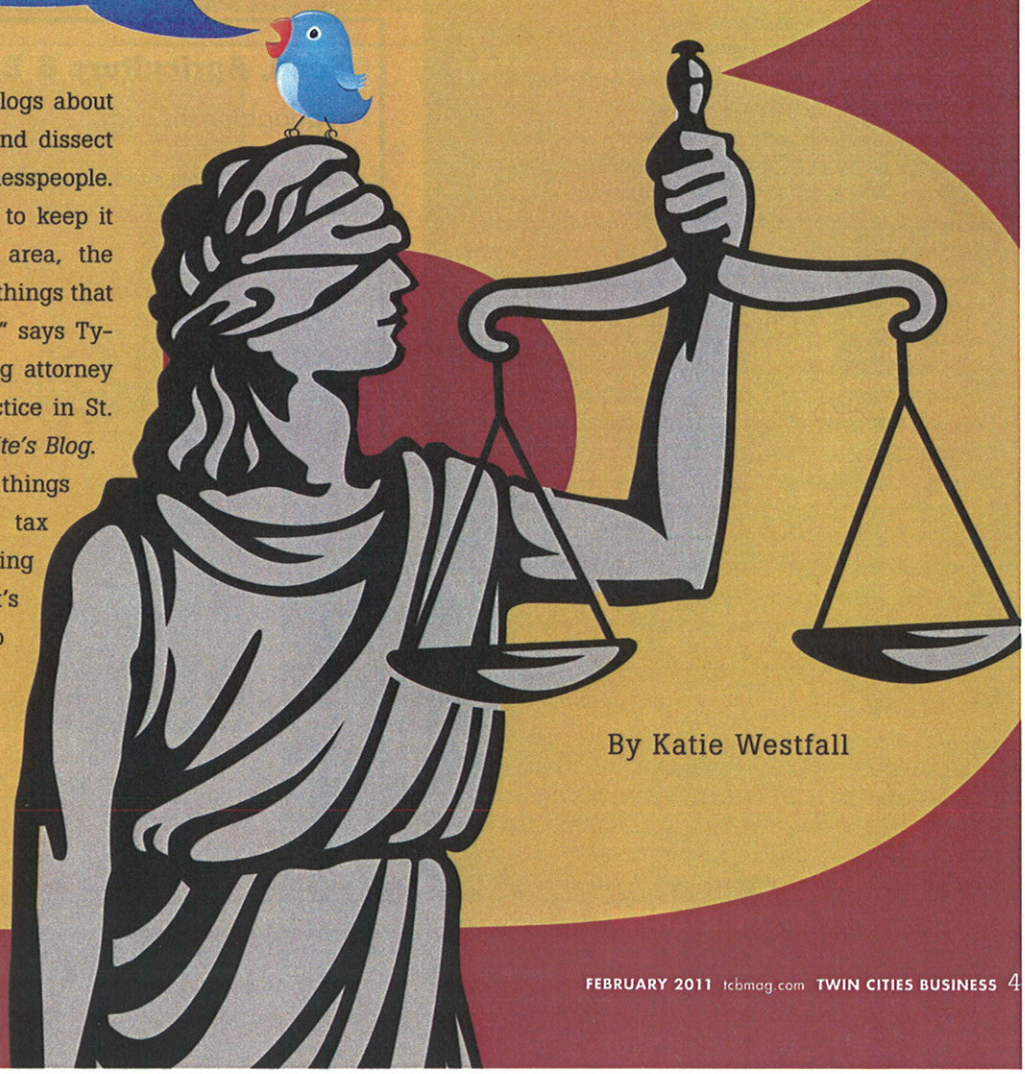
THE Blawgosphere

Minnesota law blogs (blawgs) cover topics important to business leaders.



By Katie Westfall

Many attorneys who write blogs about the law—or blawgs—distill and dissect useful information for businesspeople. But they're also trying hard to keep it readable. "For my practice area, the challenge is coming up with things that are relevant and interesting," says Tyler White, an estate planning attorney who runs an individual practice in St. Paul and writes *Tyler E. White's Blog*. "There are a lot of important things with estate planning and tax laws, but just because something is important doesn't mean it's something people want to read." White says that a lot of estate-planning blogs talk "insider baseball" and aren't aimed at helping—or entertaining—clients.

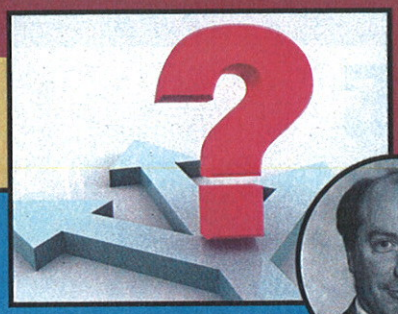
Roy Ginsburg, a partner at the Dorsey & Whitney law firm in Minneapolis, has an interactive blog. It sprang from an annual "Quirky Employment Questions" breakfast seminar that he and a colleague put on to address some of the stickiest and most bizarre employment law questions he's run across. Ginsburg realized the seminar topic would effectively translate into a blog, so in October 2007, **QuirkyEmploymentQuestions.com** was born.

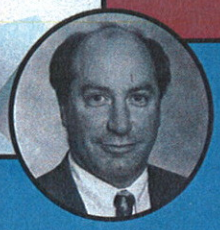
Ginsburg posts a question every Monday along with the answer to the previous week's question. Once a month, he addresses a scenario he gets from his colleagues in Dorsey's West Coast offices, so he can broaden his reach to companies operating throughout the country.

However, attorneys must be mindful that their posts aren't misconstrued as legal advice. Blog posts are not intended to be definitive statements of the law and attorneys could be liable if the material is misconstrued as legal advice. Most legal blogs have a disclaimer that says as much. "I go out of my way and make sure that I use general terms and frame it is an informative piece rather than, 'If you do this, then you should do x, y, z' or comment about a specific event," says Kenneth Kunkle, an attorney with an individual intellectual property practice in St. Paul and a blog called *Legal Muse*.

Sometimes readers send data or contracts as part of their question to Ginsburg, but he declines to use this information when answering so he can avoid straying into the realm of legal advice. "Sometimes I have to say, 'Hey, great questions, I'd love to address it, but this is so specific to your situation that I can't address it, and I can't establish an attorney-client relationship between us,'" Ginsburg says. Such a relationship would require a process to establish, such as vetting for conflicts with other Dorsey clients.

Lawyers who blog don't typically see a rush of new business after a particularly compelling post. But blogging can help them connect with clients and potential clients. White says his blog may have helped win over some prospects. "Maybe because my blog is a little more casual, they feel like I'm a little more approachable," he says.





Quirky Employment Questions

quirkyemploymentquestions.com

Author: Roy Ginsburg, Dorsey & Whitney, LLP
Topic area: Employment law
Blogging since: October 2007
Post excerpt from October 25, 2010: A question from an HR director about her company's sexual harassment policy: "The policy makes clear that an employee who feels as though he or she has been harassed should report the problematic conduct to our director of human resources. The policy also provides that, if more convenient . . . the employee also can report the harassing behaviors to anyone else in management.

"One of our employees recently filed a charge of discrimination with the EEOC. She claims that she was sexually harassed by the director of business development . . . . In her charge, she contends that she directly confronted this individual and advised him that his behaviors were unwelcome. She also stated in her EEOC charge that her direct communications with this individual constituted her 'report' of sexual harassment to company management. Surprise, surprise, our director of business development never said anything to anyone else about this harassment 'complaint.' Is this legit? Can the sole report of the harassment by the alleged victim of the harassment be made to the harasser?"

Food, Agriculture & Biofuels Blog

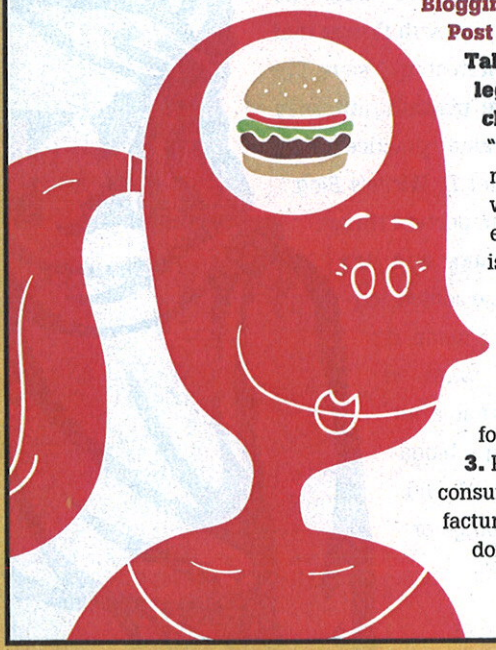
foodagbiofuels.com

Authors: Multiple authors and editors; project head: **Kim Walker,** Faegre & Benson

Topic area: Food, agriculture, and biofuels
Blogging since: February 2010
Post excerpt from August 29, 2010: Takeaways from a workshop on legal strategies for preventing childhood obesity:
"**1.** Litigation is not a preferable method for making public policy with respect to childhood obesity, especially in comparison with legislative or regulatory/administrative approaches.

2. Plaintiffs don't see much success in personal injury cases, especially because of the difficulty in establishing causation between food and obesity and illness.

3. Plaintiffs will continue to pursue consumer fraud claims against food manufacturers because the statutory claims don't require a showing of causation."

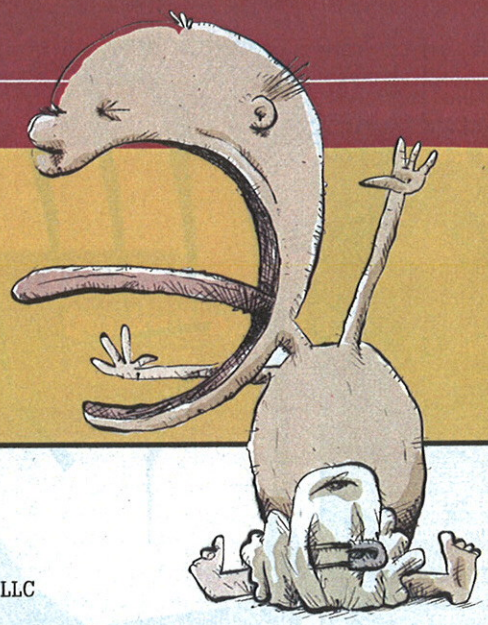


Minnesota Business & Real Estate Law Blog

mnbusinesslawyer.wordpress.com

Author: **Jack Roberts**, Roberts & Stotzheim, PLLC
Topic area: Law for Minnesota businesses and real estate communities
Blogging since: April 2010
Post excerpt from November 10, 2010: "The Minnesota Court of Appeals issued a decision yesterday regarding non-compete agreements and independent contractors that clarified the reach of the current common-law restrictions on non-competes. Minnesota common law requires that a non-compete agreement, either as a separate contract or within another contract (such as an employment agreement), be supported by independent and adequate consideration. Put simply, the employee must receive something in return for giving up his or her right to compete against the employer. Typically, employers and employees agree to a non-compete as a requirement for hiring. The employee receives employment as consideration for his or her agreement not to compete.

"The 'adequate consideration' requirement typically prevents an employer from requiring employees to agree to a non-compete after employment is commenced because the employee is not receiving anything in return (i.e., no consideration) for his or her agreement not to compete. In yesterday's decision, the Court of Appeals described the disparity of bargaining power in favor of the employer in these types of situations. The Court reinforced the requirement that a non-compete agreement entered into after an initial employment contract requires independent consideration (such as an increase in compensation)."



Tyler E. White's Blog

attorneytwhite.com/blog

Author: Tyler White, Tyler E. White, LLC
Topic area: Estate planning
Blogging since: August 2010
Post excerpt from October 19, 2010: "Well, you can imagine how pumped I was when I saw this movie trailer for a new rom-com with Katherine Heigl and the guy from the *Transformers* movies. The trailer mentioned something about a will and guardianship provisions in it, so I had to go see it, right? Unfortunately, my firm has a strict 'No-Horrible-Movies' policy (note the **rottentomatoes.com** score), so I had to skip it last weekend. But Wikipedia is just as good right?:

> *After a disastrous first date, all they have in common is their mutual dislike and their love for their shared goddaughter, Sophie. However, after a devastating car accident leaves them as the one-year-old Sophie's legal guardians, they try to put their differences aside, since they are advised to both move into Sophie's home, to minimize her need for adjustment to the new situation.*

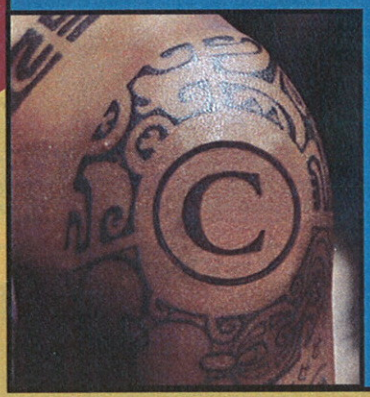
"Without going into a protracted explanation of how bad an idea it is to name two people that don't know each other—let alone [like] each other—as joint guardians of your kid, I will just say this: don't do that."

Legal Muse

legal-muse.com

Author: Kenneth Kunkle, Kunkle Law, PLC
Topic area: Intellectual property law for the creative industries
Blogging since: April 2007
Post excerpt from September 29, 2010: "A while back, someone asked me about writing a blog post on copyright law and tattoos. After thinking about it, I realized that the issue is one that provides a great opportunity to illustrate (no pun intended) some core concepts about copyright law that are often misunderstood by the general public and sometimes by creatives.

At issue is who owns the copyright in that tat on your forearm. After all, a tattoo is really no different than other creative work, and as long as it is an 'original work of authorship' (most likely) and 'fixed in a tangible form' (most [definitely]), U.S. law states that the subject matter is subject to copyright protection."



On Securities

onsecurities.com

Author: Marty Rosenbaum, Maslon Edelman Borman & Brand
Topic area: Securities, governance, and executive compensation issues facing public companies
Blogging since: May 2009
Post excerpt from March 29, 2010: Regarding Joe Mauer's 8-year, $184 million contract extension: "What if Mauer were an executive at a public company? Based on new rules adopted by the SEC . . . the Twins (and their securities lawyers) would now have to deal with several newly required disclosures in the proxy statement for the team's annual shareholders' meeting. One new item requires public companies to discuss the risk aspects of their compensation policies and practices for employees, if these risks are reasonably likely to have a material adverse effect on the company. The proxy statement might include the following:

> *"(Hypothetical) Disclosure of Compensation-Related Risk: Mr. Mauer's new compensation package . . . is reasonably likely to create a material risk for the company. The long-term and guaranteed nature of Mr. Mauer's compensation eliminates meaningful performance-related compensation incentives . . . . However, the committee believes that risks resulting from elimination of monetary incentives are substantially offset by Mr. Mauer's highly competitive personality and desire to bring a World Series Championship to his home state."*

Minnesota Employment Law Report

minnesotaemploymentlawreport.com

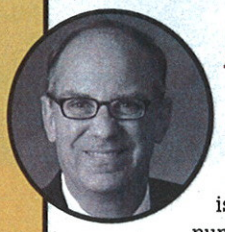
Authors: Multiple authors, edited by **Dennis Merley** and Grant Collins, Felhaber Larson Fenlon & Vogt, PA
Topic area: Employment law
Blogging since: June 2010
Post excerpt from October 29, 2010: "On October 20, 2010, the Equal Employment Opportunity Commission (EEOC) continued its push to vastly curtail employers' use of background checks to screen applicants.

"The push is part of the EEOC's E-RACE Initiative (Eradicating Racism and Colorism from Employment), which is designed to develop 'investigative and litigation strategies' with respect to employers' use of criminal background checks and credit checks.

"The EEOC has long taken the position that an employer's policy or practice of excluding individuals from employment because they have criminal conviction records is unlawful under Title VII unless the policy or practice is justified by a business necessity."

Environmental Law & Compliance

enviroattorney.net/blog



Author: Joseph Maternowski, Moss & Barnett, PA
Topic area: Environmental law and compliance
Blogging since: June 2007
Post excerpt from August 24, 2010: "One of the harsh realities for business owners and businesses is that they face potential environmental liability on a number of different fronts.

"When purchasing property, businesses need to be aware of past uses of property that may have resulted in contamination. When conducting operations, it is prudent for businesses to ensure they have all the required permits and that they are following all applicable environmental regulations. If a government inspection reveals violations of environmental standards, a business may face civil penalties and costly corrective actions.

"Past waste disposal practices may also be a source of liability for businesses. If wastes were disposed at a landfill or unpermitted facility and evidence can be found linking a business to a site that is the source of contamination, that company may be found to be responsible for a cleanup. Liability under federal and state Superfund laws is joint, strict, and retroactive. Investigations and cleanups of dump sites can be expensive."

Katie Westfall is a freelance writer. You can read her story on local executive education—"Teaching the Broad View"—in the January 2011 issue at **tcbmag.com**.