

The Fight to Secure Workplace Fairness: A Case Study of the Vital and Wide-Ranging Advocacy for MAJ Members and Their Clients



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By Justin D. Cummins, Carla M. Ferrucci, and Joel D. Carlson

Introduction

In 1954, a small group of attorneys dedicated to protecting the interests of the injured and the accused founded what is now known as the Minnesota Association for Justice ("MAJ"). Since the beginning, members of what is currently referred to as MAJ have joined and sustained the organization to ensure better representation of their clients by sharing information, litigation strategies, and trial tactics as well as by collaborating to influence relevant legislation in a positive way.

Despite the broad scope and diverse nature of MAJ's work, a common misperception of MAJ has emerged. Specifically, many people – including some MAJ members – have the mistaken impression that the MAJ exists solely to serve attorneys who represent survivors of vehicle crashes or workplace accidents.

In reality, MAJ's membership includes attorneys who handle an array of matters, including employment and civil rights cases. MAJ's recent efforts to help secure workplace fairness provides a good example of the myriad of ways MAJ serves MAJ members as well as their clients

and, ultimately, the public interest. Although the cases handled by MAJ members may differ in the source and nature of the harm to, and the remedies for, MAJ clients, those cases involve common foes: the insurance industry, corporations, and other powerful institutions.

I. Legislative Advocacy By MAJ

While MAJ members zealously represent their clients in the courtroom and in other settings, MAJ represents MAJ members and their clients at the State Capitol. MAJ's legislative advocacy on behalf of MAJ members and their clients before the Minnesota Legislature remains a cornerstone of MAJ's core mission. The MAJ lobbying team continues to be the premier group committed to protecting the rights of Minnesotans who have been harmed – whether by a vehicle or workplace accident, a consumer product, medical malpractice, a toxic tort, unpaid compensation, civil rights violations, or other illegal conduct – through legislative advocacy. Therefore, MAJ's lobbying team has worked on legislative efforts covering a wide variety of issues, including agricultural nuisance, recreational and municipal immunities, medical malpractice, class actions, construction defects, insurance coverage, autonomous vehicles, data practices, tort liability caps, statutes of limitations, consumer fraud, and attorney's fees-shifting measures.

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MAJ's legislative advocacy concerning workplace rights illustrates what a powerful impact MAJ can have in numerous arenas. In 2013, for example, MAJ helped to spearhead the successful amendments to Minnesota's whistleblower law, Minn. Stat. §§ 181.931, *et seq.*¹ These amendments provide essential protections to employees reporting violations of law that often threaten public safety or the public interest more generally. In this way, MAJ played a key role in restoring vitality to Minnesota's whistleblower regime and, thus, in enhancing the rule of law. Despite a subsequent legal challenge from the United States Chamber of Commerce in *Friedlander, v. Edwards Lifesciences, LLC*,² the Minnesota Supreme Court unanimously upheld the legislative amendments that MAJ helped to make the law of Minnesota. The year after ushering in these amendments to Minnesota's whistleblower law, MAJ successfully pushed for clarification of the law to establish a right to a jury trial regarding employment and other claims pursued under the Minnesota Human Rights Act ("MHRA"), Minn. Stat. §§ 363A.01, *et seq.*³

Most recently, and after a year of dramatic sex harassment revelations at the highest levels across the country starting in 2016, MAJ worked with a coalition of advocacy groups to advance legislation that would clarify the Federal-court-created "severe or pervasive" test

does not apply to harassment cases prosecuted under the MHRA. Representative Kelly Moller (DFL, Shoreview) worked tirelessly on this legislation and successfully achieved passage of the bill on the floor of the Minnesota House of Representatives by a vote of 113-21. Despite the overwhelmingly bipartisan vote in favor of the legislation in the Minnesota House, the Republican leadership that controlled the Minnesota Senate refused to consider the bill. As reported in the last edition of this magazine, the Minnesota Senate leadership supported an effort by Senator Karin Housley (R, St. Mary's Point) to change the MHRA to include the "severe or pervasive" threshold that has prevented accountability in many past harassment cases. In the end, the effort to provide the necessary clarity to the law did not succeed – but that did not stop MAJ from continuing to address the issue in other ways, as explained below.

II. Amicus Curiae Advocacy By MAJ

Ensuring access to justice for the clients of MAJ members in the Minnesota courts does not rely on legislative work alone, as exemplified by the recent experience with attempting to address the harassment issue legislatively. To that end, MAJ has maintained an active Amicus Curiae Committee for years to prepare and submit briefs

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CARLA FERRUCCI

has over fifteen years' experience in program management, primary prevention, public policy development, and community organizing. Throughout her professional career, Ms. Ferrucci has combined her grassroots community organizing background with her professional training to incorporate theory with practical necessities that often shape public policy. Ms. Ferrucci has demonstrated leadership in developing institutional policies and practices that are inclusive of diverse constituencies and communities, while building consensus and broad buy-in towards a common goal. Ms. Ferrucci's professional background as a victim advocate with individuals and at the coalition/association level is combined with a political passion to ensure that our legislative and legal systems work for those most at need. She has been the Executive Director of the Minnesota Association for Justice for 11 years.

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in support of MAJ members by addressing issues that affect the legal rights of people represented by MAJ members.

MAJ recently submitted an *amici curiae* brief to the Minnesota Supreme Court, joining other advocacy organizations to argue against imposition of the “severe or pervasive” standard in harassment cases litigated under the MHRA. In the relevant case, *Kenneh v. Homeward Bound, Inc.*, MAJ has urged the Minnesota Supreme Court to follow the plain language of the MHRA and compelling public policy codified therein to reverse the Court of Appeals’ affirmance of summary judgment from the employer. MAJ, like its members, believes that the “severe or pervasive” test cannot properly apply to harassment cases pursued under the MHRA. *Kenneh* has been fully briefed and

argued, but the Minnesota Supreme Court has yet to rule in the case as this article goes to press.

Conclusion

At a time when the rule of law is increasingly under attack by powerful and wealthy interests, it is more important than ever for attorneys who serve the public interest to collaborate in the advancement of justice. As the late Senator Paul Wellstone so wisely observed, “we all do better when we all do better.” MAJ enables all of its members to do better through, among other services, the legislative advocacy and *amicus curiae* work on behalf of MAJ members and their clients. The ongoing fight for workplace fairness provides a clear example of this fundamental fact. ▮

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¹Minn. Stat. § 181.931; Minn. Stat. § 181.932, subd 1.
²900 N.W.2d 162 (Minn. 2017).
³Minn. Stat. § 363A.33, subd. 6.