

Fall 2020

# Moss & Barnett Advocate

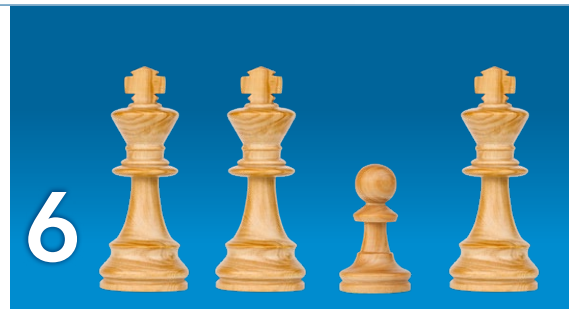
## Co-Parenting in the Era of COVID-19

By Brittney M. Miller



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By Aylix K. Jensen



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Moss & Barnett

# Co-Parenting in the Era of COVID-19



When Governor Walz signed the initial Stay at Home Order on March 25, 2020, he made an important exception for two-household families — that is, families who have experienced divorce or separation. Recognizing that parenting time schedules require a back-and-forth between two homes, the Stay at Home Order specifically exempted existing parenting time schedules from its terms. These are certainly extraordinary and stressful times for everyone, but for two-household families, the pandemic has created a unique set of challenges.

## Emerging Issues and Guidance

Although the Stay at Home Order has been eased in Minnesota, the Centers for Disease Control and Prevention (“CDC”) is still recommending that families limit interactions and gatherings to their immediate household. This recommendation is complicated for two-household families. Co-parents may have different risk-tolerance levels when it comes to the coronavirus. In the context of a pandemic, a once innocuous issue has the potential to become a source of conflict.

Co-parents may disagree about allowing their children to travel, participate in sports, or spend time with friends and family members outside of their “bubble.” They may have different views of what precautions are required, especially if someone is high risk for COVID-19 in one household (e.g., a grandparent, stepparent, or step-sibling) but not the other.

The American Academy of Matrimonial Lawyers (“AAML”) and the Association of Family and Conciliation Courts (“AFCC”) have issued *Seven Guidelines for Parents Who Are Divorced / Separated and Sharing Custody of Children During the COVID-19 Pandemic*. These Guidelines encourage co-parents to:

- follow CDC recommendations to maintain a healthy home;
- provide calm and age-appropriate answers to any questions children have about the pandemic;
- follow the court-ordered parenting time schedule when possible;
- embrace virtual forms of parent-child communication like Skype and FaceTime;

- communicate openly and honestly about COVID-19 concerns and potential exposure;
- be accommodating and flexible with the parenting time schedule; and
- be understanding if one parent is facing a financial hardship.

## Resolving Disagreements

The Guidelines are a useful resource and starting point for two-household families navigating pandemic-related issues. But if an issue arises that cannot be resolved between parents, there are a number of mediators who offer their services via video conference. Most video conference platforms allow the mediator to caucus between virtual breakout rooms and negotiate a settlement in the same manner they would in-person.

## Access to Courts

If mediation is unsuccessful, judicial officers are still holding hearings by video conference. While most hearings are being scheduled two to three months out, the court may expedite the hearing if your case involves an urgent health or safety issue.

## Conclusion

We are now nine months into the pandemic, and even with the development of multiple vaccines, it is unclear when the pandemic will end and what post-pandemic life will look like. New issues will likely continue to arise, making it all the more important to find creative and flexible solutions for families. If you want to know more about how COVID-19 may impact your family law matter and what options you have, please contact one of Moss & Barnett’s family law attorneys to assist you.



**Brittney M. Miller**

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Brittney M. Miller is a member in our Family Law group. She assists clients in all family-related matters, including parenting, support, division of assets, stepparent and same-sex adoptions, antenuptial agreements, and many other issues confronting modern families.

## Team News

### Midwest Real Estate News Lists Moss & Barnett Among Top Law Firms for Real Estate in 2020

We are pleased to announce that *Midwest Real Estate News* has named Moss & Barnett among the top regional law firms for real estate in 2020. Each year, *Midwest Real Estate News* issues its "Best of the Best" edition, which ranks the industry's

top law firms from 14 Midwestern states based on the number of real estate transactions in the past year that occurred within those states.



"We are honored to be recognized by *Midwest Real Estate News* as one of the leading real estate law firms in the Midwest. We are grateful for the many relationships that provide us with the opportunity to work on challenging and exciting transactions throughout the region."

- Tim Gustin, Chair, Moss & Barnett Real Estate Group

### Moss & Barnett's COVID-19 Resource Page

The COVID-19 virus is having significant and rapidly changing legal implications for both businesses and individuals. Moss & Barnett has created a resource page to provide information that may be helpful in your decision-making. We know that this

is a difficult and stressful time for everyone, and new challenges will emerge as this situation continues to evolve. Together, we are well-equipped to navigate these challenges and overcome these trying times.

Visit [LawMoss.com/news-moss-and-barnett-covid-19-resource-page](https://www.lawmoss.com/news-moss-and-barnett-covid-19-resource-page) to learn more.



# We're Proud to Recognize

For over 125 years, our lawyers, paralegals, and professional staff have demonstrated dedication and tenacity in serving the needs of our clients. As we look to the future, our dedication strengthens, as does our appreciation for our clients and our community. Quality legal service is our profession, our business, and our privilege.



## Notable Women in the Law | 2020

**Jana Aune Deach**  
*Secretary and Director*

Selected by *Twin Cities Business*



## The Minnesota 500, The Most Powerful Business Leaders | 2020

**Brian T. Grogan**  
*President and Chief Executive Officer*

Selected by *The Minnesota 500*



## Pro Bono All Star | 2020

**Brian J. Schoenborn**  
*Attorney*

Recognized by *Minnesota State Bar Association*

## Comstock Construction

*Moss & Barnett Client*

Comstock Construction began by straightening barns, after Clark Morrell Comstock decided to auction his farm and move to town. From those humble beginnings, Comstock Construction has remained a fourth generation, family-owned business, while growing to 125 employees and three locations in Fergus Falls, Minnesota, and Fargo and Wahpeton, North Dakota. From corporate office buildings to healthcare facilities and schools, Comstock Construction takes great pride in both their legacy and their bright future. Recent notable projects include the North Dakota Heritage Center on the North Dakota State Capitol grounds, Bobcat expansion at their headquarters in Bismarck, North Dakota, and many primary school and university projects throughout Minnesota, North Dakota, and South Dakota. Not only have these projects made a significant positive impact in the communities in which they are developed, Comstock Construction has also been a leading regional employer with over 40% of their team employed a decade or more at the company. Moss & Barnett is honored to serve as legal counsel to Comstock Construction and their exceptional leadership team.



### Bobcat Acceleration Center

Recently completed by Comstock Construction in Bismarck, ND, the 86,000 square foot space serves as the worldwide engineering hub for Bobcat's product development.

# Three New Attorneys Have Joined Our Team

Macey is a member of Moss & Barnett's multifamily and commercial real estate finance and real estate teams. Her practice is primarily focused on representing lenders who originate and sell loans secured by multifamily real estate projects to secondary market investors, Fannie Mae and Freddie Mac. Within this practice, Macey conducts title examinations, survey examinations and other due diligence, reviews legal opinions, and prepares loan documents. Prior to joining Moss & Barnett, Macey served as a judicial extern to the Honorable Mark J. Kappelhoff in Hennepin County District Court. As a law student at the University of Minnesota Law School, Macey competed in the Maynard Pirsig Moot Court and was a Best Oralist Competition semi-finalist.

## Macey L. Muller

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Multifamily and Commercial  
Real Estate Finance, Real Estate



Megan is a member of Moss & Barnett's litigation team assisting businesses and individuals with commercial litigation disputes. Her litigation experience includes drafting of discovery and memoranda, deposition preparation and review, investigation and witness interviews, mediation, pretrial motion practice, and trial preparation. Prior to joining Moss & Barnett, Megan served as a judicial law clerk at the Minnesota Court of Appeals. She is a graduate of the University of Wisconsin Law School and was a managing editor for the *Wisconsin Law Review*. While in law school, Megan was a student attorney with the Restorative Justice Project and was a law clerk for the Hennepin County Public Defender's Office.

## Megan J. Renslow

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Litigation



April is a member of Moss & Barnett's family law team assisting clients in all family law related matters, including dissolution proceedings, paternity, custody, parenting time, child support, spousal maintenance, orders for protection, and distribution of marital assets and debts. Prior to joining Moss & Barnett, April clerked for the Honorable Elizabeth V. Cutter in Hennepin County Family Court, gaining valuable insight into the court's perspective on family law litigation. While attending the University of Minnesota Law School, April earned honors for legal writing, was a staff member and online editor of the *Minnesota Law Review*, and served as a student director of the University's Family Law Clinic.

## April L. Will

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Family Law



# Are Your Company's Debt Collection Practices or Policies Creating an Impermissible Disparate Impact?



Your company is sued by a regulatory agency in a class-action lawsuit. The agency claims that your company's debt collection practices and policies cause minorities to be treated differently. Your company has no discriminatory intent. However, the agency contends that your company's practices and policies violate the Equal Credit Opportunity Act ("ECOA"). Your company then pays a six-figure civil penalty to resolve the claim of discriminatory conduct. This scenario is more common than you may believe.

## Establishing a Disparate Impact Claim

The Consumer Financial Protection Bureau ("CFPB") is tasked with ensuring that financial institutions comply with fair lending laws, including addressing discrimination in the consumer credit industry. The ECOA was enacted to protect borrowers seeking credit. This legislation prohibits credit discrimination based on race, color, religion, national origin, sex, marital status, age, or because the consumer receives public assistance. 15 U.S.C. § 1691(a)(1) (2012); see 12 C.F.R. pt. 1002.2.

**There are two main theories of liability under the ECOA:**

### 1. Disparate Treatment.

In cases of disparate treatment, the creditor treats an applicant differently based on protected class status. Proof of discriminatory intent is required in these cases.

### 2. Disparate Impact.

In cases of disparate impact, the creditor's facially neutral practices or policies have a disproportionate adverse effect on a member of a protected class. A disparate impact case does not require proof of discriminatory intent or proof that every member of the protected class was adversely impacted.

To establish a *prima facie* case under a disparate impact theory, a plaintiff must identify a specific facially neutral policy or practice that results in discrimination. The plaintiff must also demonstrate with statistical evidence that the practice or policy has an adverse effect on the protected group. There is no violation of the ECOA if a policy or practice can be justified by "business necessity" and there is no less discriminatory alternative.



**"The ECOA protects borrowers seeking credit. This legislation prohibits credit discrimination based on race, color, religion, national origin, sex, marital status, age, or because the consumer receives public assistance."**

## Three Recent Enforcement Actions

- On July 15, 2020, the CFPB filed a lawsuit against Townstone Financial, Inc. in federal district court in the Northern District of Illinois. In the Complaint, the CFPB asserted that from 2014 through 2017, the creditor drew almost no applications for properties in African American neighborhoods and few applications from African Americans. In addition, the CFPB alleged that the creditor engaged in acts or practices that discouraged prospective applicants living in African American neighborhoods from applying for mortgage loans. The CFPB sought an injunction against the creditor, as well as damages, redress to consumers, and the imposition of a civil money penalty. The case is still pending.



- On August 23, 2017, the CFPB entered into a Consent Order with American Express Centurion Bank and American Express Bank, FSB (the “banks”), resulting from allegations of discrimination against consumers in Puerto Rico, the U.S. Virgin Islands, and other U.S. territories. The CFPB contended that the banks provided credit and charge card terms that were inferior to those available in the 50 U.S. states. Specifically, the banks assigned non-U.S. territory and U.S. territory delinquent accounts to different collection agencies. This resulted in less advantageous debt settlements for similarly situated non-U.S. territory customers. In addition, the CFPB asserted that the banks discriminated against certain consumers with Spanish-language preferences. The banks paid approximately \$95 million in consumer redress during the review process and were required to pay an additional \$1 million to compensate the harmed consumers.
- On February 2, 2016, the CFPB and Department of Justice (“DOJ”) entered into a Consent Order with Toyota Motor Credit Corporation (“Toyota”), resulting from allegations that Toyota violated the ECOA. Specifically, the CFPB and DOJ asserted that Toyota adopted policies that resulted in African American and Asian and Pacific Islander borrowers paying higher interest rates for their auto loans than non-Hispanic white borrowers. As part of the resolution, Toyota was required to pay up to \$21.9 million in restitution and ordered to change its pricing and compensation system.

## Collection Agencies are Subject to the ECOA

Like lenders, the ECOA also applies to collection agencies. Inconsistent application of state specific debt collection practices

could lead to claims of disparate impact. For example, the Colorado Fair Debt Collection Practices Act prohibits debt collectors from communicating credit information to a consumer reporting agency earlier than 30 days after an initial notice has been mailed to the consumer. Colo. Stat. § 5-16-108. To avoid this state-specific requirement, collection agencies attempting to collect debt from consumers in Colorado may decide against credit reporting, despite reporting in the other states in which they collect. The different collection practice in Colorado relative to other states could create a disproportionate adverse effect against members of a protected class.

## Prepare for the Future

In a changing administration, there may be an increase in enforcement actions by the CFPB and DOJ relating to impermissible disparate impact. Thus, now is an ideal time for financial institutions to reevaluate the effect and unintended consequences of their policies and practices. Please reach out to your Moss & Barnett attorney for assistance.



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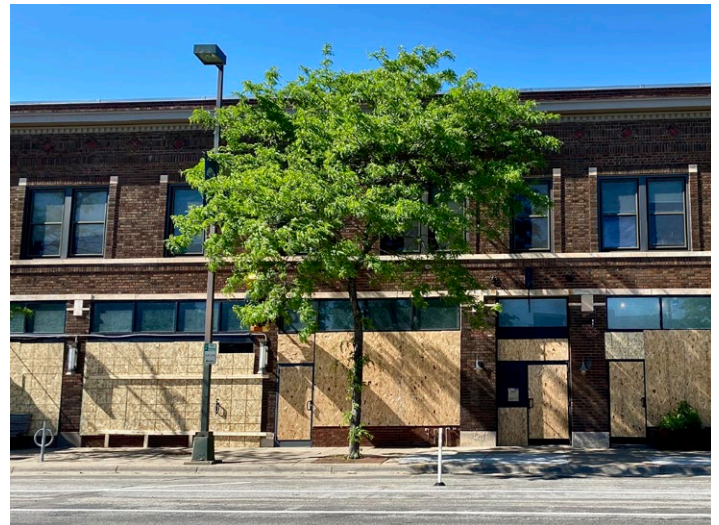
Aylix K. Jensen is a member of our Financial Services group. Aylix defends marketplace lenders, collection agencies, creditors, and other businesses in consumer litigation. She has experience defending individual and class action claims brought under the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, and the Telephone Consumer Protection Act, as well as other related state and federal laws and regulations. Aylix also counsels organizations in the financial services industry on regulatory compliance.

# Moss & Barnett Spirit of Giving

**While we pursue our professional goals, we also endeavor to improve the quality of life in our communities and around the world.** Members of the Moss & Barnett team apply the same dedication to service by making significant contributions of their time and resources to charitable organizations important to all of us.

## The Minneapolis Foundation Fund for Safe Communities

In keeping with the Moss & Barnett tradition of helping out with relief funding for community crises and major natural disasters, our board of directors determined to contribute to The Minneapolis Foundation Fund for Safe Communities by matching employee contributions up to \$10,000. The firm's employees stepped up to the plate and met that challenge, which the firm then matched. The Minneapolis Foundation recently announced that it has awarded over \$500,000 in grants to support 40 community-based groups that are using a broad spectrum of approaches and strategies to serve Twin Cities residents in the aftermath of George Floyd's tragic death. We support and applaud the Fund for its community efforts to pursue justice, equity, and healing. To learn more, visit their website: [minneapolisfoundation.org/fund-for-safe-communities](https://minneapolisfoundation.org/fund-for-safe-communities)



## Breaking Free

This holiday season – and for the past eight years – the women attorneys of Moss & Barnett “adopted” families who are in the Women’s Program at the non-profit Breaking Free. Breaking Free helps hundreds of women escape systems of prostitution and sexual exploitation through advocacy, direct services, housing, and education. Our attorneys supply and wrap gifts and gift cards to fulfill each family's wish list, helping to ensure that these families have a joyful holiday. In addition to our women attorneys adopting Breaking Free families every holiday season, Moss & Barnett’s employees donate their time and various daily items in need throughout the year. To learn more about Breaking Free, visit [breakingfree.net](https://breakingfree.net).



“Breaking Free provides a comprehensive response to the complex problem of sex trafficking by providing services and housing to the victims, educating law enforcement and the judicial system, and raising public awareness. Supporting Breaking Free aids in the prevention of trafficking and implementing long-term social change.”

- Jana Aune Deach, Moss & Barnett Attorney



While our ability to participate as in-person volunteers was limited due to COVID-19 considerations, M&B Cares was able to contribute to these service projects in 2020:

## M&B Cares

### FamilyWise

[familywiseservices.org](http://familywiseservices.org)

M&B Cares collected healthy snacks and toys for FamilyWise, a non-profit organization that offers supervised parenting and safe exchanges between non-custodial parents and their children in a safe environment in one of its five locations.



### Hope Academy School Supply Drive

[hopeschool.org](http://hopeschool.org)

M&B Cares was pleased to again sponsor a school supply drive this year – this time for a 1st grade classroom of 20 students at Hope Academy, a diverse K-12th grade inner city school located in Minneapolis, Minnesota.

Pictured from left to right: Jana Aune Deach and Andy Malec



### Sneakers for Soldiers

[sneakersforsoldiers.org](http://sneakersforsoldiers.org)

M&B Cares collected cash donations in support of Sneakers for Soldiers that provides athletic shoes to deployed combat troops from all branches of the military. The soldiers are able to select the brand and style that best fits their feet and their needs. We were able provide 21 pairs of customized sneakers to our brave men and women in the military.



### Beyond New Beginnings

[beyondnewbeginnings.com](http://beyondnewbeginnings.com)

M&B Cares made a cash donation to Beyond New Beginnings, a non-profit organization dedicated to supporting young families by providing safe, secure housing, programming, and high-quality child care to those currently enrolled or graduated from the New Beginnings program.



### Hope Academy Christmas Book Giveaway

[hopeschool.org/Christmasbooks](http://hopeschool.org/Christmasbooks)

M&B Cares made a cash donation to the Hope Academy Christmas Book Giveaway so that each of the school's students would receive a set of two gift-wrapped books. Hope Academy is a private inner-city school serving urban youth located in Minneapolis, Minnesota.





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Moss & Barnett

*At the close of another year, all of us at  
**Moss & Barnett**  
gratefully pause and join together to say*

**Thank You**

*and to wish you every Happiness this Holiday Season and throughout the coming year*

*This holiday season in lieu of traditional cards and gifts, we are making donations to the following organizations:*

**Loaves and Fishes**

To provide healthy meals to Minnesotans in areas where need is greatest ([loavesandfishesmn.org](http://loavesandfishesmn.org))

**Feed My Starving Children**

Feeding God's starving children hungry in body and spirit ([fmssc.org](http://fmssc.org))

**Good in the 'Hood**

To influence, inspire and impact individuals, families and entire communities for good ([goodinthehood.org](http://goodinthehood.org))

**Ronald McDonald House, Minneapolis Chapter**

We keep families together when it matters most ([rmhtwincities.org](http://rmhtwincities.org))

**Anna Marie's Alliance**

To provide a safe place for victims of domestic abuse and to achieve systems change that reduces violence ([annamaries.org](http://annamaries.org))

**Catholic Charities**

To serve and enhance human dignity for people of all faiths and beliefs ([ccstcloud.org](http://ccstcloud.org))