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# Bar Talk

## Senior United States District Judge Joan N. Ericksen's Reflections from the Bench

By Kelly Fermoyle



(L to R) Senior Judge Ericksen, Bullard, and Horrell

At the March 2020 FBA Luncheon, Senior United States District Judge Joan N. Ericksen provided reflections on her 25 years as a judge. Senior Judge Ericksen was interviewed by two of her former law clerks, Elsa Bullard and Holley Horrell. Many of Senior Judge Ericksen's other former law clerks were also present at the luncheon.

In her nearly eighteen years as a federal judge, Senior Judge Ericksen has presided over ninety trials (encompassing 440 days in trial), sentenced more than 800

criminal defendants, ruled on about 4,000 dispositive motions, and signed a whopping 20,000 orders. Senior Judge Ericksen noted that her hand hurt just thinking about all of those signatures over the years.

*Reflections from the Bench, continued on page 2.*

## Bar Talk COVID-19 Update

By Chad Pennington and Kari Dahlin

Like all of you, *Bar Talk* is closely monitoring the development and progression of COVID-19 and its effects on the District of Minnesota and local FBA programming. Recently, many local FBA events have been postponed or cancelled in light of COVID-19 and the attendant public health considerations. As a result, this *Bar Talk* edition includes less content than usual. During this challenging period, *Bar Talk* will continue to cover local FBA events, provide substantive District and Eighth Circuit updates, and serve as an information resource.

The following local FBA events have been cancelled or postponed:

March 18 - "Tips for Effective Appellate Advocacy." Newer Lawyers Luncheon with Judge James B. Loken.

March 18 - Mass Tort and Class Action Practice Group MDL Seminar.

March 18 - Minority Judges Reception. Diversity Committee cosponsored event.

March 20 - "Seeking Safety Away from Home: Conversations with Asylum Seekers and Their

*COVID-19 Update, continued on page 2.*

*Reflections from the Bench, continued from page 1.*

Senior Judge Ericksen reflected on her start as a federal judge. Within her first month and a half on the job, she presided over a trial for a tax protestor, who represented himself *pro se*, and held a *Markman* hearing involving a 3D fabric hunting jacket.

Over her time on the federal bench, Senior Judge Ericksen has gained a reputation for handling a large portion of the District's patent cases and has become a leader in the District in that area of the law. Senior Judge Ericksen said that she loves to learn how things work. In fact, she knows how to put in a stint.

Senior Judge Ericksen also reflected on her time as a lawyer before she became a judge. She started her career representing the cities of Robbinsdale and Crystal, where she tried more than seventy cases in her first two years out of law school. She noted that the job had plenty of "on the job training." Senior Judge Ericksen was later an Assistant

U.S. Attorney in the District where she prosecuted the first RICO civil trial in Minnesota.

Senior Judge Ericksen assumed senior status last year, but her workload has remained at roughly the same level because of the time it takes to work through the existing cases. She said that her goal is to handle a 50-75% caseload in the future. Since taking senior status, she was appointed to the Board of Regents at her alma mater, Saint Olaf College.

Some fun facts about Senior Judge Ericksen are that she loves to play the snare drum ("you can really wail on it"), enjoys travelling, biking, gardening, and that she has only used her gavel in the courtroom once—to get control of an unruly civil litigator.

At the conclusion of the luncheon, Senior Judge Ericksen's former law clerk United States Magistrate Judge Elizabeth Cowan Wright presented Senior Judge Ericksen with a chair in honor of her service to the District of Minnesota. ■

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*Kelly Fermoyle is an associate at Faegre Drinker LLP, practicing in intellectual property litigation.*

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*COVID-19 Update, continued from page 1.*

Lawyers." Hosted by the Diversity Committee.

March 25 - "Innovation Protection: Considerations and Strategies for Determining Whether Your Innovations Are Best Protected as a Patent, Trade Secret, Trademark, Copyright, or a Blended Approach." Hosted by the Intellectual Property Committee.

April 2 - "Addressing Implicit Bias in Practice." Diversity Committee cosponsored event with the University of Minnesota Law School.

April 8 - FBA Monthly Luncheon. Speakers: Eileen Hunter, Amanda Rome, and Erin Oglesby (in-house attorneys at Boston Scientific, Xcel Energy, and Target).

April 14 - Newer Lawyers Luncheon with United States District Judge Eric C. Tostrud.

April 16 - "A Holocaust Survivor Speaks: From Germany to the Shanghai Ghetto." Cosponsored by Diversity Committee and World Without Genocide.

April 17 - Disability Justice Seminar: "Voting Rights of Individuals with Disabilities." Cosponsored by Diversity Committee and Robins Kaplan LLP.

April 18 - Intellectual Property Committee Girl Scouts event.

April 22 - FBA Law Student Award Ceremony.

May 13 - FBA Monthly Luncheon. Speaker: Minnesota Supreme Court Justice Alan C. Page (Ret.).

May 14 - Membership Committee Co-Sponsored Event with MSBA Range District Bar in Chisom, MN.

May 16 - Annual Federal Judges' Dinner Dance.

*COVID-19 Update, continued on page 3.*

*COVID-19 Update, continued from page 2.*

June 15 - 100th Year Commemoration of the Duluth, Minnesota lynchings. Diversity Committee co-sponsored event.

June 16 - Annual FBA Federal Practice Seminar and Mason Memorial Luncheon: Brian Stevenson, seminar keynote speaker; United States District Judge Richard Gergel of the District of South Carolina, Mason Memorial speaker.

June 22-26 - 3rd Annual Court Camp. Diversity and Outreach Committees co-sponsored event. Court Camp has offered to contribute material and guest speakers to the Minneapolis School District, Social Studies Department. Volunteers are still needed. Email CourtCamp@mnd.uscourts.gov for details. ■

*Chad Pennington and Kari Dahlin are Bar Talk co-editors. Pennington practices with the Office of the Federal Defender-Fargo. Dahlin is a litigation attorney at Arthur, Chapman, Kettering, Smetak & Pikala, P.A.*

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## **The Clerk's Office Serving You During COVID-19**

*By Tricia Pepin*

In the new age of social distancing, the Clerk's Office is working to bring you the same level of service, but from a distance.

In response to the COVID-19 outbreak, the Clerk's Office went from having approximately 87 employees reporting to work daily, down to just a handful in each city. The only staff in the courthouse from the operations department are those needed to open the mail, work the intake desk, and perform necessary financial tasks. In addition, staff necessary to support court proceedings also report to the courthouse, including technology staff, criminal duty staff, courtroom deputies, and court reporters. We further reduced staff from having to report to the courthouse by routing all mail to Minneapolis.

While the Clerk's Office has allowed teleworking since 2018, that was not the norm for many staff and the Office had to adjust quickly to ensure that the same level of service the Bar received before the pandemic continued during the course of outbreak. In a matter of days, Clerk's Office supervisors came up with a plan to change to an almost 100% remote-working staff. All this work was done with the support of the judges, whose primary concern was to keep our staff as safe as possible while also fulfilling the Court's constitutional responsibilities and other essential functions.

As of the writing of this article, when you contact the ECF Helpdesk, whether by phone or email, someone who is teleworking is helping you. When you call the intake line, someone is answering that from home. Any online

chats are also staffed by a teleworker. The Clerk's Office has not changed how it administers the case filings and conducts first and second-level quality control remotely.

This outbreak has prompted us to look at how we do our work, and we expect to implement changes in the coming months to make it easier for members of the Bar and public to interact with our office in a remote manner. For example, we are looking at how to make it easier for pro se litigants to pay filing fees electronically, how to provide remote training opportunities for the Bar, and how to use remote workers to assist with long-term projects.

If you can think of ways we can make it easier for you to interact with the Clerk's Office remotely, please let us know! ■

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*Tricia Pepin is the Chief Deputy Clerk for United States District Court for the District of Minnesota.*

## District of Minnesota Addresses Key Infringement Concepts in Catheter Case

By Veena Tripathi

In *QXMédical LLC v. Vascular Solutions, LLC*, 408 F. Supp.3d 996 (D. Minn. 2019), United States District Judge Patrick J. Schiltz granted in part and denied in part motions for noninfringement and invalidity. The invention in dispute was a guide extension catheter, used by cardiac surgeons to deliver a balloon or stent into an artery that has been narrowed by plaque buildup. The invention requires the surgeon to push the guide extension catheter through a larger catheter and then push the balloon or stent through the guide extension catheter and into the artery. *Id.* at 1002.

With the number of patent cases in the District of Minnesota steadily increasing after the major venue changes from *T.C. Heartland*, it is important to track the Court's approach to patent cases. The Court's resolution of the complex legal and factual issues in this case provides clarity into how the Court approaches novel, nuanced patent disputes.

Defendant Vascular Solutions, LLC invented the "Guide-Liner Catheter" comprised of (1) a pushrod, (2) a side opening, and (3) a flexible tip. *Id.* Plaintiff QXMédical, LLC invented two guide extension catheters, the "Boosting Catheter" and "6F Boosting Catheter," containing the same elements. *Id.* at 1003. In April 2017, Vascular Solutions accused QXMédical of patent infringement. *Id.* at 1002. In response, QXMédical brought an action in the District of Minnesota seeking a declaration that it did not infringe any of Vascular Solutions's patents and further arguing that the patents at issue are invalid. *Id.* Vascular Solutions counterclaimed, seeking a judgement of infringement. *Id.* The Court addressed several issues. However, this article focuses on three key outcomes: the Court's discussion on key claim language, the presumption of surrender, and whether QXMédical infringed the patent claims.

### A. Definite Claim Language and Comparative Limitations

Like most areas of the law, patent cases hinge on the meaning of specific words. In *Markman* hearings, the parties propose definitions of certain words used in the patent claims to define the scope of the invention. If the language of the claim is "indefinite" to a person of ordinary skill in the art, the claim itself is invalid, and may render the entire patent invalid as well, thus precluding any assessment of infringement. As such, the Court began by addressing the validity of the patents-at-issue. *Id.* at 1003. QXMédical argued that the claim language at issue was indefinite because a guide extension catheter would not be both "substantially rigid" and "flexible", arguing that they are mutually exclusive. *Id.* at 1004. The Court disagreed with QXMédical, holding that the claims disclosed a "comparative limitation" or a "limita-

tion that would be superfluous if 'substantially rigid' and 'flexible' were mutually exclusive categories." *Id.* Additionally, the Court found QXMédical's argument unconvincing because it contradicted QXMédical's own proposed definition during claim construction. *Id.* QXMédical argued that "substantially rigid" should be defined as "largely, but not wholly unable to bend" and flexible as "capable of bending." *Id.* Thus, the Court reasoned, something that is "not wholly unable to bend" essentially equates to "flexible." *Id.* Based on these conclusions, the Court granted Vascular Solutions's motion for summary judgement on the issue of indefiniteness, stating that a person of ordinary skill in the art would know "whether a 'substantially rigid pushrod' would be 'more rigid' than a flexible tip portion." *Id.* at 1005.

### B. The Recapture Rule and the Presumption of Surrender

A patent's prosecution history, or the documents related to the filing of a patent application, aid in the determination of claim scope. Here, QXMédical alleged that three of the asserted reissued patents did not claim "pushrods without a lumen," therefore "surrendering [a] limitation present in the parent patent, and thus violat[ing] the recapture rule." *Id.* The recapture rule "prevents a patentee from retaining through reissue the subject matter that he surrendered in an effort to obtain allowance of the original claims." *Id.* at 1005 (citing *In re Clement*, 131 F.3d 1464, 1468 (Fed. Cir. 1997)). Thus, a reissued claim is invalid if it violates the rule against recapture. *Id.* (citing *MBO Labs Inc. v. Becton, Dickinson, & Co.*, 602 F.3d 1306, 1313 (Fed. Cir. 2010)). The Court applied the three-step inquiry delineated by the Federal Circuit to determine whether the patentee violated the recapture rule:

(1) first, we determine whether, and in what respect, the reissue[d] claims are broader in scope than the original patent claims; (2) next, we determine whether the broader aspects of the reissue[d] claims relate to subject matter surrendered in the original prosecution; and (3) finally, we determine whether the reissue[d] claims were materially narrowed in other respects, so that the claims may not have been enlarged, and hence avoid the recapture rule.

*Id.* (quoting *Greenliant Sys., Inc. v. Xicor LLC*, 692 F.3d 1261, 1267 (Fed. Cir. 2012)).

The parties' dispute centered on whether the "without a lumen" limitation was added during the prosecution of the parent patent to overcome a rejection. *Id.* Because Vascu-

## A Conversation with Minnesota Attorney General Keith Ellison

By Cody Blades

At the FBA's February 12, 2020 Luncheon, Minnesota Attorney General Keith Ellison gave an impassioned presentation regarding his agenda in his new role.

Attorney General Ellison wants to focus on issues that affect "the family budget"—housing, transportation, healthcare, food, and job care. To that end, Attorney General Ellison's office has worked to enforce housing laws, created a wage-theft unit to enforce wage and hour laws, and worked with community leaders to create a blueprint to lower drug prices.

Attorney General Ellison also discussed a task force his office created to grapple with officer-involved shootings. The task force includes prosecutors, activists, mental health professionals, and police. The goal of the task

force is to minimize the occurrence and impact of officer-involved shootings.

Attorney General Ellison also discussed the educational disparities in Minnesota and how his office hopes to ensure that every child in Minnesota has an equal opportunity to a high-quality education.

Finally, Attorney General Ellison discussed his hope that the Attorney General's office will become a more active participant in the Minnesota legal community. He encourages members of the office pursue leadership positions in various Minnesota legal organizations and is starting a law clerk program at the office this year. By these, and other actions, Attorney General Ellison expects that the office will continue to attract and retain the best legal talent in Minnesota. ■

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*Key Infringement Concepts in Catheter Case, continued from page 4.*

lar Solutions accepted the examiner's proposed "without a lumen" limitation, QXMédical argued that Vascular Solutions "surrendered" limitations including a lumen during prosecution, thus limiting the patent to only cover pushrods without a lumen. *Id.* at 1006. The Court found that there was ample evidence to rebut the "presumption of surrender." *Id.* at 1007. In rebutting the presumption, the Court found that because a relevant prior art reference disclosed a pushrod without a lumen, adding the limitation "without a lumen to escape the prior art" would be futile. *Id.* Moreover, the examiner explicitly stated in the Notice of Allowance that the "addition of the 'without a lumen' limitation had nothing to do with the examiner's decision to allow the application." *Id.* at 1008. Thus, in relying on the examiner's explanation on why the amended application was allowed and the examiner's familiarity with the prior art, the Court granted Vascular Solutions's motion for summary judgement, finding it did not violate the recapture rule. *Id.*

### C. Capacity to Infringe

The next infringement dispute centered on a limitation related to apparatus, systems, and method claims. Catheters use the French scale to measure the size of a catheter. Here, the patents-in-suit disclose a "guide extension catheter 'for use with' a guide catheter" that requires a "tubular structure" [having] a 'cross-sectional inner diameter' that is 'not more than one French smaller than the cross-sectional inner diameter of the guide catheter.' *Id.* at 1009-10. Vascular Solutions argued that QXMédical's device, the "6F Boosting Catheter" directly infringed the apparatus claims, and moreover, QXMédical induced others to infringe the system and method claims. *Id.* at 1010. The Court found that the language used in the apparatus claims, i.e. the words "for use with," signaled a functional limitation that described capability. *Id.* Because a functional limitation reciting capability is satisfied if the accused device is "reasonably capable" of being used in the infringing manner, the Court found that the 6F Boosting Catheter met the functional limitation. *Id.* Thus, because the product could be altered to infringe, the Court did not grant summary judgement of noninfringement.

However, the Court held that the 6F Boosting Catheter did not meet the one-French limitation because it recites "structure, not capability." *Id.* The Court concluded that meeting this limitation required that the 6F Boosting Catheter "come off of the assembly line" with the limitation. *Id.* The Court stated that the one-French limitation required that "the device incorporate both a guide catheter and a guide extension catheter, and the guide extension catheter must not be more than one French smaller than the guide catheter." *Id.* The 6F Boosting Catheter would only infringe if it were combined with a guide catheter. *Id.* at 1010-11. The size of the guide catheter would be chosen by the surgeon "based on the needs of the

*Key Infringement Concepts in Catheter Case, continued on page 6.*

Key Infringement Concepts in Catheter Case, continued from page 5.

patient, not by QXMédical.” *Id.* at 1011. Based on this conclusion, the Court granted QXMédical’s motion for summary judgment that the 6F Boosting Catheter did not directly infringe any of the apparatus claims that included the one-French limitation.

The final key infringement dispute centered on whether QXMédical indirectly infringed the system and method claims of the patents-in-suit. *Id.* at 1012. Vascular Solutions argued that any “surgeon who would use the 6F Boosting Catheter with a guide catheter that has a lumen of .070 inches or less directly infringes system and method claims containing the one-French limitation.” *Id.* Moreover, Vascular Solutions argued that QXMédical should be held liable for inducing any such infringement by a surgeon. The Court first determined that there was only one instance of anyone ever directly infringing one of the system or method claims. Dr. Yale Wang, a heart surgeon affiliated with QXMédical, “performed all of the claimed steps when, in the course of operating on a [single] patient, he used a 6F Boosting Catheter with a .070 guide catheter.” *Id.*

After establishing that Dr. Yale Wang had directly infringed, the Court then determined whether QXMédical induced the infringement. To prove this, Vascular Solutions was required to demonstrate that QXMédical “took an affirmative act” with the specific intent of inducing Dr. Wang to infringe.” *Id.* at 1013. Vascular Solutions rooted its argument in the instructions sent to the FDA, which contained instructions for use that including the infringing sizes. However, the Court found that QXMédical “specifically instruct[ed] surgeons *not* to use the 6F Boosting Catheter with guide catheters that are .070 inches or smaller.” *Id.* (emphasis in original). Moreover, Vascular Solutions was required to prove that the single infringing procedure was “induced” by the plaintiff. *Id.* However, Vascular Solutions “provided no evidence that any of the challenged communications were read by Dr. Wang or had any impact on his decision to use the 6F Boosting Catheter in an infringing manner. *Id.* The Court determined that Vascular Solutions could not meet this burden and granted summary judgment on the induced infringement claims. *Id.* ■

*Veena Tripathi is an associate at Fish & Richardson P.C. focusing on intellectual property litigation and data privacy.*

## United States District Judge Nancy E. Brasel Encourages Community Engagement

By Sarita M. Matheson



Judge Brasel

On February 19, 2020, United States District Court Judge Nancy E. Brasel invited newer lawyers to her courtroom to discuss the practice of law. Judge Brasel offered her experience and advice to the group of newer attorneys.

Judge Brasel encouraged newer lawyers to take time away from their desks and build networks inside and outside of their organizations. She recalled chairing the finance committee when in private practice. She explained that it helped her understand the organization, provided her with responsibility, and allowed her to get to know other lawyers and non-lawyers in her organization. She recalled how the experience widened and strengthened her network.

Judge Brasel also urged younger lawyers to get involved in pro bono work. She advocated that each person should become an expert in a pro bono cause and dedicate time to it. She underscored the positive impact that doing pro bono work can have on the community.

Finally, in addition to pro bono work, Judge Brasel recommended volunteering in the community or joining non-profit boards. She emphasized that these activities are not only important for building personal networks, but also essential to developing a strong community. ■

*Sarita M. Matheson is an associate at Carlson Caspers, where she focuses on intellectual property litigation.*

## Minnesota Chapter of the FBA Hosts Panel on Cultural Competency and Cultivating the Talents of Diverse Attorneys

By Megan Hintgen

On February 19, 2020, the Minnesota Chapter of the Federal Bar Association hosted a panel discussion on the challenges encountered by diverse attorneys and the importance of cultural competency in the legal profession. Three distinguished panelists shared their collective wisdom and insights: Lola Velazquez-Aguilu, Litigation & Investigation Counsel for Medtronic and Chairwoman for the Minnesota Commission on Judicial Selection; Jerry Blackwell, Founding Partner of Blackwell Burke P.A.; and Keith Ellison, Attorney General for the State of Minnesota. The panel was moderated by June Hoidal of Zimmerman Reed LLP.

Together, the panelists tackled a variety of topics related to diversity—from what it means to be a diverse attorney to challenges the panelists faced during the course of their career. The panelists agreed that throughout their careers, being a diverse attorney presented obstacles that non-diverse at-

torneys simply did not have to face. Whether it was being passed up for opportunities (both known and unknown), battling against the perception that firms are “taking a chance” on diverse attorneys, or recognizing the impact that bias from juries and legal professionals alike have had on their careers, the panelists described the difficult road that attorneys of color are forced to walk.

The panelists also emphasized the importance of real commitment to diversity in the legal profession and offered practical advice for leaders of organizations as they commit to increasing diversity. Attorney General Ellison and Ms. Velazquez-Aguilu encouraged hiring committees to base their decisions on data and only consider feedback that is specific, articulable, and verifiable in an effort to combat the bias often present in hiring committees and other decision-making bodies. They also encouraged leaders to embrace conflict as a symbol that progress is

occurring. Mr. Blackwell stressed that there is no problem with the pipeline of diverse talent, and encouraged employers to go to where the students of color are to do their hiring. Additionally, Mr. Blackwell emphasized the importance of making diversity a real business priority, with metrics and leadership that is held accountable for meeting those metrics. Accountability ensures that leadership teams are focused on real, concrete progress, not just on creating programs without ever assessing whether those programs are actually impactful.

The panelists eloquently described the benefits that come from diversity, and challenged the legal community to make a real commitment to increasing the diversity of the legal profession. The Minnesota Chapter of Federal Bar Association thanks the panelists for taking the time to share their stories and insights. ■

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*Megan Hintgen is an associate at Carlson Caspers, where she practices intellectual property law with an emphasis on patent and trade secret litigation.*

## Diversity Profile: Jerry W. Blackwell

A Conversation with Jerry Blackwell About his Efforts to Bring Diversity to the Legal Community  
By Amarachi Ihejirika



Blackwell

Jerry Blackwell is the founding and managing partner of Blackwell Burke P.A. He is an award-winning trial lawyer and litigator, with over 30 years of experience defending class actions, toxic tort, commercial disputes, products liability, and other high stakes complex cases nationwide. Jerry represents Fortune

service, helping clients, including both large corporate clients and those who can't afford lawyers, and serving the families that rely on the law firm to make ends meet." Jerry also enjoys the strategic aspect of his cases, including using all the tools available—be it the rule of law or leveraging business relationships and using personal persuasion—to position the client in the most advantageous way. Jerry is an innovator who believes that to effectively run a legal practice today, one must be open to breaking some of the traditional molds. This entails being receptive to new ideas, partnering with other lawyers and law firms to promote the client's interests, focusing more on value conferred than hours delivered, and supporting the wellness and improvement of attorneys in all respects.

Jerry's ethos of service extends to the larger community. Recently, Jerry spearheaded the application for the posthumous pardon of Max Mason, an African-American man who was wrongfully convicted of rape 100 years ago in Duluth, which has received significant media attention as the first posthumous pardon ever sought in the State. Three other accused African-American men were lynched by an angry mob of residents on June 15, 1920. A friend of Jerry's had said to him: "[s]omebody should seek his posthumous pardon." As Jerry compellingly states, "Max Mason's travails in the justice system underscore the foundational role of the rule of law in a democracy, and in a way he represents every member of our society whose life or liberty have ever been harmed by a racism that wields the coercive power of the State. Any number of us could just as easily have been Max Mason in that era. I identified with his humanity and would like to do my part for him and our State to acknowledge and right wrong."

Several events were planned by a collaborative legal community coalition to commemorate the 100th year anniversary of the Duluth tragedy, which have since been postponed for a year due to COVID-19. Some of the events planned include: (i) a reception of African-American civic organizations and leaders with Governor Walz, (ii) a luncheon in the federal courthouse in Duluth to recognize the centennial anniversary of the tragedy, with federal courts in Minnesota closed that day; (iii) the placement of a historical marker at the exact site of the lynchings, in conjunction with the Equal Justice Initiative, the City of Duluth, and the Clayton Jackson McGhie Memorial; (iv) the development of curriculum materials for programming in high schools about the tragedy and the rule of law; and (v) on June 15, 2020, the centennial anniversary of the tragedy, bringing together 10,000 persons in Duluth to match the estimated 10,000

500 companies, including 3M and General Mills, and also serves as national and trial counsel for several major corporations. Jerry is a trailblazer for attorneys of color in the Twin Cities community. In addition to being a founder of the Minnesota Association of Black Lawyers, he is the managing partner of one the first minority owned law firms in Minnesota. He has twice been named Minnesota Attorney of the Year, in 2004 and in 2019, and has many accolades as a trial lawyer in complex litigation.

Jerry hails from rural North Carolina. The son of a long-distance truck driver and a textile factory worker, aspirations of going to college, much less of being a lawyer, were far removed from his environs. Jerry recalls having met only one African-American person from his neighborhood who went to college. In the second grade, noticing that Jerry liked to read, Jerry's mom remarked, "Son, you should be a lawyer." Jerry wanted to become a lawyer from that moment on, with his mother as the first inspiration.

Jerry went on to excel in school academically, athletically, and in leadership. He attended the University of North Carolina at Chapel Hill as a Morehead Scholar, a scholarship patterned after the Rhodes scholarship, becoming the first in his family to attend college. He subsequently graduated from the University of North Carolina Law School in 1987, with a Book Award in trial advocacy. He eventually entered private practice in Minnesota.

For Jerry, the practice of law is fundamentally about service: "Life should principally be about service to self, family, and others. My involvement in the law is ostensibly about

*Diversity Profile, continued on page 9.*

*Diversity Profile, continued from page 8.*

residents who were present at the lynchings. Bryan Stevenson, social justice activist and founder of EJI, will give the keynote address and Governor Walz, Attorney General Ellison, Chief Judge Tunheim, and other state and local leaders plan to be in attendance.

Jerry's commitment to addressing racial injustice and inequality is evident in every aspect of his life. He is a champion of diversity in the legal profession, recognizing that law firms and other legal settings have for too long been overly white-hetero-male spaces, and continue to struggle with a lack of racial and ethnic diversity. Jerry emphasizes that multiple studies show that diverse workplaces yield better results: diversity means greater cultural competency, and it creates a more interesting workplace where people from diverse backgrounds and experiences can interact with and learn from each other. Jerry recalls instances of trying cases in a room full of white attorneys before a jury mostly

of color, where his cultural competency in understanding the jurors was a distinct advantage. "Understanding people is largely about translating the ways you appear to differ," Jerry says. The more empowered and diverse persons a law firm has, the better the firm will be able to compete across a broad spectrum of regions and cultures.

Jerry's advice to law firm managers on how to attract and retain attorneys of color is to "genuinely care about the issue and mean business in how you address it. To 'mean business' is to identify specific and measurable goals for diversity, methods to evaluate achievement of these goals, and hold law firm leaders accountable for outcomes related to diversity in compensation decisions, just as you would your typical business priority. Cut out the goofiness."

When not zealously defending clients or otherwise serving the community, Jerry is an avid beekeeper and hobby farmer, and practices meditation. ■

*Amarachi Ihejirika is an associate attorney at Blackwell Burke, P.A. She represents clients nationwide in a variety of complex commercial litigation and product liability matters ranging from commercial supply chain to medical device matters. She is a 2016 graduate of the University of Minnesota Law School.*

## New Chapter Members

The Minnesota Chapter welcomes the following new members, who joined in February 2020:

Hedi E. Bogda

Grant Christensen

Paul Fling

Hannah Holloran Fotsch

Jesse H. Kibort Miguel

Elliot Ko

Hannah Marie Mosby

Mary Nikolai

Michael J. Pacelli

Kara Glancy Pfister

Alexander Pozo

## Lawyers Concerned for Lawyers Resources and Services

In these challenging times, Lawyers Concerned for Lawyers ("LCL") is committed to the well-being of members of our profession, and that includes health and safety. All LCL services will be available to our colleagues and their organizations, though on occasion response times may be slower.

LCL is mindful of the mental health and the physical health implications for the spread of the COVID-19 virus. Accordingly, LCL has prepared a handout that offers selected and vetted resources and another that offers a list of remote resources. They are attached below and we encourage you to share them with your colleagues and organizations.

LCL will be updating its website (<https://www.mnlcl.org/>) and social media frequently. It encourages people to access updated health information from the CDC or Minnesota Department of Health. LCL will offer general information as well as on-line seminars and opportunities for virtual connections.

LCL – COVID 19 and Well-Being (<https://files.constantcontact.com/5cdd3e68401/19dede11-a47d-41e7-9291-63878e1f9d53.pdf>)

LCL – Online and Remote Support and Recovery Resources

(<https://files.constantcontact.com/5cdd3e68401/f9a21b1c-2b54-4e5e-a2d4-ff2d9b5ee0e7.pdf>)

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*Bar Talk* is the official newsletter of the Minnesota Chapter of the Federal Bar Association, published quarterly by the *Bar Talk* Committee. For any inquiries or article suggestions, please contact **Chad Pennington** ([Chad\\_Pennington@fd.org](mailto:Chad_Pennington@fd.org)) or **Kari Dahlin** ([kmdahlin@arthurchapman.com](mailto:kmdahlin@arthurchapman.com)).

A special thank you to **Gerri Rishel**, Courtroom Deputy to Senior United States District Judge Michael J. Davis, for her proofreading expertise, and **Taya Swenson Schmid**, Dorsey & Whitney LLP, for formatting this issue.

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*Want to get involved in the Minnesota Chapter of the Federal Bar Association? Visit <http://www.fedbar.org/Chapters/Minnesota-Chapter/Chapter-Initiatives.aspx> for a full list of committees and information about how to get involved.*

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### Online Registration:

The Minnesota Chapter of the FBA utilizes an online registration system for the monthly Minneapolis Club luncheons. A registration link will be sent to you via e-mail for each luncheon. One feature of the system is the automatic calendar entry; just click “Add to Calendar” from the registration system or your confirmation e-mail. Registration coordinators have the option to register multiple attendees in a single registration. Also, Season Pass Holders must register for each luncheon online to select their meal choice and confirm their attendance.



**Federal Bar  
Association**  
Minnesota Chapter