

NO. A11-1481

**State of Minnesota
In Court of Appeals**

Jane Kay Dukowitz,

Appellant,

vs.

Hannon Security Services, Inc.,

Respondent.

RESPONDENT'S INFORMAL BRIEF

John J. Neal (#0387473)
WILLENBRING, DAHL, WOCKEN
& ZIMMERMANN, PLLC
318 Main Street
P.O. Box 417
Cold Spring, MN 56320
(320) 685-3678

Attorney for Appellant

James R. Andreen (#174373)
Jessica A. Megorden (#0391375)
ERSTAD & RIEMER, P.A.
8009 - 34th Avenue South
Suite 200
Minneapolis, MN 55425
(952) 896-3700

Attorney for Respondent

TABLE OF CONTENTS

SUMMARY AND STATEMENT OF THE ISSUE 1

STANDARD OF REVIEW 2

ARGUMENT 3

I. THE TRIAL COURT PROPERLY LIMITED ITS DISCRETION TO THE REASONABLENESS OF HANNON’S COSTS AND DISBURSEMENTS AND DID NOT CONSIDER DUKOWITZ’S INABILITY TO PAY. 4

 A. The Trial Court Did Not Err in Applying Minn. R. Civ. P. 54.04 and Minn. Stat. § 549.04 and Refusing to Consider Dukowitz’s Financial Condition When Awarding Hannon its Costs and Disbursements 5

 B. The Trial Court Did Not Err in Concluding That Minn. Stat. § 563.01 Does Not Affect the Application of Minn. R. Civ. P. 54.04 and Minn. Stat. § 549.04 8

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO RELY ON DECISIONS OF FEDERAL COURTS AND FOREIGN JURISDICTIONS AS THEY ARE NOT APPLICABLE GIVEN MINNESOTA’S COMPULSORY AWARD OF REASONABLE COSTS AND DISBURSEMENTS TO A PREVAILING PARTY 11

CONCLUSION 16

SUMMARY AND STATEMENT OF THE ISSUE

Appellant Jane Dukowitz (“Dukowitz”) brought a lawsuit against Respondent Hannon Security Services, Inc. (“Hannon”) alleging wrongful termination. Hannon brought a motion for summary judgment, which was granted. Hannon filed its Notice and Application for Taxation of Costs and Disbursements following the dismissal of the case. Dukowitz objected on the ground that the award of costs and disbursements would create an undue hardship. The trial court awarded Hannon its reasonable costs and disbursements and held that Dukowitz could not avoid costs and disbursements based on her financial position.

The trial court’s decision and holding is consistent with Minnesota authority regarding the award of costs and disbursements. This Court should affirm the decision of the trial court on the basis that a district court’s discretion in determining the amount of an award for the prevailing party’s costs and disbursements is limited to a question of the reasonableness of the costs and disbursements. It does not include the non-prevailing party’s ability or inability to pay.

STANDARD OF REVIEW

A trial court's discretion in awarding costs and disbursements is broad and its decision should not be disturbed absent clear abuse of discretion. *Cheyenne Land Co. v. Wilde*, 463 N.W.2d 539, 540 (Minn. Ct. App. 1990); *Franklin v. Western Nat. Mut. Ins. Co.*, 588 N.W.2d 277, 281 (Minn. Ct. App. 1997) (Court of Appeals to defer to district court's award of fees or costs "unless the award is clearly erroneous or evidences an abuse of discretion."), *reversed on other grounds*, 574 N.W.2d 405. However, the trial court does not have discretion to deny costs and disbursement to a prevailing party. *Quade & Sons Refrigeration, Inc. v. Minnesota Min. & Mfg. Co.*, 510 N.W.2d 256, 260 (Minn. Ct. App. 1994) (*citing Crince v. Kulzer*, 498 N.W.2d 55, 58 (Minn. Ct. App. 1993) (*citing Jostens, Inc. v. National Computer Systems*, 318 N.W.2d 691, 704 (Minn. 1982))).

The decision of a district court with discretion will not be reversed unless it "abused its discretion, exercised its discretion in an arbitrary or capricious manner, or based its ruling on an erroneous view of the law." *Posey v. Fossen*, 707 N.W.2d 712, 714 (Minn. Ct. App. 2006) (*quoting Montgomery Ward & Co. v. County of Hennepin*, 450 N.W.2d 299, 306 (Minn. 1990)). A party that challenges the district court's exercise of discretion has the burden to prove, which can only be met "when it is clear that no reasonable person would agree [with] the trial court's assessment []." *Posey*, 707 N.W.2d at 714 (*quoting Patton v. Newmar Corp.*, 538 N.W.2d 116, 119 (Minn. 1995) (citation omitted)).

ARGUMENT

Hannon was the prevailing party when the trial court granted summary judgment in its favor. As the prevailing party, Hannon was entitled to its reasonable costs and disbursements. The trial court properly limited its inquiry to the reasonableness of Hannon's claimed costs and disbursements and refused to consider Dukowitz's financial condition when determining the amount of the award.

In Minnesota, a prevailing party's entitlement to an award of its reasonable costs and disbursements is compulsory. Rule 54.04 of the Minnesota Rules of Civil Procedure and Section 549.04 of the Minnesota Statutes require that a district court award reasonable costs and disbursements to a prevailing party. A court's discretion is limited to determining the prevailing party in the case and the amount of the award. The district court does not have discretion to consider the non-prevailing party's inability to pay. This is even more evident when considering the language of the *in forma pauperis* statute, Section 563.01. Subdivision 10 of the statute requires that judgment be rendered for costs at the conclusion of an action as in other cases. Stated another way, a party's *in forma pauperis* status does not affect the award of costs and disbursements.

The trial court in this case appropriately applied the law in Minnesota and awarded Hannon its reasonable costs and disbursements without regard for Dukowitz's inability to pay. It did not consider decisions from the federal bench or foreign jurisdictions due to the distinguishable characteristics in those cases compared to the settled Minnesota law.

Accordingly, the trial court did not abuse its discretion in awarding Hannon its costs and disbursements and its decision should not be disturbed.

I. THE TRIAL COURT PROPERLY LIMITED ITS DISCRETION TO THE REASONABLENESS OF HANNON'S COSTS AND DISBURSEMENTS AND DID NOT CONSIDER DUKOWITZ'S INABILITY TO PAY.

In Minnesota, a trial court determining the amount of a prevailing party's award of costs and disbursements is not to consider the non-prevailing party's ability or inability to pay. Instead, the trial court's discretion is based on whether the prevailing party's costs and disbursements are reasonable.

A trial court does not have discretion to deny an award of costs and disbursements. *Quade & Sons Refrigeration, Inc. v. Minnesota Min. & Mfg. Co.*, 510 N.W.2d at 260. Instead, it has discretion to determine two things: 1) who the prevailing party is for purposes of the award; and 2) the amount of an award of costs and disbursements. *Posey v. Fossen*, 707 N.W.2d at 714. In this case, the trial court granted Hannon's motion for summary judgment, and it is undisputed that Hannon was the prevailing party. (See Appellant's Brief at 1.)

Therefore, on appeal, the only question is whether the trial court abused its discretion in determining the amount of Hannon's award for costs and disbursements. Dukowitz has failed to establish that the trial court abused its discretion because the trial court's decision was based only on the reasonableness of Hannon's costs and disbursements and not on Dukowitz's financial condition, which is consistent with Minnesota Rule of Civil Procedure 54.04 and Minnesota Statute Section 549.04. In

addition, the trial court properly applied the *in forma pauperis* statute, Section 563.01, which requires that an award of costs and disbursements be granted without regard for the *in forma pauperis* status of a party. As such, Hannon requests that this Court affirm the decision of the trial court in awarding Hannon its reasonable costs and disbursements without regard for Dukowitz's financial condition.

A. The Trial Court Did Not Err in Applying Minn. R. Civ. P. 54.04 and Minn. Stat. § 549.04 and Refusing to Consider Dukowitz's Financial Condition When Awarding Hannon its Costs and Disbursements.

The trial court properly applied Minn. R. Civ. P. 54.04 and Minn. Stat. § 549.04 when it concluded that the award of reasonable costs and disbursements is compulsory in Minnesota and that its discretion in determining the award did not include Dukowitz's ability to pay.

Rule 54.04 of the Minnesota Rules of Civil Procedure establishes the procedure for a party to seek recovery of its costs and disbursements. The relevant portions are as follows:

(a) Costs and disbursements allowed.

Costs and disbursements shall be allowed as provided by law.

...

(d) Decision.

Costs and disbursements may be taxed by the court administrator or a district court judge at any time after all partes have been allowed an opportunity to file applications and to object to the application of any other party as provided in this rule. The judge or court administrator may tax any costs and disbursements allowed by law.

Minn. R. Civ. P. 54.04 (2010). Read together, subdivisions (a) and (d) (hereinafter referred to as “the Rule”) compel the award of costs and disbursements “as provided by law.”

The Rule sets forth the procedure for a party to seek recovery of costs and disbursements. The Rule is silent on when the party is actually entitled to recover the costs and disbursements and instead defers to applicable laws for such guidance (“ . . . as provided by law”). Section 549.04 of the Minnesota Statutes requires that every prevailing party in every action in a district court “**shall** be allowed reasonable disbursements paid or incurred” Minn. Stat. § 549.04, subd. 1 (hereinafter referred to as “the Statute.”) (Emphasis supplied.)

The Rule permits the recovery of costs and disbursements as provided by law. The Statute states that in every action in a district court the prevailing party is entitled to reasonable disbursements paid or incurred. *Wetish v. Salvhus*, 555 N.W.2d 26 (Minn. Ct. App. 1996), *reversed on other grounds*, 558 N.W.2d 258. Accordingly, the trial court’s discretion in this regard relates only to the reasonableness of the disbursements paid or incurred by the prevailing party. *Abraham v. County of Hennepin*, 611 N.W.2d 121, 129 (Minn. Ct. App. 2001), *reversed on other grounds*, 639 N.W.2d 342.

Nothing in the language of the statute states that a party’s ability to pay should be considered. A trial court’s discretion does not include consideration of the non-prevailing party’s ability to pay the reasonable costs and disbursements of a prevailing party.

In attempting to establish the trial court's error, Dukowitz misapplies the application of the Rule and the Statute in arguing that they are inconsistent. She spends a great deal of time discussing the superiority of a Rule of Civil Procedure over a statute, the doctrine stating that the "latest in date" provision prevails, and the difference between a general and specific provision. (Appellant's Brief at 4-6.) This discussion is irrelevant as the Rule and the Statute are not inconsistent, irreconcilable or in conflict.

As demonstrated above, Rule 54.04 merely sets forth the general procedure allowing the recovery of costs and disbursements "as provided by law." Minn. R. Civ. P. 54.04 (a), (d). The relevant law, Minn. Stat. § 549.04, subd. 1, states that in every action in district court a prevailing party "**shall** be allowed reasonable disbursements paid or incurred" (Emphasis supplied.) The Rule provides the authority for the recovery of costs and disbursements, and the Statute provides the application. There is nothing inconsistent, irreconcilable or conflicting about these two provisions, and Dukowitz's contentions suggesting otherwise fail to establish that the trial court abused its discretion in refusing to consider Dukowitz's financial circumstances in determining Hannon's award of costs and disbursements.

In addition to contriving some absent conflict between Minn. R. Civ. P. 54.04 and Minn. Stat. § 549.04, Dukowitz attempts to gain support for her position with an unpublished decision, *Kelly v. Holt*, 2010 WL 3000193 (Minn. Ct. App. August 3, 2010.) In *Kelly*, the plaintiff lost a personal injury case. She argued that the award of costs and disbursements resulted in an inequity and undue hardship. Curiously, even though there

had been no offer of judgment under Minn. R. Civ. P. 68, she argued on appeal that the district court should have reduced her costs obligations pursuant to Rule 68.03(b)(3). *Id.* at *2. The Court of Appeals affirmed the award of costs because Rule 68 (Offer of Judgment or Settlement) did not apply as the costs obligation was based on Rule 54 and Minn. Stat. § 549.04, subd. 1. *Id.*

If anything, *Kelly* defeats Appellant's argument here. This court did not consider a non-prevailing party's financial condition when determining the reasonableness of a prevailing party's costs and disbursements under Rule 54 and Minn. Stat. § 549.04.

Again, a trial court's discretion is only as to the reasonableness of the prevailing party's costs and disbursements themselves, not whether the non-prevailing party can pay them. Therefore, the trial court properly refused to consider Dukowitz's financial circumstances in determining the amount of Hannon's award of costs and disbursements.

B. The Trial Court Did Not Err in Concluding That Minn. Stat. § 563.01 Does Not Affect the Application of Minn. R. Civ. P. 54.04 and Minn. Stat. § 549.04.

The trial court properly applied the *in forma pauperis* statute by awarding Hannon its reasonable costs and disbursements without regard for Dukowitz's status as a non-prevailing *in forma pauperis* party. The *in forma pauperis* statute, Minn. Stat. § 563.01, details the types of fees and expenses that can be waived for an indigent party and paid for by the state. Such fees include the following: payment of expenses, witness fees, deposition fees, transcript expenses, copy costs, and appellate briefs. Minn. Stat. § 563.01, subsd. 4-8. A trial court has broad discretion to determine whether expenses

should be paid under the *in forma pauperis* statute. *Thompson v. St. Mary's Hospital of Duluth Minnesota*, 306 N.W.2d 560, 563 (Minn. 1981).

However, subdivision 10 of the statute states that “[j]udgment may be rendered for costs at the conclusion of the action as in other cases.” *Id.* at subd. 10. Furthermore, subdivision 12 states that the *in forma pauperis* statute does not eliminate other remedies, and that “[t]he provisions of this section do not replace or supersede remedies otherwise provided by law.” *Id.* at subd. 12. In this case, Hannon was the prevailing party and the trial court properly held that Dukowitz’s *in forma pauperis* status does not affect Hannon’s entitlement to recovery of its reasonable costs and disbursements under Minn. R. Civ. P. 54.04 and Minn. Stat. § 549.04.

On appeal, Dukowitz argues that the trial court erred in concluding that Minn. Stat. § 563.01 specifically allows for the taxation of costs and disbursements against an indigent party. Dukowitz argues that the trial court interpreted subdivision 10 inappropriately by focusing only on the first sentence of the subdivision. This argument lacks any basis upon review of the provision in its entirety.

Subd. 10. Judgment. Judgment may be rendered for costs at the conclusion of the action as in other cases. In the event any person recovers moneys by either settlement or judgment as a result of commencing or defending an action in forma pauperis, the costs deferred and the expenses directed by the court to be paid under this section shall be included in such moneys and shall be paid directly to the court administrator by the opposing party. The court administrator shall transmit the costs to the commissioner of management and budget for deposit in the state treasury and credit them to the general fund.

Minn. Stat. § 563.01, subd. 10. Clearly, the general statement “Judgment may be rendered for costs at the conclusion of the action as in other cases” is the controlling language for purposes of this appeal. Nevertheless, Dukowitz makes much of the sentences following the general proposition, which detail the protocol for handling the award of costs and disbursements *to* the *in forma pauperis* party. This discussion is simply an explanation of the process that is to occur when an indigent party is awarded the costs paid for by the state. The second part of the provision imposes a duty on the non-prevailing, non-*in forma pauperis* party, to pay to the court the awarded costs and disbursements. There is no implication that it modifies or limits the application of the first sentence of the provision, which states the general proposition that costs are to be awarded “as in other cases.” Stated another way, a party’s *in forma pauperis* status does not affect the award of costs and disbursements. Only when the prevailing party is the *in forma pauperis* party is the second part of the provision relevant.

Dukowitz’s discussion regarding the alleged error of the trial court in reading the first sentence of subdivision 10 in isolation is a red herring considering the remaining portion of the provision has no relevance in the case before this Court as Dukowitz is not the prevailing party. Dukowitz cites no case law or other authority to support her position in this regard and relies merely on her misguided application of this subdivision. This does not demonstrate any abuse of discretion on the part of the trial court. Accordingly, the trial court properly applied the first sentence of the subdivision and rendered judgment for costs without regard for Dukowitz’s *in forma pauperis* status.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO RELY ON DECISIONS OF FEDERAL COURTS AND FOREIGN JURISDICTIONS AS THEY ARE NOT APPLICABLE GIVEN MINNESOTA'S COMPULSORY AWARD OF REASONABLE COSTS AND DISBURSEMENTS TO A PREVAILING PARTY.

The law in Minnesota is clear: a prevailing party is entitled to an award of reasonable costs and disbursements. A trial court has broad discretion to determine 1) the prevailing party; and 2) the amount of the award. *Posey*, 707 N.W.2d at 714. The amount of the award, however, is based only on the reasonableness of the costs and disbursements claimed by the prevailing party. *Abraham*, 611 N.W.2d at 129. The trial court does not have discretion to deny the prevailing party an award of costs and disbursements. *Quade*, 510 N.W.2d at 260. Its discretion is limited to an inquiry of what costs and disbursements were reasonable. Minnesota law does not permit a trial court to consider outside factors, such as a non-prevailing party's ability or inability to pay the costs and disbursements, in awarding costs and disbursements to a prevailing party.

Dukowitz cites a plethora of distinguishable cases from the federal bench and foreign jurisdictions to support her contention that her financial condition should have been a factor in the trial court's determination of Hannon's award of costs and disbursements. The trial court refused to give credence to the federal court decisions cited by Dukowitz due to the distinguishable language of Fed. R. Civ. P. 54(d) (permissive award of costs) and Minn. R. Civ. P. 54.04 and Minn. Stat. § 549.04 (compulsory award of costs.) Similarly, Dukowitz's citation on appeal to the Hawaii case has no

authoritative weight in attempting to establish any abuse of discretion on the part of the trial court.

A federal court applying federal law is guided by the language of Federal Rule of Civil Procedure 54(d)(1), which states that costs “**should be allowed** to the prevailing party.” (Emphasis supplied.) This permissive language is not used in Minnesota. Instead a prevailing party’s right to costs is clear: “In every action in a district court, the prevailing party . . . **shall be allowed** reasonable disbursements paid or incurred.” Minn. Stat. § 549.04. (Emphasis supplied.)

This distinction is clear in *Mulvihill v. Spalding Worldwide Sports, Inc.*, 239 F.Supp.2d 121 (D. Mass. 2002), in which the court weighed a number of considerations in determining whether to award a prevailing party costs, including “plaintiff’s limited means, the substantial impact of the award requested, the disparity of resources between the parties, the colorable quality of plaintiff’s case, the professional manner in which the case was tried and the significant public policy issues concerned.” *Id.* at 122.

The trial court did not find *Mulvihill* persuasive due to the explicit Minnesota authority that conflicts with the permissive nature of the Federal Rule. “Minnesota law is clear, and Plaintiff cannot avoid costs in this case based on her financial position.” (Notice of Filing of Order with Memorandum Granting Taxation of Costs at 4; Appellant’s Appendix at App-8.)

Dukowitz also cites *Badillo v. Central Steel & Wire Company*, 717 F.2d 1160 (7th Cir. 1983) to support her position that a non-prevailing party’s financial position should

be considered in a Minnesota district court's determination of an award of costs and disbursements. However, this was a federal cases (Title VII) brought in federal court where the permissive language of Fed. R. Civ. P. 54(d) applied. Again, this case cannot be persuasive in light of the compulsory language used in Minnesota's authority. For the same reason, the line of cases cited by Dukowitz for the same proposition should not persuade this Court to consider redefining the settled law that the trial court relied on in refusing to consider Dukowitz's financial position in its determination of Hannon's award of costs and disbursements. (See *Papas v. Hanlon*, 849 F.2d 702, 703 (1st Cir. 1988) (a civil federal action brought against two Registrar Voters for a town and the town treasurer)¹; *Mansourian v. Univ. of Calif. at Davis*, 566 F.Supp.2d 1168 (E.D. Cal. 2008) (a Title IX case); *Treaster v. Healthsouth Corporation*, 505 F.Supp.2d 898, 903 (D. Kan. 2007) (a federal court action involving medical negligence); and *Crow v. Best Buy Co., Inc.*, 299 F.Supp.2d 802 (N.D. Ohio 2004) (an Americans with Disability Act case)).

In an attempt to de-emphasize the obvious contrasting permissive language of the Federal Rule of Civil Procedure and the compulsory language of Minn. R. Civ. P. 54.04

¹ In *Papas v. Hanlon*, the nonprevailing party, like Dukowitz, received *in forma pauperis* status. 849 F.2d 702, 703 (1st Cir. 1988). The court was left to determine whether the district court could award costs against a litigant who had been permitted to proceed *in forma pauperis*. The court stated that despite the effect of the *in forma pauperis* status, which is to waive the prepayment of court costs, "[i]t does not completely immunize an indigent litigant from eventual liability for costs." *Id.* at 704. While this federal court did consider the financial circumstances of the *in forma pauperis* party, it held that the district court's award of costs was not done in error. *Id.* As in *Papas*, Dukowitz's *in forma pauperis* status was properly left out of the trial court's determination in awarding Hannon its reasonable costs and disbursements.

and Minn. Stat. § 549.04, Dukowitz includes, on appeal, a citation to *Pulawa v. GTE Hawaiian Tel.*, 143 P.3d 1205 (Haw. 2006). Dukowitz argues that the case stands for the proposition that Minnesota’s compulsory language should be read as “functionally identical” to the federal rule and that a non-prevailing party’s financial condition should be considered when a trial court determines the award of reasonable costs and disbursements to a prevailing party. This argument cannot stand upon a more detailed review of the Hawaii case.

In *Pulawa*, summary judgment was entered in favor of the defendants, and the defendants requested costs in the amount of \$35,509.09 pursuant to Rule 54(d) of the Hawaii Rules of Civil Procedure and Section 607-9 of the Hawaii Revised Statutes. *Pulawa*, 143 P.3d at 1211-12. The costs were taxed by the clerk of the court against the plaintiffs. The plaintiffs objected on the ground that it would be inequitable to award costs against them. *Id.* at 1212. The relevant portions of the Hawaii Rule of Civil Procedure and Hawaii statute are as follows:

Rule 54(d) provides in relevant part:

(d) Costs; attorneys’ fees.

(1) COSTS OTHER THAN ATTORNEYS’ FEES. Except when express provision therefor is made either in a statute or in these rules, costs shall be allowed as of course to the prevailing party **unless the court otherwise directs. . .**

Ha. R. Civ. P. 54(d) (2004) (Emphasis supplied.)

Section 607–9 provides:

. . . All actual disbursements . . . sworn to by an attorney or a party, and deemed reasonable by the court, may be allowed in taxation of costs. **In determining whether and what costs should be taxed, the court may consider the equities of the situation.**

Ha. Stat. § 607-9 (1993) (Emphasis supplied.) Obviously, the language of the Hawaii Rules of Civil Procedure and the Hawaii statute are starkly different than what exists in Minnesota. The Hawaii Rule and Statute expressly authorize a court to consider “the equities of the situation.” The Rule and the Statute in Minnesota include no such authorization for a district court. Instead, the law in Minnesota is clear: a prevailing party is entitled to an award of reasonable costs and disbursements without regard for the non-prevailing party’s inability to pay. A trial court has broad discretion to determine 1) the prevailing party; and 2) the amount of the award. *Posey*, 707 N.W.2d at 714. The amount of the award, however, is based only on the reasonableness of the costs and disbursements claimed by the prevailing party. *Abraham*, 611 N.W.2d at 129. The trial court does not have discretion to deny the prevailing party an award of costs and disbursements. *Quade*, 510 N.W.2d at 260. Its discretion is limited to an inquiry of what costs and disbursements were reasonable.

Minnesota law does not permit a trial court to consider outside factors such as a non-prevailing party’s ability or inability to pay in awarding costs and disbursements to a prevailing party, and the trial court in this case was correct in refusing to do so. Its decision, therefore, should be affirmed.

CONCLUSION

For the foregoing reasons, Defendant Hannon Security Services, Inc. respectfully requests that this Court affirm the trial court's award of costs and disbursements.

Dated: _____

3/12/12

ERSTAD & RIEMER, P.A.

By: _____

James R. Andreen, #174373

Jessica A. Megorden, #0391375

Attorneys for Defendant Hannon Security Services, Inc.

8009 - 34th Avenue South, Suite 200

Minneapolis, MN 55425

Direct Phone: 952-837-3249

Direct Fax: 952-767-7449

E-Mail: jandreen@erstad.com

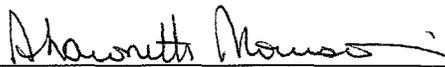
RE: *Jane Kay Dukowitz v. Hannon Security Services, Inc.*

STATE OF MINNESOTA)
)SS.
COUNTY OF HENNEPIN)

AFFIDAVIT OF SERVICE BY MAIL

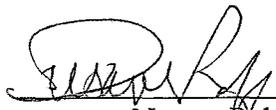
Shawnette Morrison, an employee of Erstad & Riemer, P.A., being duly sworn, says that on the 12th day of March, 2012, she served the annexed **Respondent's Informal Brief** on the below-listed party by mailing a copy thereof, enclosed in an envelope, postage prepaid, and by depositing the same in the post office at Bloomington, Minnesota, directed to:

John J. Neal
WILLENBRING, DAHL, WOCKEN & ZIMMERMANN, PLLC
318 Main Street
P.O. Box 417
Cold Spring, MN 56320



Shawnette Morrison

Subscribed and sworn to before me
this 12th day of March, 2012.



Notary Public
(STAMP AND/OR SEAL)

