolous. It therefore granted defendants' motion to dismiss the complaint, and awarded defendants their costs and attorney fees under the Uniform Public Expression Protection Act (UPEPA) in the amount of $5,765. Plaintiffs appealed.

**Decision.** The Court of Appeals affirmed the District Court's actions. This is not a significant decision in terms of defamation law principles, but it does demonstrate the potential value of the recently enacted Uniform Public Expression Protection Act.

## 8. Minneapolis Police Chief's Statements to Media Not Absolutely Privileged against Libel

***Timberlake v. O'Hara***
**Minn. App. June 30, 2025 (2025 WL 1793993)**

**Factual Background:** In 2020, Tyler Timberlake was involved in a taser incident while working as an officer for the Fairfax County Police Department (FCPD) in the State of Virginia. Timberlake was criminally charged with three counts of misdemeanor assault and battery, but was subsequently acquitted. He was then reinstated to his position with a reprimand. The reprimand was not considered a disciplinary action. Timberlake later applied for a position with the Minneapolis Police Department, and was hired in 2023.

After he began work for MPD, members of the local media, representing several different news outlets, inquired about Timberlake's background, including the 2020 incident and MPD's hiring process. Police Chief O'Hara issued a number of statements in response, which Timberlake claims were defamatory. Not long afterwards, he was terminated by MPD.

Timberlake then sued O'Hara and the city for defamation. In response, O'Hara and the city moved to dismiss the defamation claims, arguing that Chief O'Hara's statements were protected by the doctrine of absolute privilege. The District Court denied their motions, causing them to appeal.

**Decision.** The Court of Appeals affirmed the decision of the District Court. It agreed that Chief O'Hara statements to the media were not absolutely privileged, and could therefore potentially support Timberlake's defamation claims.

## 9. <u>Comments made to News Media by Attorneys about Civil Lawsuit not Privileged</u>

***Cook vs. Trimble***
**22 N.W.3d 196 (Minn. 2025) (2025 WL 3749913)**

**Factual Background:** Former Minnesota Viking Dalvin Cook brought defamation action against attorneys representing his former girlfriend, claiming that attorneys defamed him and invaded his privacy in a separate lawsuit when the attorneys made certain statements to the news media. The District Court denied the attorneys' special motion for expedited relief to dismiss the claims under Minnesota Uniform Public Expression Protection Act (UPEPA), and attorneys appealed.

**Decision.** On appeal, the attorneys renewed their argument that the "judicial-proceedings privilege" protected their statements to the media. But according to the Court of Appeals, "Under the judicial-proceedings privilege, statements may be protected from claims that sound in defamation if "(1) made by a judge, judicial officer, attorney, or witness; (2) made at a judicial or quasi-judicial proceeding; and (3) the statement at issue is relevant to the subject matter of the litigation. But application of the privilege is limited; it does not apply unless 'the administration of justice requires complete immunity from being called to account for language used.'"

The attorneys argued that the judicial-proceedings privilege applied to their statements because they were made in the course of representing Cook's ex-girlfriend. The Court disagreed, however. "Although our Supreme Court has not addressed the issue, '[t]he majority of states have determined that the [judicial-proceedings] privilege does not apply when the communications are made to the media.' 'The absolute privilege does not extend to a press conference.'"

"Based on the weight of the relevant authority, and consistent with our persuasive analysis in [an earlier decision], we hold that attorney statements to the media generally do not fall

within the scope of the judicial-proceedings privilege. Accordingly, the district court did not err by rejecting this asserted basis for dismissing Cook's defamation claims" against the attorneys.

## 10. Even the Archbishop isn't Safe from Defamation Lawsuits

***Benjamin vs. Hebda***

**U. S. District Court (Minn.) 2025 WL 884140**

**Factual Background.** Plaintiffs Henry Benjamin and Harold Edwin sue Bernard Hebda, the Bishop of the Archdiocese of St. Paul and Minneapolis, and Timothy Broglio, the President of the United States Conference of Catholic Bishops ("USCCB"), claiming that "the business and property dealings of the USCCB offend the central tenets of the Roman Catholic faith." One of the claims made by plaintiffs was for defamation.

**Decision.** The federal court concluded that it had no jurisdiction over plaintiff's claims, and dismissed the lawsuit.

## 11. Minnesota Uniform Public Expression Protection Act (UPEPA)

**Expedited Relief Provision is Being Cited Frequently in Libel Cases**

After the Minnesota Supreme Court a few years ago struck down the state Anti-SLAPP statute that provided an expedited legal procedure by which meritless libel lawsuits could be dismissed early, because the Court concluded that the procedure provided in the statute violated a libel plaintiff's constitutional right to a jury trial, a coalition of individuals and organizations (including the Minnesota Newspaper Association) persuaded the Legislature to adopt the Uniform Public Expression Protection Act (UPEPA), which became effective on May 25, 2024. The Act was developed by a respected national organization known as the Uniform Law Commission, which seeks to promulgate proposed statutes that can be enacted by states throughout the country. The UPEPA purports to avoid the constitutional defects that caused the high court to invalidate Minnesota's prior law.

The new statute includes the following provision:

**§554.09 Special Motion for Expedited Relief**

*Not later than 60 days after a party is served with a complaint, crossclaim, counterclaim, third-party claim, or other pleading that asserts a cause of action to which sections 554.07 to 554.19 apply, or at a later time on a showing of good cause, the party may file a special motion for expedited relief to dismiss the cause of action or part of the cause of action.*

**§554.16 Costs, Attorney Fees, and Expenses**

*On a motion under section 554.09, the court shall award court costs, reasonable attorney fees, and reasonable litigation expenses related to the motion:*

*(1) to the moving party if the moving party prevails on the motion; or*
*(2) to the responding party if the responding party prevails on the motion and the court finds that the motion was frivolous or filed solely with intent to delay the proceeding.*

As noted in the above summary of recent defamation decisions, UPEPA is now being cited frequently by defendants in libel cases.

## D. REPORTER'S PRIVILEGE

### 1. Is Reporter for Nonprofit, Advocacy News Organization Protected by Privilege?

***Energy Transfer LP, et al. v. Greenpeace International;***
***Unicorn Riot, et al., Respondents***
**Minnesota Supreme Court, 23 N.W.3d 554 (Minn. 2025)**

**Factual Background.** Energy Transfer and the other plaintiffs in this case are energy companies suing an advocacy organization, Greenpeace International, as well as environmental activists in North Dakota in connection with the 2016 Dakota Access Pipeline ("DAPL") protests. In the North Dakota state court, they issued a subpoena to a non-party nonprofit media organization in Minnesota, Unicorn Riot Collective LLC, and its co-founder Niko Georgiades. The subpoena sought the disclosure of materials from Unicorn Riot's coverage of the DAPL protests such as, "[d]ocuments and communications, including video and audio recordings, concerning actual or planned Direct Action relating to Energy Transfer, Dakota Access, and/or DAPL," and "[a]ll videos, audio recordings, images, reports, articles, letters, emails, press releases, statements, internet postings or content, or other materials prepared by Unicorn Riot concerning Energy Transfer, Dakota Access, or DAPL."

When the subpoena was objected to, the companies brought proceedings in Minnesota to enforce it. A Minnesota district court determined that Unicorn Riot fell squarely within the protections of the (the Minnesota Free Flow of Information Act (MMFIA), the state Shield Law, and that the subpoena targeted privileged documents protected from disclosure under that statute. Nonetheless, and very strangely, the district court also ordered Unicorn Riot to create a detailed privilege log (which is a detailed description of materials in its possession that might be within the scope of the subpoena).

The energy companies appealed the ruling that the Shield Law applied, and Unicorn Riot cross-appealed the district court's requirement that despite its recognition of the privilege held by Unicorn Riot, it nonetheless had to create a burdensome "privilege log." Unicorn Riot argues on appeal that the purpose of the reporter's privilege under both the First Amendment and under the Minnesota Shield Law would be frustrated if non-party journalists were forced to participate in civil discovery like this.

**Decision.** Last May, the Court of Appeals held that Unicorn Riot "qualified as a news-media organization that could seek the MFFIA's protections; that the MFFIA's protections are not limited only to newsgathering information obtained by means of lawful, non-tortious conduct; that newsgathering information obtained by Unicorn Riot was subject to the privilege against disclosure provided by the MFFIA; that in a proceeding to enforce a third-party subpoena, a district court may not order a privilege log or require the production for in camera review of information that is privileged under the MFFIA and that does not fall within a statutory exception.

However, both sides then asked the Supreme Court to review this ruling, which the Court agreed to do. In July, the Court issued it decision, agreeing with the Court of Appeals that the Free Flow of Information Act does not contain an exception for newsgatherers who allegedly engage in unlawful or tortious conduct "of the kind presented in this case." Disappointingly though, the Court held that the Act does not prohibit the District Court from ordering production of a privilege log.

The Washington, D.C. based Reporters Committee for Freedom of the Press submitted an amicus curiae brief on behalf of Unicorn Riot in the case, which the Minnesota Newspaper Association and many state news organizations signed on to.

## E. FIRST AMENDMENT ISSUES

### 1. Federal Court Issues Preliminary Injunction on First Amendment Grounds Covering ICE Agents and other Government Officers

***Tincher vs. Noem***

**___ F.Supp.3d ___ (D. Minn.) 2026 WL 125375 (Jan. 16, 2026)**

**Factual Background.** Several individuals who have been engaged in protesting the ongoing enforcement activities of ICE in the Twin Cities asked the federal court for a preliminary injunction and other judicial relief, claiming that ICE agents have repeatedly violated their First Amendment rights.

According to the Court, "Plaintiffs have established an ongoing, persistent pattern of Defendants' chilling conduct. The dozens of declarations by similarly situated nonparties detail similar, if not more egregious, injuries to rights suffered at the hands of federal law enforcement officers for engaging in protected activity. And although the Court is resisting relying broadly on media reports of recent developments, it cannot ignore the almost-nonstop press reporting of continuing protest activity met with continuing aggressive responses by immigration officers operating in the Twin Cities."

**Decision.** Based on this analysis, the Court granted in part the request for a preliminary injunction, that provides as follows:

1. It applies to individual Plaintiffs and to all persons who do or will in the future record, observe, and/or protest Operation Metro Surge and related operations that have been ongoing in this District since December 4, 2025.
2. It applies to [the government] Defendants and their officers and agents operating in the District of Minnesota to conduct immigration enforcement activities as part of Operation Metro Surge. It also applies to Defendants and their officers and agents responding to protests that arise in response to Operation Metro Surge.
3. Covered Federal Agents are hereby enjoined from:
a. Retaliating against persons who are engaging in peaceful and unobstructive protest activity, including observing the activities of Operation Metro Surge.
b. Arresting or detaining persons who are engaging in peaceful and unobstructive protest activity, including observing the activities of Operation Metro Surge, in retaliation for their protected conduct and absent a showing of probable cause or reasonable suspicion that the person has committed a crime or is obstructing or interfering with the activities of Covered Federal Officers.
c. Using pepper-spray or similar nonlethal munitions and crowd dispersal tools against persons who are engaging in peaceful and unobstructive protest activity, including observing the activities of Operation Metro Surge, in retaliation for their protected conduct.
d. Stopping or detaining drivers and passengers in vehicles where there is no reasonable articulable suspicion that they are forcibly obstructing or interfering with Covered Federal Agents, or otherwise violating 18 U.S.C. § 111. The act of safely following Covered Federal Agents at an appropriate distance does not, by itself, create reasonable suspicion to justify a vehicle stop.
5. This Order shall remain in effect until Operation Metro Surge concludes or the conditions change such that it is no longer necessary.

## 2. Plaintiffs Claim First Amendment Violation when County Board Terminates Online Portal for Submission of Public Comments

***Preble v. Itasca County Board of Commissioners***
**U. S. District Court (Minn.) 2025 WL 3458590**

**Factual Background:** The Court's factual summary states that "Plaintiffs brought this action against a variety of elected and appointed public officials in Itasca County, in relation to the online portal the Defendants established for County residents to submit written comments to be read aloud at the public meetings of the County Board of Commissioners. Plaintiffs allege that they submitted comments through this online portal and that Defendants violated their rights under the First, Fourth, and Fourteenth Amendments by not reading their comments aloud at public Board meetings. Thirteen days after Plaintiffs filed this lawsuit, the Board stopped accepting written comments submitted through the online portal. Now, residents of the County who wish to provide input are required to attend the Board's in-person meetings."

The Board's action prompted plaintiffs to seek a preliminary injunction against the Board, arguing that the Board decided to stop accepting written comments through the online portal

in retaliation for plaintiffs' decision to initiate this lawsuit, in violation of the First Amendment. Plaintiffs asked the Court order Defendants to reinstate the online portal.

**Decision.** In support of their request for the injunction, the plaintiffs argued that "the close temporal proximity between filing their lawsuit on July 25, 2025, and Defendants shutting down the online portal thirteen days later demonstrates retaliation against Plaintiffs for filing this lawsuit." The Court responded to their argument as follows: "Plaintiffs are correct that the right to file a legal action is protected under the First Amendment. However, temporal proximity between protected activity and the alleged retaliation, by itself, does not establish a retaliatory motive. Because Plaintiffs have only offered evidence of temporal proximity to support their assertion of retaliation, the Court concludes that on the present record, Plaintiffs are unlikely to succeed on this First Amendment retaliation claim." The Court therefore denied the requested injunction.

### 3. Federal Appellate Court Revives Lawsuit by School Board Member Claiming She was Punished by Board for Engaging in Speech Protected by the First Amendment

***Sorcan vs. Rock Ridge School District***
**131 F.4th 646 (8th Cir. 2025)**

**Factual Background.** Based on the claim that Polly Sorcan, one of its board members, had "undermined the District's mission and failed to respect its policies and data privacy laws," the board of Independent School District No. 2909 (Rock Ridge) banned Sorcan from committee assignments and meetings. In response, Sorcan sued the District and the chair of the school board, arguing that the board impermissibly retaliated against her for engaging in speech protected by the First Amendment.

The school board's objections to Sorcan's behavior were spelled out in a censure resolution. It alleged that, (1) "Sorcan has failed to respect and follow the District's policies, including the District's Rules of Order at Board meetings; (2) Sorcan has failed to respect data privacy laws while acting in her capacity as a Board member; and (3) Sorcan has failed to carry out the District's mission and has actively undermined the District's mission by refusing to work with the Board's Negotiation Committee on a contract, undercutting the District's mission on social media, and more." The resolution further stated that, if it was adopted, Sorcan would be "remove[d] ... from any and all School Board committee assignments until such time as the Board decides that [Sorcan] may again be assigned to committees." All board members other than Sorcan voted "yes" on the resolution, and it passed. Sorcan was then immediately removed from all committee assignments.

**Decision.** The federal District Court granted the defendants' motion to dismiss Sorcan's lawsuit. After that development, the board removed Sorcan from her position as a board member, contending that she had prioritized her personal interests and undermined school board decisions. Sorcan then appealed. In March, the federal 8th Circuit Court of Appeals reversed the District Court's ruling, and sent the case back to the lower court for further proceedings.

### 4. Federal Court Strikes Down New Law that Severely Restricted Corporate Speech

***Minnesota Chamber of Commerce vs. Choi***
**765 F.Supp.3d 821 (D. Minn. 2025)**

**Factual Background.** The 2023 Minnesota Legislature enacted a statute it called the "Democracy for the People Act." The law prohibited "some (but not all) businesses with foreign ownership from exercising First Amendment free-speech rights in connection with elections for state and local public office and ballot questions in Minnesota." In other words, "foreign-influenced corporations" could not make political contributions and independent expenditures in Minnesota's elections. The extent of foreign ownership necessary to trigger the statute's prohibitions was very small: a foreign ownership interest of as little as one percent might qualify. Violations of the law could trigger both criminal and civil penalties.

**Decision.** The Minnesota Chamber of Commerce filed suit in federal court, challenging the new law claiming it violated established free expression principles protected by the First Amendment. And in a decision filed on February 7, Judge Eric Tostrud struck down the statute. Judge Tostrud held that the law clearly violated the First Amendment because the operation of its provisions seriously restricted political speech.
As the Court explained in reaching its decision, "domestic corporations are protected under the First Amendment." And "there is no support for the proposition that corporations lose their First Amendment protections merely because a foreign citizen or instrumentality purchases some share or interest, no matter how small."

Because the law would have posed a serious threat to political advertising in Minnesota, MNA (together with the Minnesota Broadcasters Association) supported the Chamber's effort with a friend of the court brief when the Chamber sought and obtained a preliminary injunction against the statute.

## F. ACCESS TO COURTS

### 1. Federal Court Holds that Records Relating to Allegations of Misconduct Against Government Employees Generally Don't Warrant Sealing

***Kasso vs. City of Minneapolis***
**U. S. District Court (Minn.) 2025 WL 18619**

**Factual Background.** Defendants filed a motion asking the Court to permanently seal two documents in the court file, arguing that one document included data regarding a defendant's medical condition and the other document included allegations of [government] employee misconduct that did not result in final discipline.

**Decision.** In responding to the motion, the Court provided a succinct summary of the rules that are used to determine whether court records may be sealed—in other words, will not be

accessible to the public. [See also *Shopek v. City of Minneapolis* summary below]. Then, after analyzing the documents at issue, the Court concluded that "the personal health information of an individual is generally of a character that warrants sealing."

"But, contrary to Defendants' argument in their Joint Motion Regarding Continued Sealing, allegations of misconduct against public employees that have not resulted in final discipline are not generally of a character that warrants sealing. Notably, the Minnesota Government Data Practices Act (MGDPA) provides that both (1) 'the *existence* and *status* of any complaints or charges against [a public employee], regardless of whether the complaint or charge resulted in a disciplinary action' and (2) 'the *final disposition* of any disciplinary action' against a public employee are public information. Minn. Stat. §13.43, subd. 2(a)(4). Moreover, even if such information is considered private under the MGDPA, the Act expressly contemplates that otherwise private information may be released in connection with judicial proceedings. In addition, such a statutory classification does not automatically merit an order sealing judicial proceedings."

**2. Federal Court Allows Exhibits in Pending Case to be Sealed.**

***Shopek vs. City of Minneapolis***

**U. S. District Court (Minn.) 2025 WL 1112826**

**Factual Background.** The parties in this case filed a joint motion asking the Court to seal certain exhibits submitted by the City of Minneapolis in connection with the City's motion to dismiss the case. The parties agreed that the exhibits should remain sealed because "they contained information regarding plaintiff that [was] personal, private, confidential and is not public under the Minnesota Government Data Practices Act ("MGDPA")."

In reviewing the request to seal, the Court first summarized the governing legal principles. "Parties may seal documents in a civil case 'only as provided by statute or rule, or with leave of court.' There is a common-law right of access to judicial records. But the right of access is not absolute. The Court 'must consider the degree to which [the relief requested] would interfere with the interests served by the common-law right of access and balance that interference against the salutary interests served by maintaining confidentiality of the information.' [T]he weight to be given to the presumption of [public] access must be governed by the role of the material at issue in the exercise of Article III judicial power and resultant value of such information to those monitoring the federal courts."

"When the documents at issue play a material role in the exercise of the Court's [decision-making], or are of value to those monitoring the federal courts, 'the presumption of public access to judicial records may be overcome if the party seeking to keep the records under seal provides compelling reasons for doing so.' On the other hand, when the documents at issue do not play a material role in the [the decision-making] or are of little value to those monitoring the courts, the presumption of public access instead 'amounts to ... a prediction of public access absent a countervailing reason.'"

The Court continued: “Because the exhibits at issue are connected to a dispositive motion, they are likely to play a role in [the Court’s] decision on the motion. The exhibits thus likely implicate the exercise of Article III power and are of value to those monitoring the federal courts, such that the presumption for public access may be overcome only if the parties provide a compelling reason to keep them sealed. Furthermore, whether the information at issue is deemed private under the MGDPA does not necessarily determine whether it should be permanently sealed in this litigation (‘a statutory classification does not automatically merit an order sealing judicial proceedings’).”

“Nevertheless, having reviewed the exhibits, the Court finds that each contains sensitive or personal information, including health details about plaintiff, such that—at least at the present time—plaintiff has a legitimate interest in maintaining confidentiality that outweighs any public interest in unsealing the exhibits. The Court cautions the parties that this determination may not be the last word on sealing the documents at issue, however. In deciding the underlying motion or during a trial in this matter, [the Court] might conclude that all or part of the information sealed pursuant to this Order is of such significance that the public's interest outweighs the parties’ interests in confidentiality and the information should be unsealed.”

### 3. Statute Requiring Automatic Expungement of Eviction Records is Unconstitutional

***Sela Investments, Ltd. LLP vs. J.H.***
**22 N.W.3d 181 (Minn. App. 2025)**

**Factual Background.** Sela brought this action challenging a recently enacted state law that requires district courts to automatically expunge housing eviction case records in certain situations. Sela argued that the statute violates the separation-of-powers doctrine by infringing on the District Court's inherent authority to hear and decide cases. In response, defendant J.H. argued that the statute simply creates a remedy by removing an eviction court case file from publicly accessible databases “without limiting the judiciary's final decision to expunge its own housing court records.” Sela appealed the District Court’s decision to automatically expunge records at issue in the case.

**Decision.** In analyzing Sela’s argument, the Court of Appeals noted that “in 2023 and 2024, the Legislature expanded the grounds for expungement of eviction case court records. As amended, the law requires the district court to expunge its court file “upon motion of a defendant, if the case is settled and the defendant fulfills the terms of the settlement. The plain language of [the statute] mandates district courts to order expungement of an eviction court file, in every case, solely upon a defendant's motion, without any decision-making by the district courts. This is contrary to standard court procedure, which allows the adverse party to object and the district court to decide the issue on the merits. In essence, [the statute] precludes courts from considering the underlying facts of any case, considering the arguments raised by a party opposing expungement, making findings, or determining whether granting the expungement is in the best interests of society or the individual.”

“For instance, expungement of an eviction case may not be appropriate in a case in which a tenant causes extensive damage to a property or when other substantial violations of the lease occur. But under the current language of the statute, the district court would be required to expunge its own eviction case court file automatically, without any consideration of how the expungement may impact society.”

“We therefore hold that Minn. Stat. §484.014, subd. 3(a)(6), is facially unconstitutional as violating the separation-of-powers doctrine because it mandates a district court to order expungement of an eviction case court file solely based on when a defendant files a motion and leaves no room for the district court to exercise its discretion to decide whether expungement is appropriate, and therefore infringes on the court's inherent authority to manage its own records.”

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