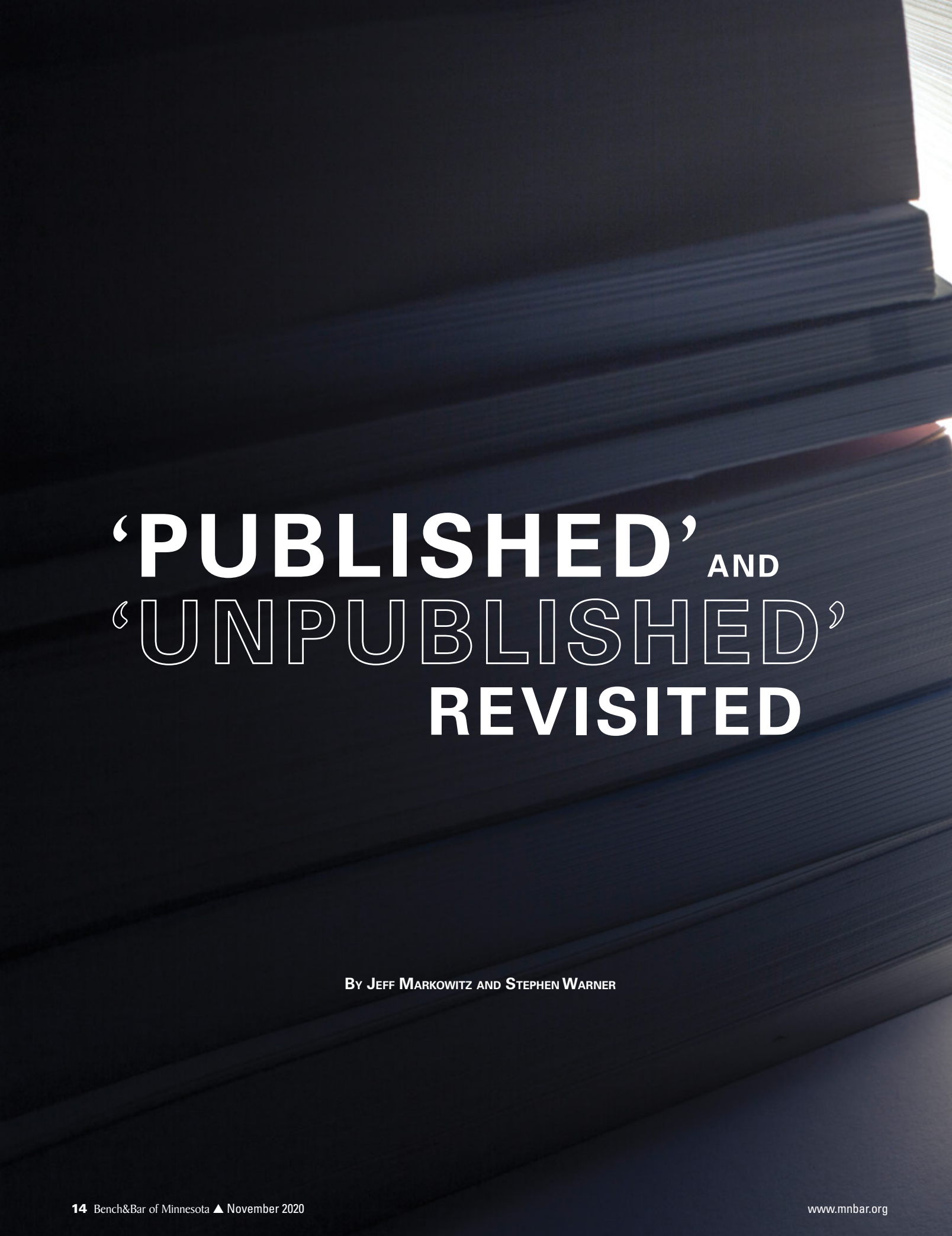
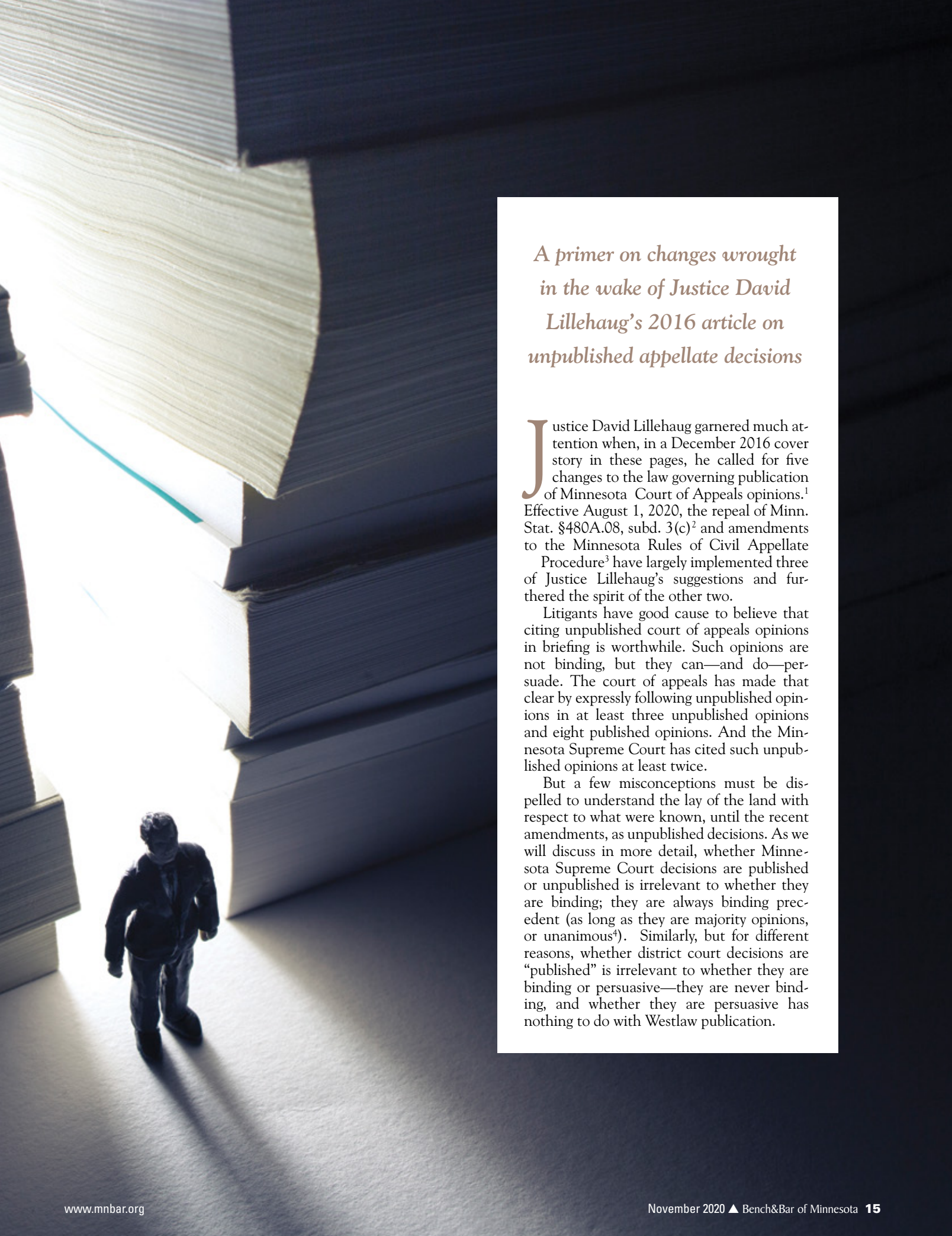


‘PUBLISHED’ AND ‘UNPUBLISHED’ REVISITED

By Jeff Markowitz and Stephen Warner



A primer on changes wrought in the wake of Justice David Lillehaug's 2016 article on unpublished appellate decisions

Justice David Lillehaug garnered much attention when, in a December 2016 cover story in these pages, he called for five changes to the law governing publication of Minnesota Court of Appeals opinions.[1] Effective August 1, 2020, the repeal of Minn. Stat. §480A.08, subd. 3(c)[2] and amendments to the Minnesota Rules of Civil Appellate Procedure[3] have largely implemented three of Justice Lillehaug's suggestions and furthered the spirit of the other two.

Litigants have good cause to believe that citing unpublished court of appeals opinions in briefing is worthwhile. Such opinions are not binding, but they can—and do—persuade. The court of appeals has made that clear by expressly following unpublished opinions in at least three unpublished opinions and eight published opinions. And the Minnesota Supreme Court has cited such unpublished opinions at least twice.

But a few misconceptions must be dispelled to understand the lay of the land with respect to what were known, until the recent amendments, as unpublished decisions. As we will discuss in more detail, whether Minnesota Supreme Court decisions are published or unpublished is irrelevant to whether they are binding; they are always binding precedent (as long as they are majority opinions, or unanimous[4]). Similarly, but for different reasons, whether district court decisions are "published" is irrelevant to whether they are binding or persuasive—they are never binding, and whether they are persuasive has nothing to do with Westlaw publication.

Under the amendments, litigants on appeal are now invited to weigh in on whether the court of appeals should issue a precedential opinion to clarify Minnesota law. They will be aided in such arguments by new and (in our view) more liberal criteria governing whether to "publish."

The amendments to Minnesota's appellate rules also included three nomenclature changes (the latter two of which had been called for by Justice Lillehaug), which we adjust for in this article: "decisions" are now "opinions," "unpublished" opinions are now "nonprecedential" opinions, and "published" opinions are now "precedential" opinions.[5] These new terms are not only required by the rules but more accurately describe permitted uses. The changes will likely require a bit of an adjustment period for both bench and bar, but, as one author has said, "The only languages that don't change are dead ones."[6]

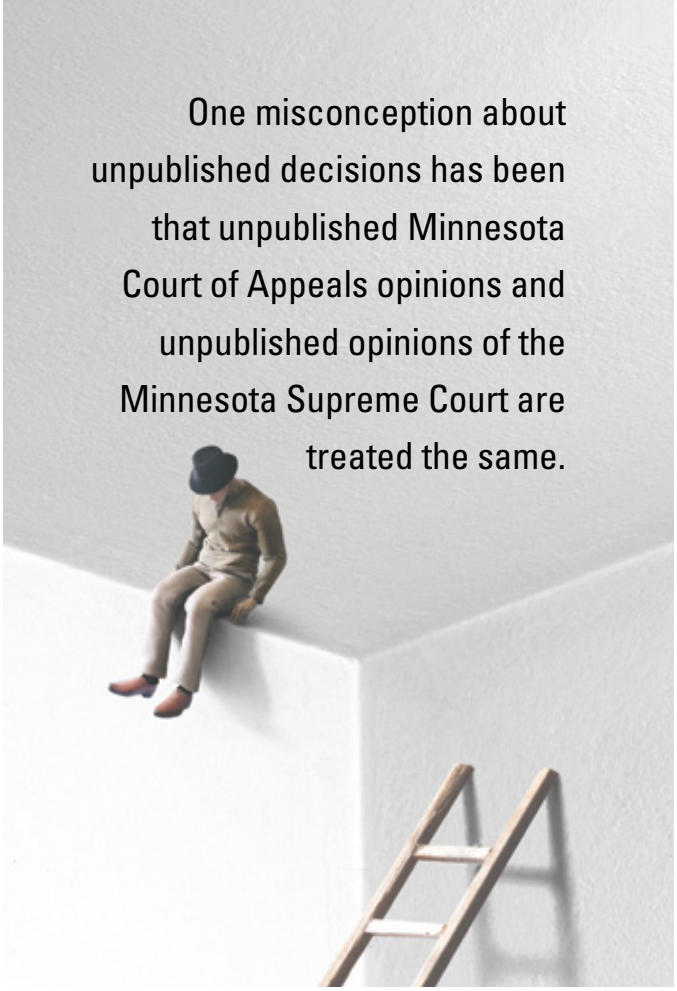
Don't be shy about citing nonprecedential Minnesota Court of Appeals opinions as persuasive authority

Many of us are familiar with the statutory rule that stated: "[u]npublished opinions of the court of appeals are not precedential."[7] It was repealed, effective August 1.[8] But an equivalent rule is now found in Minn. R. Civ. App. P. 136.01, subd. 1(c) (2020): "Nonprecedential [court of appeals] opinions and order opinions are not binding authority except as law of the case, *res judicata*, or collateral estoppel…."[9] The Minnesota Supreme Court has long embraced the rule (since 2004, *Vlahos*), as has the court of appeals (first in 1993, *Dynamic Air*).[10] Pursuant to the rule, the court of appeals has repeatedly (though not uniformly) declined expressly to follow a nonprecedential opinion based on no stated reason other than that it was not precedential.[11] The district court errs if it cites such opinions "as binding precedent."[12] For example, in *Dynamic Air*, the court of appeals faulted the district court for "relying upon an unpublished opinion for the proposition that a restrictive covenant lacking a territorial limitation is *per se* unenforceable."[13]

But that is not a blanket prohibition on citing nonprecedential court of appeals opinions. To the contrary, "attorneys are not prohibited from mentioning unpublished decisions in pretrial conferences, hearings, trials, memoranda, or briefs."[14] And, as the court of appeals concluded earlier this year in *Adams v. Harpstead* (a precedential opinion), "the district court committed no error in considering an unpublished opinion only for its persuasive value."[15] In support, it quoted case law, under which nonprecedential opinions "may be 'persuasive.'"[16]

While formerly found only in case law, Minn. R. Civ. App. P. 136.01, subd. 1(c), as amended (2020), now codifies the principle that "nonprecedential opinions may be cited as persuasive authority."[17]

Moreover, the court of appeals has—on a number of occasions—expressly followed reasoning or guidance from its nonprecedential opinions. It has done so in at least three nonprecedential opinions (issued in 2004, 2009, and 2018).[18] And it has done so in at least eight precedential opinions: five issued between 2017 and 2019 (after Justice Lillehaug's 2016 article),[19] and the other three issued in 2002, 2009, and 2010, respectively.[20] In *State v. Roy* (2009, precedential), the "exact issue" had been resolved fewer than two years prior in a nonprecedential opinion, and the court "adopt[ed]" that opinion's reasoning.[21] In *Kruse* (2018, precedential) the court followed two of its nonprecedential opinions.[22] This suggests that, even if the court did not see an issue as warranting a precedential opinion in a prior appeal, seeing the issue recur might change its mind.



The Minnesota Supreme Court at least occasionally cites to such nonprecedential opinions. In 2018, in support of the statement that "[w]e have never held that a school generally stands *in loco parentis* with its students, and we will not do so today," the Court's sole supporting citation was a *cf.* citation to *Hollingsworth v. State*, No. A14-1874, 2015 WL 4877725, at *4 (Minn. App. 8/17/2015): "Hollingsworth concedes that schools generally do not owe a duty of care *in loco parentis* to protect students."[23] In 2019, the Court cited *State by Swanson v. Amer. Family Prepaid Legal Corp.*, No. A11-1848, 2012 WL 2505843, at *4 (Minn. App. 7/2/2012) (and one of its own opinions) in support of the proposition that the Minnesota Attorney General's *parens patriae* power to act on behalf of all Minnesotans harmed by a pattern and practice of fraudulent conduct "includes the power to seek equitable restitution."[24]

Furthermore, at least as of December 2016, when Justice Lillehaug "cast[] his vote for or against a petition for review, he no longer g[a]ve[] any weight to whether the Court of Appeals opinion is published or unpublished."[25] In 2013-2014, the Minnesota Supreme Court granted 165 petitions for review (PFRs), of which 88 (51 percent) involved nonprecedential opinions.[26]

There are professional and ethical duties at play too.[27] In *Jerry's Enterprises*—a precedential legal-malpractice opinion—the court of appeals concluded that the district court erred by excluding expert attorney testimony regarding how nonprecedential court of appeals opinions "affected their understanding of the merger doctrine."[28] "The district court should not have excluded testimony of how unpublished opinions of this court might inform an attorney of trends in the law."[29]

Moreover, in an October 1993 column in this publication, the then-director of the Office of Lawyers Professional Responsibility (OLPR) wrote plainly:

> An attorney is preparing a response to a summary judgment motion brought against his client. Opposing counsel has failed to cite an unpublished opinion by the Minnesota Court of Appeals, adverse to the client, which is the only opinion on point in the jurisdiction. Does the attorney have to cite the unpublished opinion in light of Minn. Stat. §480.08, subd. 3, which provides that unpublished Court of Appeals opinions are not precedential?
>
> Yes, the attorney must disclose the adverse unpublished opinion.[30]

That article is consistent with Minnesota Rule of Professional Conduct 3.3(a)(2), which refers to "legal authority," not *binding/precedential* legal authority: "A lawyer shall not knowingly… fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel."

Of course, both the Minnesota Supreme Court and court of appeals have embraced the notion that "[t]he danger of miscitation is great because unpublished decisions rarely contain a full recitation of the facts."[31] But this danger likely can be alleviated through thoughtful case-by-case legal reasoning. If the nonprecedential opinion is rich with facts and sound reasoning, then arguably the danger of miscitation is entirely absent. If the nonprecedential opinion consists of bare bones—bereft of material facts and rationale—that will probably detract from its persuasive value. Then again, perhaps the opinion is light on facts, but the material facts are all there, or the rationale is instructive. Or perhaps the court got to the outcome you urge now, in the only opinion to have addressed the issue. Citing to it for such ends is not "miscitation." It is being as persuasive as you can be with what you have.

In short, if you find a nonprecedential court of appeals opinion that supports your argument, don't be shy about citing it. It may not be binding. But it can persuade. (Indeed, as the eight examples cited above demonstrate, yesterday's nonprecedential decisions could become tomorrow's precedential opinions.) And even if you don't like what you see in it, you may have an ethical duty to disclose it to the court.

Majority and unanimous Minnesota Supreme Court opinions are binding, even if not "published"

One misconception about unpublished decisions has been that unpublished Minnesota Court of Appeals opinions and unpublished opinions of the Minnesota Supreme Court are treated the same. Minnesota Supreme Court opinions (or, at least, orders), at least on occasion, are unpublished. This practice appears to be reserved at least generally for non-merits rulings, such as whether to strike a notice of related appeal[32] or grant a PFR.[33]

Admittedly, those non-merits decisions may often not include anything that might change, affirm, or clarify the law (but rather simply grant or deny a PFR with no rationale), which obviates the need to inquire whether they are binding on anyone other than the parties. But when the Minnesota Supreme Court in fact decides what the law is in an order, that decision is just as much binding precedent as the Court's merits opinions. That conclusion flows from the basic rule that the Minnesota Court of Appeals and district courts are bound by Minnesota Supreme Court opinions.[34] And it is "consistent with Article VI, section 2 of the Minnesota Constitution, which provides: 'The court of appeals shall have appellate jurisdiction over all courts, *except the supreme court*….'"[35]

This issue was squarely addressed by the court of appeals in *Allinder* (precedential).[36] In *State v. Manns*—an unpublished order—the Minnesota Supreme Court had "clarif[ied] that our holding in *State v. Lee,* that stays of adjudication are to be treated as pretrial orders for purposes of appeal, applies only to stays of adjudication in misdemeanor cases."[37] In *Allinder*, the court of appeals rejected an argument that the unpublished status of the *Manns* order made it nonbinding:

> [T]his court is bound to follow supreme court precedent. There appears to be no authority limiting this duty to the supreme court's published opinions…. Because *Manns* expressly states that *Manns* is clarifying its holding in *Lee,* a published opinion, this court must assume it was intended to have precedential effect.[38]

No party filed a PFR in *Allinder*, and the Minnesota Supreme Court has not weighed in on that issue. But, in our view, *Allinder* is sound, and the Supreme Court would likely follow it.

District court decisions are not binding, even if "published"

The other publication/nonpublication misconception deals with district court decisions. "A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case."[39] The same is true of Minnesota state district court decisions,[40] which have no "binding precedential effect."[41] They "lack precedential value."[42] They "govern *only* the rights of the parties to the litigation."[43]

No statute or rule makes publication of such decisions relevant to the analysis. Westlaw never "publishes" Minnesota state district court decisions, apart from placing them in its electronic database (we confirmed as much with Westlaw while preparing this article). Westlaw does publish some federal district court decisions, if they are "of general importance to the bench and bar."[44] Westlaw's publication criteria include whether the case involves issues of first impression, clarifies the law, reviews the law, includes unique facts or holdings, or includes "newsworthy" content.[45] District court judges may weigh in on whether Westlaw should "publish" their decisions.[46]

Notwithstanding the above, a court will at least occasionally note that a Minnesota state district court decision was "unpublished," as if to suggest that matters in assessing whether it was binding or persuasive.[47] This appears to occur more frequently when federal district court decisions are analyzed.[48]

Fortunately, when courts do squarely address whether publication of district court decisions matters, they rightly conclude, at least generally: "district court decisions, published or not, can be persuasive authority"[49] and "the distinction between 'published' and 'unpublished' federal district court decisions is meaningless. This is for the simple reason that such decisions bind no one except the parties in the underlying case."[50] Whether Westlaw thinks that a nonprecedential district court decision is important does not make it more or less persuasive.

The 2020 amendments will facilitate an informed increase in precedential opinions

Nothing in the 2020 amendments requires the Minnesota Court of Appeals to issue more precedential opinions. However, that may very well be one of their primary effects, consistent with the five changes Justice Lillehaug called for back in his December 2016 article. Therein, he called for:

1. the "repeal [of] section 480A.08, subd. 3, as an infringement on the judicial branch's authority. The Legislature should not be, and should not want to be, in the business of telling the courts when and how to issue and apply their own opinions";
2. the striking of "the rule that special notice need be given when a non-precedential decision is cited";
3. the changing of "the designations 'published' and 'unpublished' . . . to 'precedential' and 'non-precedential'" "because all Court of Appeals decisions are available online to all attorneys";
4. the Advisory Committee on the Minnesota Rules of Civil Appellate Procedure to "consider a rules change whereby unpublished Court of Appeals opinions deemed especially significant by the bar could be upgraded to precedential status"; and
5. the court of appeals to "try to issue more precedential opinions."[51]

Because of the 2020 amendments, item one has occurred in significant part, items two and three have occurred, and the spirit of items four and five have been substantially furthered.

As to the first and second, the Legislature repealed subdivision 3(c) of Minn. Stat. §480A.08. That eliminated the legislative "publish only" limitation on the court of appeals issuing precedential opinions in only one of five circumstances,[52] and the requirement (which we all loved to hate) that litigants relying on "[u]npublished opinions" provide copies to adverse parties.[53]

As to replacement criteria, the Minnesota Supreme Court enacted new subparagraph (b) to rule 136.01, subdivision 1, of the Minnesota Rules of Civil Appellate Procedure:

> (b) In determining the written form [of the opinion], the panel may consider all relevant factors, including whether the opinion:
> (1) establishes a new principle or rule of law or clarifies existing case law;
> (2) decides a novel issue involving a constitutional provision, statute, administrative rule, or rule of court;
> (3) resolves a significant or recurring legal issue;
> (4) applies settled principles or controlling precedent;
> (5) involves an atypical factual record or procedural history;
> (6) includes an issue pending before the United States Supreme Court or the Minnesota Supreme Court; or
> (7) warrants a particular form based on the parties' arguments, including, but not limited to, the parties' statements allowed by Rule 128.02, subd. 1(f).[54]

These factors include liberalized criteria for issuance of precedential opinions. Specifically, they expressly contemplate potential issuance of precedential opinions to "clarif[y] existing caselaw" (factor 1) or "resolve[] a… recurring legal issue" (factor 3), which conceivably could be done even if governing case law is already clear, or a governing statute is unambiguous.

As to Justice Lilllehaug's third request, the 2020 rule amendments made the nomenclature changes he proposed, primarily by amending rule 136.01 of the Minnesota Rules of Civil Appellate Procedure to replace "unpublished" with "nonprecedential" and "published" with "precedential."[55] These changes are also reflected in amended rule 128.02, subdivision 1(f) (discussed next). The term "opinion" also replaces "decision" throughout rule 136.[56]

As to Justice Lillehaug's fourth request, no rule change was made to provide a mechanism for "upgrad[ing]" nonprecedential opinions to precedential status. But the 2020 amendments do provide for a pretty decent second best, in new subparagraph (f) to rule 128.02, subdivision 1:

> In briefs filed with the court of appeals, a party may include an optional statement as to whether the court's opinion should be precedential, nonprecedential, or an order opinion, and the party's reasons, with reference to Rule 136.01, subd. 1(b).[57]

As to that rule's intent, Minnesota Court of Appeals Chief Judge Susan Segal wrote on behalf of a committee of the court of appeals that, while the committee was neutral on whether to adopt it:

> We included this option based on our understanding that the bar desired the opportunity for counsel to be able to express their opinion on this question to the court. As some committee members have commented, we recognize that parties may currently offer their thoughts on whether an opinion is precedential or nonprecedential by doing so in their brief or during oral argument. And we welcome hearing the parties' thoughts on this topic.[58]

The new rule's invitation—when combined with the court of appeals's demonstrated willingness to follow persuasive nonprecedential opinions in its precedential opinions[59]—provides a next-best-thing means of somewhat upgrading nonprecedential holdings into precedential ones.

Finally, in proposing that the court of appeals "try to" issue more precedential opinions, Justice Lillehaug floated a goal of doubling the percentage issued in 2015 (8 percent).[60] Subsequently, the percentage shifted to around 7 percent in 2016 (94 of almost 1,350 opinions issued);[61] 11 percent in 2017 (152 of 1,365);[62] and 9 percent in 2018 (120 of 1,328).[63]

The 2020 amendments—by inviting attorneys to weigh in on appeal, with the blessing of Minn. R. Civ. App. P. 128.02, subd. 1(f), and the benefit of more liberal precedential-opinion criteria in Minn. R. Civ. App. P. 136.01, subd. 1(b)—may well provide a vehicle for collaboration on appeal between the appellate bench and bar on these matters, leading to thoughtful increases in Minnesota precedent.

We look forward to seeing the benefits of this collaboration unfold. ▲

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Notes

[1] Lillehaug, David L., Ebnet, Nathan J., "A Fresh Look at the Problem of Unpublished Opinions; Why It's Time to Reconsider Minnesota's Approach" at 19, *Bench & Bar of Minnesota* (Dec. 2016).

[2] 2020 Minn. Laws, ch. 82, S.F. No. 3072, §3, *located at https://www.revisor.mn.gov/laws/2020/0/82/laws.0.3.0#laws.0.3.0*

[3] *https://www.mncourts.gov/mncourtsgov/media/Appellate/Supreme%20Court/RecentRulesOrders/Administrative-Order-Promulgating-Amendments-to-the-Rules-of-Civil-Appellate-Procedure-Effective-August-1-2020.pdf*

[4] When one justice is disqualified, and the remaining six are equally divided so that there is no unanimous or majority opinion, "no precedent is made." *See Sig Ellingson & Co. v. Polk Cnty. State Bank of Crookston*, 242 N.W. 626, 627 (Minn. 1932) (Dibell, J.). Once, in *Nelson*, the Court issued a *per curiam* opinion without any indication of division, and stated that it was "without significant precedential value." *Nelson v. Nelson*, 189 N.W.2d 413, 416 (Minn. 1971). But that appears to have been intended to mean not that the opinion was not binding, but rather that it lacked persuasive value, given that "the points raised [were] without force." *Id.* The supreme court and court of appeals have followed *Nelson*. *See, e.g.*, *Davis v. Davis*, 235 N.W.2d 836, 838 (Minn. 1975); *Melius v. Melius*, 765 N.W.2d 411, 417 (Minn. App. 2009).

[5] *https://www.mncourts.gov/mncourtsgov/media/Appellate/Supreme%20Court/RecentRulesOrders/Administrative-Order-Promulgating-Amendments-to-the-Rules-of-Civil-Appellate-Procedure-Effective-August-1-2020.pdf*

[6] Crystal, David, *A Little Book of Language*, chapter 21, paragraph 1 (Yale University Press 2010).

[7] Minn. Stat. §480A.08, subd. 3(c) (2018).

[8] 2020 Minn. Laws, ch. 82, S.F. No. 3072, §3, *located at https://www.revisor.mn.gov/laws/2020/0/82/laws.0.3.0#laws.0.3.0*

[9] Supra note 3.

[10] *Vlahos v. R&I Constr. of Bloomington, Inc.*, 676 N.W.2d 672, 676 n.3 (Minn. 2004); *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 797, 800-01 (Minn. App. 1993).

[11] *See, e.g.*, *Hoff v. Surman*, 883 N.W.2d 631, 636 (Minn. App. 2016); *Columbia Cas. Co. v. 3M Co.*, 814 N.W.2d 33, 38 (Minn. App. 2012).

[12] *Vlahos*, 676 N.W.2d at 676 n.3.

[13] 502 N.W.2d at 800.

[14] *Jerry's Enters., Inc. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 691 N.W.2d 484, 494 (Minn. App. 2005), *aff'd as modified,* 711 N.W.2d 811 (Minn. 2006).

[15] 947 N.W.2d 838, 847 (Minn. App. 2020).

[16] *Id.* at *846 (quoting *Donnelly Bros. Constr. Co. v. State Auto Prop. & Cas. Ins. Co.*, 759 N.W.2d 651, 659 (Minn. App. 2009), *review denied* (Minn. 4/21/2009)); *see Dynamic Air*, 502 N.W.2d at 800 ("At best, these opinions can be of persuasive value.").

[17] Supra note 3.

[18] *Williams v. Pine Cnty. Sheriff's Dep't*, No. A17-0964, 2018 WL 1701888, at *2 n.1 (Minn. Ct. App. 4/9/2018); *Afremov v. Amplatz*, No. A03-448, 2004 WL 77851, at *4 (Minn. Ct. App. 1/13/2004) ("While *Bonanza Grain* is not precedential, we adopt its reasoning…."); *see also Ehrman v. Adam*, No. A08-2120, 2009 WL 2746749, at *4 (Minn. Ct. App. 9/1/2009).

[19] *See In re Welfare of Children of A.M.F.*, 934 N.W.2d 119, 123 (Minn. App. 2019); *State v. Defatte*, 921 N.W.2d 556, 562 (Minn. App. 2018), *aff'd,* 928 N.W.2d 338 (Minn. 2019); *Kruse v. Comm'r of Pub. Safety*, 906 N.W.2d 554, 559 (Minn. App. 2018); *Compart v. Wolfstellar*, 906 N.W.2d 598, 610 n.7 (Minn. App. 2018), *review denied* (Minn. 4/17/2018); *Linert v. MacDonald*, 901 N.W.2d 664, 669 (Minn. App. 2017).

[20] *See State v. Zais*, 790 N.W.2d 853, 861 (Minn. App. 2010), *aff'd,* 805 N.W.2d 32 (Minn. 2011); *State v. Roy*, 761 N.W.2d 883, 888 (Minn. App. 2009); *Reinsurance Ass'n of Minn. v. Timmer*, 641 N.W.2d 302, 314 (Minn. App. 2002) ("While not precedential, we are persuaded by the *Frost Paint* analysis."), *review denied* (Minn. 5/14/2002).

[21] *Roy*, 761 N.W.2d at 888.

[22] *Kruse*, 906 N.W.2d at 559.

[23] *Fenrich v. The Blake Sch.*, 920 N.W.2d 195, 202-03 (Minn. 2018).

[24] *State v. Minn. Sch. of Bus., Inc.*, 935 N.W.2d 124, 133-34 (Minn. 2019).

[25] *Supra* note 1, "A Fresh Look at the Problem of Unpublished Opinions" at 18.

[26] *Id.*

[27] Petition in Supreme Court for Review of Decisions of the Court of Appeals, 3 Minn. Prac., Appellate Rules Annotated R 117.

[28] 691 N.W.2d at 495.

[29] *Id.*

[30] Johnson, Marcia A., "Advisory Opinion Service Update," *Bench & Bar of Minnesota* (Oct. 1993).

[31] *Vlahos*, 676 N.W.2d at 676 (citing *Dynamic Air,* 502 N.W.2d at 801).

[32] *See Menard, Inc. v. Cnty. of Clay*, No. A16-0415, 2016 WL 7208722, at *3 (Minn. 5/16/2016).

[33] *See Gunufson v. Swanson*, No. C4-95-1446, 1996 WL 686121, at *1 (Minn. 11/20/1996).

[34] *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018).

[35] *Id.* (quoting Minn. Const. art. VI, §2 (emphasis added by court)).

[36] *State v. Allinder*, 746 N.W.2d 923 (Minn. App. 2008).

[37] *State v. Manns*, No. A06-478, 2006 WL 8462127, at *1 (Minn. 5/24/2006).

[38] *Allinder*, 746 N.W.2d at 925 (citation omitted).

[39] *See Nygard v. Rogers*, No. A14-2175, 2015 WL 7201171, at *3 (Minn. Ct. App. 11/16/2015) (quoting *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (quoting 18 J. Moore et al., Moore's Federal Practice §134.02[1] [d], p. 134–26 (3d ed. 2011))) ; *see* Charles W. Tyler, *The Adjudicative Model of Precedent*, 87 U. Chi. L. Rev. 1551, 1597 (2020); *e.g.*, *Howard v. Wal-Mart Stores, Inc.*, 160 F.3d 358, 359 (7th Cir. 1998)..

[40] *But see State v. Behena-Vargas*, No. A03-1954, 2004 WL 1327804, at *4 n.2 (Minn. Ct. App. 6/15/2004) (noting but not reaching argument that "the district court erred by applying the doctrine of stare decisis to rely on a district court opinion").

[41] *O'Rourke v. O'Rourke*, 220 N.W.2d 811, 823 (Minn. 1974).

[42] *Green v. BMW of N. Am., LLC, 826 N.W.2d 530, 537 n.5 (Minn. 2013); see Kmart Corp. v. Cnty. of Stearns, 710 N.W.2d 761, 769-70 (Minn. 2006) ("Decisions of district courts likewise are not regarded as precedent for retroactivity purposes.").*

[43] *In re Guardianship of Tschumy*, 853 N.W.2d 728, 758 (Minn. 2014) (Stras, J., dissenting).

[44] *https://legal.thomsonreuters.com/en/solutions/government/court-opinion-submission-guidelines*.

[45] *Id.*

[46] *Id.*

[47] *See, e.g., Stover v. Home Valu, Inc.*, No. 02-CV-07-1394, 2008 WL 8905530 (Minn.Dist. Ct. 12/3/2008 ("The Dakota County district court order, which is an unpublished, unreviewed order, is not binding upon this Court.").

[48] *See, e.g., Murphy by Murphy v. Harpstead*, No. CV 16-2623 (DWF/BRT), 2019 WL 6650510, at *4 (D. Minn. 12/6/2019), *aff'd as modified,* No. CV 16-2623 (DWF/BRT), 2020 WL 256194 (D. Minn. 1/17/2020); *Okon v. Knutson*, No. 18-CV-0191 (DWF/TNL), 2019 WL 2030568, at *8 (D. Minn. 1/22/2019), *report and recommendation adopted,* No. CV 18-191 (DWF/TNL), 2019 WL 1277521 (D. Minn. 3/20/2019).

[49] *United States v. Copeland*, No. 1:19-CR-9-MHC-RGV, 2020 WL 1131026, at *3 (N.D. Ga. 3/9/2020).

[50] *Cont'l W. Ins. Co. v. Costco Wholesale Corp.*, No. C10-1987 RAJ, 2011 WL 3583226, at *3 (W.D. Wash. 8/15/2011)

[51] Lillehaug and Ebnet, supra note 1 at 19.

[52] ~~(c) The court of appeals may publish only those decisions that:~~

~~(1) establish a new rule of law;~~
~~(2) overrule a previous court of appeals' decision not reviewed by the supreme court;~~
~~(3) provide important procedural guidelines in interpreting statutes or administrative rules;~~
~~(4) involve a significant legal issue; or~~
~~(5) would significantly aid in the administration of justice.~~

Minn. Stat. §480A.08, subd. 3(c) (2018), *repealed by* 2020 Minn. Laws, ch. 82, S.F. No. 3072, § 3, *located at https://www.revisor.mn.gov/laws/2020/0/82/laws.0.3.0#laws.0.3.0*.

[53] *Id.*

[54] Supra note 3.

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] Letter from Chief Judge Susan Segal to Justice Natalie Hudson and Commissioner Rita DeMules (July 12, 2020) (on file with authors).

[59] *Supra* § I.

[60] Lillehaug & Ebnet, *supra* note 1, at 18-19.

[61] *See* Minnesota Judicial Branch, Report to the Community: The 2016 Annual Report of the Minnesota Judicial Branch 52 (2016) at 52; Minnesota Judicial Branch, Report to the Community: The 2017 Annual Report of the Minnesota Judicial Branch 53 (2017).

[62] Minnesota Judicial Branch, Report to the Community: The 2017 Annual Report of the Minnesota Judicial Branch 53 (2017).

[63] Minnesota Judicial Branch, Report to the Community: The 2018 Annual Report of the Minnesota Judicial Branch 49 (2018).