

STATE OF MINNESOTA

Executive Department



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DEC 21 2020

President of the Senate

Governor Tim Walz

NOTICE OF APPOINTMENT

Bradford S. Delapena

Because of the special trust and confidence I have in your integrity, judgment, and ability, I have appointed and commissioned you to have and to hold the office of:

JUDGE

MINNESOTA TAX COURT

Effective: January 4, 2021

Expires: January 4, 2027

This appointment carries with it all rights, powers, duties, and emoluments granted by law and pertaining to this position until this appointment is superseded or annulled by me or other lawful authority or by any law of this State.

Signed and sealed December 14, 2020.



Handwritten signature of Tim Walz in black ink.

Tim Walz

Governor

Handwritten signature of Steve Simon in black ink.

Steve Simon

Secretary of State

Reappointment

Filed on December 21, 2020
Office of the Minnesota
Secretary of State,
Steve Simon

Bradford S. Delapena
245 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155
(612) 201-2359
brad.delapena@state.mn.us

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October 14, 2020

The Honorable Tim Walz
Governor of Minnesota

DEC 21 2020

Governor Walz:

President of the Senate

Please accept this letter in support of my application to be re-appointed a Judge of the Minnesota Tax Court. To function properly, the tax court must be perceived as legitimate. Thus, its judges must be non-partisan, learned in tax law, and neutral as between the government and taxpayers. My eight years of service on the court demonstrate that I possess these qualities.

I have had six judicial colleagues during my tenure on the court. What follows is a list of representative accomplishments I achieved working closely with those colleagues:

- Eliminated a backlog of thousands of cases by placing all matters on written scheduling orders and encouraging parties either to actively litigate cases or to settle them.
- Contracted with Thompson Reuters for Westlaw electronic research package.
- Secured the services of MMB's Small Agency Resource Team to assist with budgeting, internal controls, and human resource matters.
- Obtained funding for three full-time judicial law clerks.
- Implemented a modern electronic case management system.
- Created a program that furnishes parties no-cost judicial mediation in suitable cases by having all judges complete 45-hour mediation training.
- Presented Minnesota State Patrol live-shooter training to all court staff.
- Modernized the court's website.
- Secured the State's three executive branch courts a liaison in the Governor's Office.
- Installed a socially distanced courtroom leveraging technology to allow (a) fewer persons physically present, (b) remote witness appearances, and (c) the exclusive use of electronic documents.
- Conducted the court's first completely remote trial (via Zoom).
- Filed the court's first Affirmative Action Plan.

I have also submitted with my application a document summarizing the decisions I have written as a judge. I think my most significant achievement on the court has been to improve the quality and consistency of its written decisions, both my own and those of my colleagues. I would be honored by the opportunity to continue serving.

Very truly yours,

Bradford S. Delapena

Important Changes to Office Operations: COVID-19 Information

**OFFICE OF THE MINNESOTA
SECRETARY OF STATE STEVE SIMON**

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Application for the position Judge

Part I: Position Sought

Agency Name: Tax Court
Position: Judge

Part II: Applicant Information

Name: Bradford Delapena
Phone: (651) 296-1270
Mailing Address: 245 MN JUDICIAL CENTER; 25 REV. DR. MARTIN LUTHER KING JR. BLVD St. Paul 55155
Email: brad.delapena@state.mn.us
County: Ramsey
Felony Conviction: No
Mn House District: 64A
US House District: 4
Recommended by the Appointing Authority: False



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Part III: Appending Documentation

Cover Letter and Resume

Type	File Type	
Cover Letter	application/pdf	
Resume	application/pdf	

Additional Documents (.doc, .docx, .pdf, .txt)**Type****File Name**

No additional documents found.

Part IV: Optional Statistical Information

Race and Natural Origin: White or Caucasian**Political Party:** Democratic-Farmer-Labor**Age:****Gender:** Male**Disability:** No**Hispanic, Latino or Spanish origin:** No Answer**Veteran:** No Answer**Part V: Signature**

Signature: Bradford S. Delapena**Date:** 10/15/2020 9:36:19 AM**AGENCY DETAILS**

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BRADFORD S. DELAPENA

245 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155
(612) 201-2359
brad.delapena@state.mn.us

WORK HISTORY

12/12 – Present **Judge, Minnesota Tax Court**

- Resolve disputes between property owners and counties concerning the correct value and classification of real property.
- Adjudicate taxpayer appeals from orders of the Minnesota Commissioner of Revenue.
- Chief Judge January 2013 to January 2015; June 2017 to present.

5/07 – 12/12 **Solo Practitioner, Bradford Delapena, Ltd.**

- Represent individuals, businesses, and the Minnesota Board of Public Defense in civil controversies and appeals.
- Represent criminal defendants appealing convictions and responding to State appeals of pro-defense pretrial rulings by district courts.
- Represent individuals and businesses before the Minnesota Department of Revenue and the Minnesota Tax Court.

1/00 – 4/07 **Assistant Attorney General, Minnesota Attorney General's Office, Tax Litigation Division**

- Division Manager, November 2004 to April 2007. Also managed Education and Consumer divisions.
- Represent Commissioner of Revenue in taxpayer-initiated suits challenging assessments, denials of refund claims, collection actions, etc.
- Advise Commissioner on risks of pending litigation, and on potential for contemplated agency action to precipitate future litigation. Provide counsel reconciling Commissioner's litigation activities and long-term objectives.

4/92 – 12/99 **Assistant State Public Defender, Minnesota State Public Defender**

- Represent indigent criminal defendants appealing convictions and pursuing post-conviction actions.

1998 – 2017 **Adjunct Professor of Law, University of Minnesota Law School**

- State Constitutionalism and Criminal Procedure, Fall 1998
- Introduction to American Law, Summer 2010-2020

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WORK HISTORY

- 1994 – 2007 **Adjunct Professor of Law**, William Mitchell College of Law
- Advanced Criminal Procedure, 1994-1998
 - Criminal Constitutional Law, 1995-1996
 - Substantive Criminal Law, 1996, 1999, 2007
- 1990 **Summer Associate**, Popham, Haik, Schnobrich & Kaufman, Ltd.

EDUCATION

- J.D., cum laude**, 1991, University of Wisconsin Law School
- B.A.**, Philosophy & Economics, 1986, University of Pittsburgh

PUBLICATIONS

- Individual Liberties Claims: Promoting a Healthy Constitution for Minnesota*, 19 Wm. Mitchell L. Rev. 683 (1993)

PROFESSIONAL ACTIVITIES

- Member**, MSBA Commission on Juvenile Sentencing for Heinous Crimes
Appointed December 2016
- Member**, Minnesota Supreme Court Criminal Rules Advisory Committee
Appointed December 2007; Reappointed December 2010
- Member**, Minnesota Supreme Court Civil Appellate Rules Advisory Committee
Appointed July 2008
- Presenter** at various Continuing Legal Education programs.

COMMUNITY ACTIVITIES

- Board Member, Officer, Instructor**, 2000-Present, Twin Cities Aikido Center
- Volunteer Judge**. I regularly serve as judge for various law school moot courts and high school and college mock trial programs.
- Volunteer Education Consultant**, 1999, Open Society Institute, New York.
Assisted with selection of scholars for Mongolian Professional Development Fellowship.
- Volunteer Attorney**, 1992-96, Minnesota Lawyers Committee. Represented indigent foreign nationals seeking political asylum in the U.S.

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President of the Senate



FOSTER & BREVER, PLLC

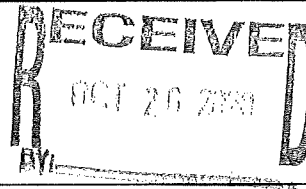
ATTORNEYS AT LAW

ROBERT J. FOSTER (612) 436-3290
THOMAS E. BREVER (612) 436-3291
ANDREW T. BREVER (612) 455-8942
OF COUNSEL, ERIC B. BREVER (612) 436-3294

October 22, 2020

Ms. Jaqueline Congello
Associate Director of Appointments
Office of Governor Tim Walz

75 Rev Dr. Martin Luther King Jr. Blvd.
Suite 130
St. Paul, MN 55155-1611



RE: MN Tax Court Judge

Dear Ms. Congello:

I am writing to recommend reappointment of Judge Brad Delapena to the position of Tax Court Judge. Judge Delapena has exhibited the best qualities of a judge, deciding cases on evidence and maintaining an independence of thinking uninfluenced by politics, favoritism towards any parties, and has demonstrated a commitment to fairness. The Tax Court has suffered in the past from appointments of persons unsuited to act as judges. Judge Delapena has restored confidence in the fairness of the process and decision-making of the court.

Sincerely,



Thomas E. Brever

TEB/brb

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Summary of Legal Career
Bradford S. Delapena
October 2020

As a practicing lawyer, I specialized in appellate law—both criminal and civil—and in state tax controversies.

From 1992 through 1999, I was an Assistant State Public Defender handling appeals to the Minnesota Court of Appeals and Supreme Court. I challenged criminal convictions for indigent persons, obtaining outright reversals for several clients convicted of serious felonies including murder and attempted murder.

In January 2000, I was appointed an Assistant Minnesota Attorney General. I worked for seven years in the Tax Litigation Division, which I managed from late 2004 through early 2007. I also managed the Education and Consumer Protection Divisions for a time. I handled a wide variety of state tax controversies including matters involving individual income tax, corporate franchise tax, centrally-assessed property tax, withholding tax, gasoline excise tax, and sales and use tax. Amounts in issue ranged from under one hundred dollars to hundreds of millions of dollars.

From May 2007 through December 2012, I worked in private practice for Bradford Delapena, Ltd. As a solo practitioner, I handled a wide variety of cases including criminal and civil appeals and state tax matters. In addition, the Board of Public Defense obtained from the Attorney General Office consent for me (rather than the AGO) to represent the Board in several important public defense funding cases.

In November 2012, Governor Dayton appointed me Judge of the Minnesota Tax Court. Although Tax Court cases are commonly referred to as “appeals,” they are really taxpayer-initiated civil suits seeking a declaration that some final action by a state taxing authority—the valuation of real property or the issuance of an assessment order—is incorrect or invalid. A Tax Court Notice of Appeal functions as the complaint in a conventional civil action. Once initiated, cases proceed in accordance with the Minnesota Rules of Civil Procedure, and include discovery, dispositive and non-dispositive motion practice, a bench trial, the preparation of formal findings of fact and conclusions of law, and post-trial motion practice. The Tax Court is analogous to an Article VI district court with limited jurisdiction.

In addition to practicing law, I have taught a variety of courses as an adjunct professor at both the University of Minnesota Law School and the William Mitchell College of Law. I have also served on the Minnesota Supreme Court’s Criminal and Civil Appellate Rules advisory committees.

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Published and Unpublished Cases
Bradford S. Delapena

Attached are two case lists. The first contains 203 decisions I have filed as a Tax Court judge; the second, 189 decisions that courts filed in matters I handled as counsel. Because lists of this length are not very helpful standing alone, I identify from the first list (by item number and title) some noteworthy cases I have decided, then some shorter orders that convey a sense of my judicial writing. From the second case list, I note some significant matters I handled as counsel.

Representative Decided Cases:

- 4 *CenterPoint Energy Res. Corp. v. Comm'r*, 2020 WL 4045620 (Minn. T.C. July 15, 2020) (valuing CenterPoint's natural gas distribution pipeline)
- 47 *Menard, Inc. v. Cty. of Anoka*, 2019 WL 237158 (Minn. T.C. Jan. 15, 2019) (valuing Menard's large big box retail store in Coon Rapids)
- 56 *Gen. Mills, Inc. v. Comm'r*, 2018 WL 4053060 (Minn. T.C. Aug. 17, 2018) (resolving computational issues concerning Minnesota's R&D credit)
- 121 *Blandin Paper v. Cty. of Aitkin*, 2015 WL 3767339 (Minn. T.C. June 16, 2015) (valuing Blandin's 180,000-acre forest in Northern Minnesota)
- N/A *Kimberly-Clark Corp. v. Comm'r*, 2015 WL 3843986 (Minn. T.C. June 19, 2015) (rejecting the taxpayer's multi-million dollar claim that Minnesota had surrendered its sovereign taxing authority by entering into an interstate tax compact)
- 145 *Ford Motor Co. v. Cty. of Ramsey*, 2014 WL 3888226 (Minn. T.C. Aug. 5, 2014) (valuing Ford's St. Paul automobile assembly-plant site)

Shorter Judicial Orders:

- 3 *IRC Riverdale Commons, LLC v. Cty. of Anoka*, 2020 WL 4669433 (Minn. T.C. Aug. 7, 2020) (brief order denying County's request to hold IRC in contempt of court)
- 82 *Sinclair v. Comm'r*, 2017 WL 3482767 (Minn. T.C. Aug. 11, 2017) (20-page decision commencing with a clear description of a complex corporate tax issue)
- 92 *Signature Flight v. Cty. of Ramsey*, 2017 WL 1377751 (Minn. T.C. Apr. 7, 2017) (brief order resolving a routine pretrial issue)
- 100 *CenterPoint v. Comm'r*, 2016 WL 6068337 (Minn. T.C. Oct. 14, 2016) (longer order chastising the government for withholding material evidence)
- 195 *Odunlade v. Cty. of Hennepin*, 2013 WL 2951059 (Minn. T.C. June 7, 2013) (denying the County's motion to dismiss where the County induced the taxpayers' procedural default)

I include the following sub-lists with parentheticals to indicate the broad range of matters I have handled in Minnesota's appellate courts. Items 1-50 reflect cases I handled in private practice between 2007 and 2012 (8 in the Supreme Court; 38 in the Court of Appeals; 3 in the Eighth Circuit; and 1 in the Tax Court).

Published and Unpublished Cases
Bradford S. Delapena

- 1 *Mauer v. Comm'r*, 829 N.W.2d 59 (Minn. 2013) (income tax residency case)
- 17 *J.E.B. v Danks*, 785 N.W.2d 741 (Minn. 2010) (establishing the proper scope of statutory immunity for “good faith” reports of child sexual abuse)
- 21 *In re Welfare of J.B.*, 782 N.W.2d 535 (Minn. 2010) (protecting state budget for representing indigent criminal defendants against intrusion for other purposes)
- 36 *Morris v. State*, 765 N.W.2d 78 (Minn. 2009) (establishing that the Minnesota Constitution’s right to assistance of counsel extends to indigent misdemeanor defendants pursuing first-review by post-conviction petition)

Items 51-82 reflect cases I handled as an Assistant Minnesota Attorney General from 2000 through early 2007 (6 in the Supreme Court; 5 in the Court of Appeals; 3 in federal district court; and 18 in the Tax Court).

- 52 *State ex rel. Humphrey v. Philip Morris USA, Inc.*, 713 N.W.2d 350 (Minn. 2006) (upholding the State’s authority to impose upon all cigarettes a Health Impact Fee with a revenue stream of approximately \$180 million annually)
- 68 *Amoco Corp. v. Comm'r*, 658 N.W.2d 859 (Minn. 2003) (ruling that the State’s “in lieu” gasoline excise tax does not bar imposition of the corporate franchise tax)
- 71 *Walker v. Zuehlke*, 642 N.W.2d 745 (Minn. 2002) (upholding the constitutionality of tax-base-sharing throughout Minnesota’s Iron Range)

Items 83-189 reflect cases I handled as an Assistant State Public Defender from 1992 through 1999 (12 in the Supreme Court; 93 in the Court of Appeals; and 1 in federal district court).

- 105 *State v. Traxler*, 583 N.W.2d 556 (Minn. 1998) (holding that an expert witness’ “guesstimate” concerning the amount of drugs that *might* have been manufactured with seized coffee filters could not support a weight-based drug conviction)
- 162 *State v. Harris*, 521 N.W.2d 348 (Minn. 1994) (reversing first-degree murder conviction and adopting an analytical framework limiting the admissibility of evidence that a prosecution witness has requested protection from the accused)
- 167 *State v. McCuiston*, 514 N.W.2d 802 (Minn. Ct. App. 1994) (reversing second-degree murder conviction and adopting the common law Castle Doctrine)
- 172 *State v. Post*, 512 N.W.2d 99 (Minn. 1994) (reversing attempted second-degree murder conviction and clarifying the standard for the defensive use of deadly force outside the home)

Not included on this final sub-list is *State v. George*, 557 N.W.2d 575 (Minn. 1997) (adopting a heightened standard for consent searches in Minnesota), which I argued in the Supreme Court for another lawyer.

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