

29th Annual Rulemaking Seminar

Rulemaking without Fear

October 9, 2024

In-person & via Teams

8:50 – 10:00 Rulemaking without Fear (Dave Orren – DHS)

A Tour through the Rulemaking Process and How to Use the Rulemaking Manual to Successfully Navigate from Beginning to End. Without Fear!

Dave Orren Dave is a retired lawyer. Dave spent most of his legal career with the state of Minnesota, working five years for the Department of Public Safety and 26 years for the Department of Health. Most relevant to the Rulemaking Seminar, Dave worked many years as a rule writer. Dave took notes, letters, forms, notices, and other documents from his early rules projects and used them to produce the first edition of the Minnesota Rulemaking Manual in 1996. He served as the editor until 2006. After his work on rules, Dave was Chief Legal Counsel for the Department of Health from 2006 to 2018. Dave also had an interesting side career of coaching college women's volleyball for 30 seasons at the University of St. Thomas. And, in a recent development, Dave has failed at retirement by going back to work half time for the Department of Human Services in a Post Retirement Option (PRO) position as a Senior Legal Consultant.

10:15 – 11:15 What makes a good rulemaker? An Organizational Psychologist Evaluates Rulemaking...(Dr. Nathan Kuncel, University of Minnesota)

This presentation will focus on: 1) evaluating the key skills requirements for rulemaking roles; 2) how to assess those skills in a hiring context; and 3) potentially how to develop those skills on the job.

Nathan Kuncel is the Marvin D. Dunnette Distinguished Professor of Industrial-Organizational Psychology and a Distinguished McKnight University Professor at the University of Minnesota where he also earned his doctorate in Psychology. Nathan's research generally focuses how individual characteristics (skills, personality, interests) influence subsequent work, academic, and life success as well as efforts to model and measure success. He also studies how people use information to make decisions and how this impacts admissions and hiring decisions. Nathan's work has appeared in Science, Harvard Business Review, Psychological Bulletin, Review of Educational Research, The Wall Street Journal, Psychological Science, Perspectives on Psychological Science, among others. Nathan is a Fellow of the Association for Psychological Science, the American Psychological Association, and the Society for Industrial and Organizational Psychology. He

received the Anne Anastasi Award from the American Psychological Association, the Cattell Research Award from the Society of Multivariate Experimental Psychology, the Jeanneret Award from the Society for Industrial and Organizational Psychology, was made McKnight Presidential Fellow by the University of Minnesota, and delivered the Esther Rosen Lecture for the American Psychological Foundation.

11:15-11:45 OAH Update

Join Office of Administrative Hearings Chief Judge Jenny Starr for an update on the new enterprise-wide public comment portal. Learn about our progress and the current project status, see design previews, and ask your questions.

Chief Judge Jenny Starr has served as the Chief Administrative Law Judge at the Minnesota Office of Administrative Hearings since her gubernatorial appointment in 2019.

Prior to her appointment, Chief Judge Starr served as Assistant Commissioner for the Minnesota Department of Revenue, where she was responsible for the administration of taxes ranging from Minnesota's Corporate Franchise Tax, Sales and Use Tax, and Property Taxes. Prior to her role as Assistant Commissioner, she served as an attorney in the Department's legal services division.

Chief Judge Starr has also provided free legal services to low-income families at Legal Assistance of Dakota County, clerked at the Minnesota Court of Appeals, and taught as an adjunct professor at William Mitchell School of Law (now Mitchell Hamline) from 2007 to 2014.

She loves to ski and volunteers as an adaptive ski instructor with Courage Kenny Rehabilitation Institute. In the past, she has also volunteered with organizations like the Minnesota Fringe Festival, served as an Executive Committee Member of the National Conference of the Administrative Law Judiciary and secretary of the National LGBT Bar Association, and is a past chair and current member of the Minnesota Lavender Bar Association.

Chief Judge Starr graduated cum laude from the University of Minnesota Law School, and summa cum laude from the University of Minnesota College of Liberal Arts.

1:15-2:15 Shining a Light in the Shadowy Places: Working with Vagueness in Drafting (Jason Kuenle)

Vagueness and its counterpart discretion can cause unwanted distraction or disapprovals to your rules. The presentation will focus on identifying

vagueness, the legal effects that vagueness can have, and tools for using vagueness appropriately.

Jason Kuenle has been an attorney with the Revisor of Statutes since 2008. He is now an Assistant Deputy Revisor and his duties include managing the production of Revisor publications, supervising the publication indexes, presenting on drafting standards, and drafting in higher education, elections, administrative law, and data practices. He received his law degree from Washington University in St. Louis, where he earned the Samuel M. Breckenridge Book Award for Excellence in Legal Writing and was selected to the Order of the Barristers.

2:30 – 4:00 Breakout Session #1: Judicial Deference to Agency Interpretations in Rulemaking – General Guidance and Possible Impacts of *Loper Bright Enterprises v/ Raimondo*

This breakout session will: 1) provide an overview of judicial deference to agency statutory interpretation; 2) compare case law defining judicial deference in the federal courts versus judicial deference in Minnesota state courts; 3) examine possible impacts on federal and state judicial deference in light of *Loper*; and 4) examine how Minnesota courts may react to *Loper*.

Jason Marisam is an associate professor at Mitchell Hamline School of Law, where he teaches administrative law, constitutional law, and civil procedure. His research focuses on administrative law and election law. His scholarship has appeared in the *Administrative Law Review*, *Minnesota Law Review*, *Fordham Law Review*, *Ohio State Law Journal*, and *Arizona State Law Journal*, among others. His article on the first nationwide election held during a pandemic, *Judging the 1918 Election*, was widely cited and discussed during the run up to the 2020 election.

Jason is a 2008 graduate of Harvard Law School and former editor of the *Harvard Law Review*. In 2021, *Minnesota Lawyer* honored him as an Attorney of the Year for his work on the 2020 election, when he was an assistant attorney general for the State of Minnesota. In 2022, *Minnesota Lawyer* honored him as an Attorney of the Year for his work on the constitutionality of Minnesota's pardon system.

2:30 – 4:00 Breakout Session #2: Community Engagement (Addison Otto, Quinn Carr, Daniel Gonzalez and Erica Backstrom, Minnesota Pollution Control Agency)

Community Engagement: “Conjuring” Meaningful Feedback from “The Cabin in the Woods”

Join members of the Minnesota Pollution Control Agency (MPCA) Rules Team for a presentation on community engagement throughout the rulemaking process. The topics to be covered include accessibility and inclusivity, requests for comments, additional and informal comments, additional notice plans, and advisory committees.

Quinn Carr (he/him) is a Rule Coordinator at the Minnesota Pollution Control Agency while he received degrees from the University of Minnesota for a Bachelor of Arts in Geography and a Master's Degree in Public Policy. In his current role, Quinn provides planning and project management assistance to researchers and scientists to implement environmental laws. Quinn also has extensive background in community-focused data analysis and visualization work where he has helped create tools for organizations on efforts such as advancing environmental justice data use, educating the public on solid waste trends and how to promote more sustainable practices, informing county planners where to put protected bike lanes, and more. Quinn was also a part of the EPA's Science Advisory Board in 2023 on reviewing their EJScreen environmental justice data tool as well as a presenter at the 2015 ESRI International User Conference on City and Ward neighborhood profile reports. Outside of work, Quinn enjoys going to concerts, playing sports with friends in the Twin Cities Stonewall League as well as finding new bike lanes and parks to explore.

Addison Otto (she/her) is a rule coordinator with the MPCA who started working for the agency in December of 2023. Prior to working at the MPCA, Addison worked for several county governments overseeing feedlots, solid waste, and land use and had a variety of job duties including permitting, inspections, enforcement, preparing items for public hearings, grant and ordinance writing, and public outreach and engagement. This experience working closely with community members drives her passion for ensuring meaningful community engagement. She is presenting at this seminar not as a rulemaking expert but offers her experience on community outreach and engagement and how you can utilize the feedback you receive on a rulemaking. Addison's current rulemaking projects include the Air Toxics Emissions Reporting rule and the PFAS in Products Currently Unavoidable Use rule.

Daniel Gonzalez (he/him) is a Rule Coordinator at the Minnesota Pollution Control Agency. He received degrees from Miami University (Ohio) for a Bachelor of Arts in Political Science and Sustainability and from Indiana University's O'Neill School of Public and Environmental Affairs for a Master's Degree in Environmental Policy. In his current role, Daniel provides planning and project management assistance to scientists and lawyers and builds community engagement to develop rules and regulations enacted in law. Daniel has extensive background in policy and legislative work at all levels of government including watershed management policy in Northern Michigan, transportation resiliency policy at the New York City's Mayor's Office, and

non-profit federal zero emissions transportation policy at a federal non-profit organization. Daniel is presenting at the seminar on community engagement and how feedback is used in rulemaking. Daniel is currently working on the Waste Treated Seed Rule and the Solid Waste Capital Assistance Program Reauthorization rule.

Erica Backstrom (she/her) is a Rule Coordinator with the Minnesota Pollution Control Agency. Beginning in this role in March 2024, Erica enjoys the community engagement and collaborative efforts involved in rulemaking. Erica has cultivated her community engagement and outreach skills over fourteen years of work in nonprofit organizations. A licensed attorney and Minn. Rule 114 Qualified Neutral, Erica has been mediating civil and family disputes since 2007. Erica is a 2015 graduate of Hamline University Law School and holds a Bachelor of Science in Legal Studies from the University of Wisconsin – Superior. Erica’s current rulemaking projects include the Solid Waste Facilities Exiting Postclosure Care rule, the Odor management rule, and the Water Quality Standards for Class 1 rule. Outside of work, Erica enjoys spending time with her family outdoors – hiking, paddling, camping and sailing on Lake Superior.

2:30 – 4:00 Breakout Session #3: Using Teams to Organize Rulemaking and Permanent Records in a Digital World (Celeste Marin, DHS)

Survival Tips: Using Teams to organize rulemaking (45 mins)

Celeste Marin (she/her), Agency Policy Specialist, and Amanda Ubongen, Business Solutions Coordinator, Minnesota Department of Health, will give a demonstration on how to use Teams to organize files, encourage collaborative work, keep track of tasks, and organize resources.

Mummified Remains: Protecting your records for the next millennium (45 mins)

Eleanor Chow (she/her), Records Manager from the Department of Health, will talk about considerations and techniques for retaining files permanently, per Minnesota Statutes, section 14.365. This includes thinking about how new technologies in the future might affect electronic files created today, and how to prolong the life of a paper file.

Celeste Marin (she/her) is an Agency Policy Specialist from the Department of Health. She started rulemaking in 2016 at the Department of Revenue and specializes in shepherding a rule project through the required steps from beginning to promulgation and she has completed both good cause exempt and regular rulemaking projects. She has 15 years of state service between the departments of Health, Revenue, MMB, and the Minnesota House of Representative. She holds an associate of science degree in Paralegal Studies from Inver Hills Community College.

Eleanor Chow (she/her) is Records Manager at the Department of Health. She has worked in the records and information management field for 7 years. She started as the Records Management Officer for the Department of Health in 2022 and has been in her current role since March 2024. Before working for the state, she was the Records Manager for the Office of the University Registrar at the University of Pittsburgh. She holds a master's degree in library science from the University of Pittsburgh.