income disparity as a new basis for deviating from the child support guidelines in certain circumstances. If a parent has 10-45% parenting time and "a significant disparity of income exists between the parties" such that "an order directing payment of basic support would be detrimental to the parties' joint child," the court would be allowed to eliminate the party's basic support obligation. **Ch. 71, Art 1, sec. 78.**

■ **Revisions to potential income.** Amendments were made to one of the methods for calculating potential income. Instead of using full-time employment at 150 percent of minimum wage, the amended statute uses 30 hours per week at 100 percent of minimum wage. **Ch. 71, Art. 1, sec. 70.**

■ **Modification of medical support.** A new subdivision was added to Minn. Stat. §518A.39 that permits modification of medical support without modification of the other components of a support order if there is a substantial increase or decrease in the cost of available health care coverage or if other factors are met. **Ch. 71, Art. 1, sec. 72.**

■ **Recognition of parentage.** Minn. Stat. §257.75 was amended to allow courts in custody proceedings to make a temporary determination of custody and parenting time during the pendency of the case under Minn. Stat. §518.131. Additionally, the notification provisions of the recognition of parentage form are expanded, including an emphasis that execution of a ROP does not confer any custody or parenting time rights. **Ch. 71, Art. 1, sec. 52, 53.**

■ **Credit reporting for child support arrears.** A new section added to chapter 518A requires the public authority to report delinquent child support obligors who are more than three months in arrears and not in compliance with a payment plan to a consumer reporting agency. **Ch. 71, Art 1, sec. 86.**

■ **Certificates of dissolution.** Minn. Stat. §518.148 was amended to require a certificate of dissolution to be prepared in every dissolution proceeding. Also, the content of the certificate was amended to eliminate the need to include children's names and Social Security numbers. Name changes of any party are to be included. **Ch. 57, sec. 1.**

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FEDERAL PRACTICE

JUDICIAL LAW

■ **Notice of appeal; appeal information form; issues waived on appeal.** Where the appellant sought to appeal several earlier orders by the district court, failed to identify any orders other than the court's summary judgment order in his notice of appeal, and later argued that his identification of those earlier orders in his appeal information form was sufficient cure for his defective notice of appeal, the 8th Circuit held that the appeal information form could not serve to preserve the unidentified portions of the appeal where the form was not filed within the time limit for a notice of appeal. ***Schell v. Bluebird Media, LLC,*** ___ F.3d ___ (8th Cir. 2015).

■ **Forum-selection clause; motion to transfer; writ of prohibition or mandamus denied.** The 8th Circuit denied the plaintiff's petition seeking a writ of prohibition or mandamus to prevent the transfer of its action to the Southern District of New York based on a forum-selection clause, finding "no clear legal error, no clear error of judgment, and no patently erroneous result." ***In Re Union Elec. Co.***, ___ F.3d ___ (8th Cir. 2015).

■ **Vacatur; abuse of discretion; explanation required.** Where the action became moot after Judge Kyle denied portions of the defendant's Rule 12(b)(6) motion, both parties asked that the case be dismissed, and the defendant requested that the 12(b)(6) motion be vacated, Judge Kyle granted the motion to dismiss but denied the motion to vacate without explanation, and the defendant appealed the denial of its motion to vacate, the 8th Circuit held that it had jurisdiction to consider the appeal, but that it could not conduct a "meaningful review" of the denial of the motion to vacate under an abuse of discretion standard without knowing the "reason" for the denial of the motion. Accordingly, the case was remanded to allow Judge Kyle to "provide an explanation for [his] decision." ***Reid v. BCBSM, Inc.***, ___ F.3d ___ (8th Cir. 2015).

■ **Arbitration compelled; stay or dismissal of underlying action.** A recent 8th Circuit decision compelling arbitration serves to highlight an ongoing divergence of opinion on the court as to what should happen to the underlying litigation while the arbitration is pending. While the majority found that the district court could stay or dismiss the action pending the outcome of the arbitration, Judge Shepherd, concurring in the result, expressed his belief that "Section 3 of the [FAA] unambiguously directs a district court to stay an action and does not give a district court the discretion to dismiss an action." ***Unison Co. v. Juhl Energy Devel. Inc.***, ___ F.3d ___ (8th Cir. 2015).

■ **Attorney's fees; costs; computerized legal research.** The 8th Circuit found no abuse of discretion in a district court's award of attorney's fees and costs that allowed two attorneys to attend certain depositions; awarded attorney's fees for travel time at the attorney's full hourly rate, and permitted reimbursement for expenses related to focus groups and jury consultants.

The 8th Circuit also found no abuse of discretion in the district court's decision to awarded costs associated with computerized legal research, and it appeared to question the continued vitality of its earlier decisions holding that Westlaw and Lexis costs could not be recovered under fee-shifting statutes. (An earlier summary of the law on this issue can be found in "Recovering Research Costs" (Bench & Bar of Minnesota, May/June 1997)). ***Ludlow v. BNSF Rwy. Co.***, ___ F.3d ___ (8th Cir. 2015).

■ **Deposition of in-house attorney permitted.** Determining that *Shelton v. Am. Motors Corp.*, 805 F.2d 1323 (8th Cir. 1986), was "inapplicable" because the plaintiff was not seeking to discover attorney work product, Magistrate Judge Mayeron recently denied a motion for a protective order to prevent the deposition of the defendant's in-house counsel, finding that the attorney possessed relevant, non-privileged information relating to the plaintiff's employment discrimination claims. The magistrate judge also found it relevant that the defendant opposed the deposition but reserved the right to call the attorney as a witness at trial. The defendant filed objections to Magistrate Judge Mayeron's order, but Chief Judge Davis overruled the objections, finding that the order was "neither clearly erroneous or contrary to law." ***Oehmke v. Medtronic, Inc.***, 2015 WL 2242041 (D. Minn. Mar. 26, 2015), aff'd, 2015 WL 2242064 (D. Minn. 5/12/2015).

■ **Motion to lift PSLRA discovery stay in securities litigation denied.** Judge Tunheim denied a motion to lift the PSLRA's automatic discovery stay to conduct discovery said to be relevant to the plaintiff's preliminary injunction motion, holding that the plaintiff would not be unduly prejudiced because he could pursue his motion without the discovery, and because other legal remedies would remain available even if the preliminary injunction motion was denied. ***Lusk v. Life Time Fitness, Inc.***, 2015 WL 2374205 (D. Minn. 5/18/2015).

■ **Sanctions and more sanctions.** The 8th Circuit affirmed Judge Ericksen's imposition of sanctions against plaintiff's counsel under 28 U.S.C. §1927 where the attorney issued subpoenas that purported to require witnesses' appearance for multiple days at courthouses in other districts in order to appear by video conference in Minnesota. ***Wagner v. Gallup, Inc.***, ___ F.3d ___ (8th Cir. 2015).

Finding that the plaintiffs' claims were "so completely frivolous and without a factual or legal basis that they had to have been brought in bad faith," Chief Judge Davis imposed sanctions pursuant to Fed. R. Civ. P. 11, 28 U.S.C. §1927 and the court's inherent powers, ordered the plaintiffs and their counsel to pay defendants' reasonable attorney's fees, and ordered the plaintiffs to post an appeal bond of $200,000. Also noteworthy is Chief Judge Davis's determination that certain defendants complied with Rule 11's "safe harbor" provision when they served a motion for sanctions without a supporting memorandum. ***Wolfchild v. Redwood County***, 2015 WL 3616058 (D. Minn. 6/9/2015).

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IMMIGRATION LAW

JUDICIAL LAW

■ **Jurisdiction to review.** On 6/15/2015, the United States Supreme Court held the 5th Circuit Court of Appeals committed error by finding it lacked jurisdiction to review the petitioner's request that the Board of Immigration Appeals equitably toll the 90-day time limit on his motion to reopen as a result of ineffective assistance of counsel. "An alien [*sic*] ordered to leave the country has a statutory right to file a motion to reopen his removal proceedings… If immigration officials deny that motion, a federal court of appeals has jurisdiction to review their decision… Notwithstanding that rule, the court below declined to take jurisdiction over such an appeal because the motion had been denied as untimely. We hold that was error." ***Mata v. Lynch***, 575 U.S. ___, ___ (2015). *slip op.* at *http://www.supremecourt.gov/opinions/14pdf/14-185_i4dk.pdf*

■ **No deprivation of due process.** On 6/15/2015, the United States Supreme Court overturned the Ninth Circuit Court of Appeals and remanded, holding that the U.S. Department of State, which denied a visa to U.S. citizen Fauzia Din's husband, did not deprive her of due process. There is, according to the Court, no constitutional right to live in the United States with one's spouse if the government finds the foreign national spouse to be ineligible for an immigrant visa. "Because Fauzia Din was not 'deprived of life, liberty, or property' when the government denied Kanishka Berashk admission to the United States, there is no process due her under the Constitution. To the extent that she received any explanation for the government's decision, this was more than the due process clause required." ***Kerry v. Din***, 575 U.S. ___, ___ (2015). *slip op.* at *http://www.supremecourt.gov/opinions/14pdf/13-1402_e29g.pdf*

■ **The sock case: Drug paraphernalia, controlled substances, and 21 U.S.C. §802.** On 6/1/2015, the United States Supreme Court found that, for removal purposes, the government must connect an element of an immigrant's conviction under Kansas state law to a "controlled substance" as delineated in 21 U.S.C. §802. The government failed to do that in this case. "Mellouli's Kansas conviction for concealing unnamed pills in his sock did not trigger removal… The drug paraphernalia possession law under which he was convicted, related to a controlled substance… But it was immaterial under that law whether the substance was *defined in* 21 U.S.C. §802. Nor did the state charge, or seek to prove, that Mellouli possessed a substance on the §802 schedules. Federal law (§1227(a)(2)(B)(i), therefore, did not authorize Mellouli's removal." ***Mellouli v. Lynch***, 575 U.S. ___, ___ (2015). *slip op.* at *http://www.supremecourt.gov/opinions/14pdf/13-1034_3dq4.pdf*

■ **Physical abuse by relatives does not necessarily rise to the level of persecution.** The 8th Circuit Court of Appeals recently held the Board of Immigration Appeals was not required to find that physical abuse inflicted on the petitioner by his aunt, cousin, and a group of his cousin's friends amounted to persecution, either in isolation or cumulatively. Citing *Al Tawm v. Ashcroft*, 363 F.3d 740, 743 (8th Cir. 2004), the court observed that "there is no evidence that Barillas-Mendez suffered lasting physical injury, and '[t]he mere presence of some physical harm does not require a finding of past persecution.'" ***Barillas-Mendez v. Lynch***, No. 14-1444, *slip op.* (8th Cir. 6/4/2015) at *http://media.ca8.uscourts.gov/opndir/15/06/141444P.pdf*

■ **Lack of jurisdiction to review hardship claim in cancellation of removal case.** The 8th Circuit Court of Appeals denied the petition for review, holding it lacked jurisdiction to review the Board of Immigration Appeals' discretionary denial of the petitioner's claim of "exceptional and extremely unusual" hardship to his son while he sought the relief of cancellation of removal. "Congress has limited our jurisdiction to review the Attorney General's denial of discretionary cancellation of removal; we may only review 'constitutional claims or questions of law.'" 8 U.S.C. §1252(a)(2)(B)(i) and (D). ***Salas-Caballero v. Lynch***, No. 14-2556, *slip op.* (8th Cir. 5/20/2015) at *http://media.ca8.uscourts.gov/opndir/15/05/142556P.pdf*

ADMINISTRATIVE ACTION

■ **Discrimination against U.S. workers by U.S. employer.** H-2A visa holders are foreign national workers coming to the United States to perform agricultural labor of a temporary or seasonal nature. Part of that process requires certification that the employer has been unsuccessful in locating qualified and eligible domestic workers. That means U.S. workers are not to be discriminated against during the hiring process. As Judge Ellen Thomas noted in her 6/10/2015 decision, "That purpose of the labor certification process was ill-served in this case. To be clear, unlike the labor certification process, nothing in this forum's governing statute or regulations mandates that a U.S. citizen be afforded any preference over an equally qualified alien [*sic*] individual… Both the certification process and this forum's statute are on the same page, however, in mandating that U.S. workers are not to be discriminated against in favor of foreign workers… That is precisely what happened here. Jerry Estopy and Manuel Bortoni, individually and d.b.a. Estopy Farms, are liable for engaging in an immigration-related unfair employment practice in violation of 8 U.S.C. §1324b(a)(1)(B)." *U.S.A. v Estopy Farms*, 11 OCAHO no. 1252 (2015). *slip op.* at *http://www.justice.gov/opa/file/478436/download*

■ **Temporary protected status extended for Somalia.** On 6/1/2015, temporary protected status for Somalia was extended to 3/17/2017. Those Somalis currently holding temporary protected status may register for extension of their TPS status during the 60-day re-registration period running from 6/1/2015 to 7/31/2015. 80 *Fed. Reg.* 31056-61 (6/1/2015). *slip op*. at *http://www.gpo.gov/fdsys/pkg/FR-2015-06-01/html/2015-13094.htm*

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REAL PROPERTY

JUDICIAL LAW

■ **Truth In Lending Act; statute of limitations.** Homeowners commenced suit to rescind their mortgage under the Truth in Lending Act (TILA) three years after the loan origination, claiming that the finance amount was understated in the disclosure. The district court ruled that the disclosure was accurate, and therefore, the right to rescission expired three days after origination and the action was time-barred. The 8th Circuit affirmed. At issue was whether the more lenient disclosure of finance charge under 15 USC §1605(f)(2)(A) applied, which allows a variance of one-half of 1 percent, or whether the more strict 15 USC §1635(i)(2) governs, which allows only a variance of $35 less than actual amount. The 8th Circuit held that the more strict statute applies only in response to a foreclosure. In this case, the homeowners sent notice of their intention to rescind before foreclosure, and therefore, the more lenient disclosure statute applies. Because the finance disclosure complied with 15 USC §1605(f)(2)(A) , the homeowners' right to rescission expired three days after origination and the action was time-barred. ***Beukes v. GMAC Mortgage, LLC***,___ F.3d___ 2015 WL 2237484 (8th Cir. 2015).

■ **Equitable mortgage; foreclosure reconveyance.** Property owners conveyed their property to an entity in exchange for funds used to redeem the property from foreclosure. The property was conveyed to the entity via warranty deed and the parties entered into a contract for deed so the homeowners could repurchase the property. After a payment default, the contract for deed was cancelled. The district court and court of appeals concluded that the conveyance was an equitable mortgage, but that it did not constitute a foreclosure reconveyance under Minn. Stat. §325N.10, subd. 3 because the transaction did not allow the purchaser to acquire title to the property by redeeming the property as a junior lienholder. The court also held that the lender could sell a multi-parcel farm as one parcel where there is evidence that it would be beneficial to the parties and where the owner failed to request or designate separate tracts for individual sale under Minn. Stat. §582.042, subd. 3. ***Roseland v. Wentzell***, 2015 WL 2341602 (Minn. Ct. App. 5/18/2015).

■ **Easement; exclusive easement.** Owner of two contiguous parcels sold Parcel B and intended to grant an easement over Parcel A, but failed to do so. When the owner subsequently sold Parcel A, he reserved an "exclusive easement for ingress, egress and utility purposes…" over Parcel A to himself and then assigned that easement to the owner of Parcel B. Relying on the "exclusive" aspect of the easement, the owner of Parcel B attempted to exclude the new owner of Parcel A from the easement area. The owner of Parcel A commenced suit declaring that they could not be excluded from reasonable use of the easement area and that the owner of Parcel B was using the easement area in excess of the use granted by the easement. The district court granted summary judgment in favor of the owner of Parcel B and held that the term "exclusive easement" was not ambiguous and gave the owners of Parcel B the right to exclude all others, including the owners of Parcel A, from using the easement area. The court of appeals reversed and held that the term "exclusive easement" is ambiguous and could mean exclusive as everyone, or just exclusive as to all others other than the owners of the easement area. The court of appeals remanded the case back to the district court to consider extrinsic evidence and determine the intent of the parties to the easement agreement. ***Apitz v. Hopkins***, — N.W.2d — 2015 WL 2341307 (Minn. Ct. App. 2015).

■ **Mortgage foreclosure; standing.** Homeowner brought suit alleging that the foreclosure of her home was invalid because the assignment of mortgage to a securitized trust violated the terms of the pooling and servicing agreement. The district court dismissed the action and the 8th Circuit affirmed because a mortgagee lacks standing to challenge the foreclosure based on the ground that the foreclosing party violated an agreement to which the mortgagee was not a party. ***Rogers v. Bank of America, N.A.***, ____ F. 3d ___, 2015 WL 3456764 (8th Cir. 2015).

■ **Sale of real property; listing agreement override clause.** Property owner entered into a listing agreement with real estate agent that contained an override clause that required the owner to pay a full commission on any sale within 180 days after the expiration of the listing agreement if the buyer was a person or entity introduced to the property by the agent. The override clause contained a requirement, codified in Minnesota Statutes section 82.66, subd. 1(b)(7), for the listing agent to notify the owner within 72 hours after the expiration of the listing with a list of names of all of the prospects that are protected. The agent did not provide a list of potential candidates within 72 hours after expiration of the listing agreement. However, property owner sent a letter to the agent nearly two months after expiration of the listing agreement agreeing to pay a commission if the property was sold to Pheasants Forever, Inc. The property was sold to Pheasants Forever, Inc. within the 180-day override period. The real estate agent sued the owner for failing to pay a commission. The district court dismissed the suit on summary judgment because the agent failed to provide a protective list to the owner within 72 hours of expiration of the listing agreement and the owner's letter did not constitute a contract entitling the agent to a commission because it lacked essential terms and there was no consideration. The court of appeals affirmed and held that the protective list requirement set forth in Section 82.66, subd. 1(d)(1), is strictly construed and the agent may not enforce the override clause if it does not provide the list within 72 hours after expiration of the listing agreement. The court of appeals also held that the owner's letter lacked consideration because the owner's promise to pay the commission was based solely on past consideration. The court of appeals further stated that promissory or equitable estoppel is not available to the real estate agent because it would defeat the plain language of the statutory requirement. ***Cityscapes Development, LLC v. Scheffler***, ___ N.W.2d ___, 2015 WL 3649307 (Minn. Ct. App. 2015).

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TAX

JUDICIAL LAW

■ **Personal income tax: Dormant commerce clause prevents certain double-taxation of state's residents.** In a decision with potentially far-reaching consequences for state revenue departments, the Supreme Court ruled that Maryland's personal income tax scheme, which taxes income that its residents earn both within and outside the state but does not provide residents with a full credit against the income taxes that they pay to other states, violates the dormant commerce clause. The decision, premised as it was on the dormant commerce clause, drew dissents from Justice Thomas (there is no dormant commerce clause) and Justice Scalia (there ought not be any extension of the dormant commerce clause). Justice Ginsburg also dissented (states are justified in taxing 100 percent of the income of their residents). The decision is notable for its potential impact on states' treasuries, and also for the continued challenge to discern the parameters of the dormant commerce clause, especially in the state tax setting. The Court is also arguably signaling a limit on the "double-taxation" of residents. ***Comptroller of Treasury of Maryland v. Wynne***, 135 S. Ct. 1787 (2015).

■ **Personal income tax: Cancellation of debt not income when repayment schedule entered.** Forgiven debts constitute income. Determining when a debt is "forgiven" however, can be the trick. Married taxpayers petitioned for a redetermination after the Service determined that a loan related to the husband's business had been forgiven and therefore constituted taxable income. The court ruled that the couple did not realize cancellation of indebtedness income because credible testimony showed that loan was outstanding and being repaid via payroll deductions and further that the husband didn't receive Form 1099-C discharging the loan. It was not conclusive, the court continued, that the debtor failed to take collection action before the state limitations period for collection expired, nor was it conclusive that the taxpayer failed to make payments on the loan until the couple's return was audited**.** ***Johnson v. Comm'r***, No. 12767-13, 2015 WL 2180652, at *1 (T.C. 5/11/2015).

■ **Personal income tax: Commuting, even long distances, remains a nondeductible personal expense.** Reminding the taxpayer that "deductions are a matter of legislative grace," the tax court denied a college professor's claimed deduction for mileage expenses between the taxpayer's home and the college at which he taught. The taxpayer lived 470 miles from the college; regardless of distance, however, commuting remains a nondeductible personal expenditure. Various other deductions, including gambling losses and various medical and dental expenses, were also disallowed. ***Renner v. Comm'r***, No. 26481-12, 2015 WL 3464885, at *4 (T.C. 6/2/2015).

■ **Lease income: Matter of first impression.** A lessor was required to include a $1 million lease payment in the year it was received, as the year in which an amount of fixed rent was payable and thus fixed in the absence of specific allocation. The taxpayer and commissioner were disputing the impact of Section 467, a provision which, the court noted, was enacted "to prevent lessors and lessees from mismatching the reporting of rental income and expenses." The section provides, *inter alia*, "the