

Davis, Shaull Examine Minnesota's Adoption of Common Interest Doctrine in *Bench & Bar* Article

In the News

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Stinson attorneys [Andy Davis](#) and Connor Shaull authored "Minnesota Supreme Court recognizes the common interest doctrine," an article for *Bench & Bar of Minnesota*, that discusses what Minnesota legal professionals need to know, and what remains to be settled, now that the state has formally recognized and adopted the common interest doctrine.

Common interest agreements have long been used by the state's practitioners to share otherwise privileged information among parties with a common interest. However, it wasn't until a recent Minnesota Supreme Court decision in *Energy Policy Advocates v. Ellison* that the state formally recognized the common interest doctrine, announcing a six-part test to regulate whether and under what circumstances the doctrine applies.

"The Court's decision in *Energy Policy Advocates* is a welcome development for Minnesota practitioners, and the Court's formulation of the doctrine provides much needed clarity regarding when the doctrine applies," Davis and Shaull write. They continue and note that in applying the doctrine, trial courts will need to address a number of key issues:

- When is the asserted interest "legal" in nature, and when it is a mere policy or commercial interest?
- What happens when those interests overlap or intertwine?
- When is a communication "in furtherance of" a joint legal interest, and when is it something else?
- How similar must parties' interests be for the doctrine to apply?

Davis and Shaull conclude, saying, "These and other questions will need to be clarified, likely in the trenches of district court litigation, and eventually, to the rarefied air of the appellate courts, where the rules of decision will crystallize."

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Davis focuses his practice on complex litigation and regulatory matters in the areas of environmental, energy and transportation law. He is skilled at managing large litigation teams in multi-party matters involving complex scientific evidence, document management and e-discovery issues and expert witness teams. Davis is the deputy chair of the firm's Energy, Environmental, Mining and Transportation Practice Division.

Shaul focuses his litigation practice on matters involving a wide array of industries, including products liability actions, general business, real estate, patent litigation and employment.

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