

# MARICOPA LAWYER

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## REDISCOVER YOUR MCBA

# Avoiding COVID-19 Infection has Morphed into Avoiding COVID-19 Litigation

Jay Zweig and Jessica Federico  
Ballard Spahr

Maricopa County lawyers have experienced practicing law in 2020 and 2021 deploying distancing techniques. Whether we are litigators watching the courts for updates, or business lawyers who coordinate transactions, we have learned the “six foot” standard and spent more time in home offices than ever before. Adapting and using coping mechanisms became second nature—wearing masks, holding Zoom meetings, and slathering on hand sanitizer. The handshake went by the wayside, sometimes a reluctant “fist-bump” was feigned or given.

In the wake of widespread vaccination, we are scaling back these COVID-19 coping mechanisms. But in the excitement to leave the pandemic behind, lawyers as advisors, counselors and, most of all, as employers cannot ignore employee fears, desires and rights—and conflicts that are arising. Litigation associated with the return to work is growing nationwide, raising a wide variety of allegations. OSHA has also updated its enforcement standards and COVID-19 FAQs. Employers should continue to track these developments in an effort to avoid litigation while retaining talented employees in an environment where distancing has result-

ed in a significant number of people quitting or changing organizations.

First, employers should communicate clearly as to remote work and leave issues. When COVID-19 first hit, a majority of employees moved to remote work arrangements. Most lawyers adapted well and found they could be very productive. Where the line between work and home used to be clear, it quickly blurred. Previously, when an employee took leave, employers knew not to contact them during that time. But, post-COVID, and continuing remote or hybrid work arrangements, employers need

See **Avoiding COVID-19** page 7



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## CourtWatch

Daniel P. Schaack

# Fathers Have Rights, Too—Unless ...

Fathers generally should step up to take responsibility for their children, including those born out of wedlock, right? If so, it would seem to follow that we should do what we can to enable them to do so. Yet, for the second time in recent memory, an Arizona Supreme Court opinion shows we're not doing a very good job of it.

Back in 2017, the high court issued an opinion—*Frank R.*—countenancing, if not actually endorsing, egregious deception committed by a mother and the agency she hired to adopt out her son, as the two successfully thwarted the boy's father from asserting his rights to, and responsibility for, the boy. The mother and the agency lied to the father and lied to the courts in order to have another couple adopt the boy, despite knowing the father's wishes to raise the child as his own.

The juvenile court fully recognized what the mother and agency had done. It nonetheless rejected the father's claim based on the basest technicality, ruling that he had waived his right to assert paternity because he had not timely registered with the Arizona Putative Father Registry.

The reason why such a notice is required is to ensure that a mother is aware of any claims to the paternity of her child. But notice was

completely superfluous in that case: both the mother and the adoption agency were not only aware of Frank R's claim, their actions were clearly designed to thwart it.

And, stunningly, the supreme court affirmed nonetheless. It held that its hands were tied because the Legislature had strictly mandated registration, without exception, even if the statutory purpose had already been fulfilled. *Frank R. v. Mother Goose Adoptions*, 243 Ariz. 111, 115 ¶ 22 (2017).

The supreme court admitted that its holding created “an unsettling outcome.” It observed that “a mother who seeks to deceive the father of her child and the adoption agency that assists her may read this opinion as tacitly permitting such conduct.” It confessed that its decision “has the practical effect of depriving a father, who at least since [the boy's] birth has asserted his desire to parent his child, of any legal rights to his child.”

The court nonetheless held that “creating a fact-based excuse for noncompliance with the registry statute is not consistent” with the Legislature's intent, and “the statute must be applied as written.” The problem was that the statute, A.R.S. § 8-533(B)(6), does not seem to be written so harshly. Rather than mandating that a father's failure to register automatically

forfeits his rights, it instead provides that failure to register is only “evidence sufficient to justify termination of the parent-child relationship.”

Turning the clock forward almost four years, we find Thomas Cox, himself the victim of another legal nicety. He had been in a relationship with Makayla Esplin, who became pregnant. She elected adoption and moved out of their shared home.

Unlike Frank R. before him, Cox did register a notice of claim of paternity. And he hired an attorney, who spoke with counsel for the adopting couple. After the conversation, his paralegal sent a letter stating Cox's intent to assert parental rights over the child, including filing a paternity action.

Cox's attorney's paralegal participated in the conversation, after which he asserted that the adopting couple were willing to “back out gracefully” if Cox sent their attorney a letter expressing his intention to “be involved in the minor child's life.” (The adopting couple denied this.) As it later turned out, the paralegal failed to calendar the statutory deadline for Cox to file a paternity action.

Esplin served notice on Cox of her intention to place the child for adoption. The no-See **Fathers Have Rights, Too—Unless...** page 8

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Tyler Carrell

## Bad Legal Takes in the Internet Age

You don't have to be a lawyer to know the First Amendment to the United States Constitution. In fact, I surmise that the First Amendment and the "freedoms" set forth therein may be the most well-known legal writing in the United States. That's a good thing, as the protections in the First Amendment are a critical part of the American story, from its inception to today. But while many people know what the First Amendment says, or even what it's "about," there can be wild results when someone attempts to apply its protections.

For lesser-known legal doctrines or laws, there are more misguided interpretations or assertions that are just plain wrong. The reason is probably simple: most people are not familiar with relevant case law on what can be complex, evolving legal issues. Maybe it is just the media bubble I find myself in, but it seems non-lawyers have become increasingly willing to act as armchair lawyers when considering major events in American society, and in the process have added to the damaging spread of misinformation. The question is, what, if anything, should lawyers do about this?

I don't know. I think that's the answer. Wait, I'm sorry, that's confusing. While I don't know how to solve the problem, I think lawyers can help by preaching the concept of "I don't know." See, I just did it in that last sentence.

Wordplay aside, admitting you don't know something seems like a critical trait in a good lawyer. I believe most lawyers in private practice or otherwise have been approached by a non-lawyer about legal issues outside their primary practice area, like a DUI, a dispute with a neighbor, tax questions, etc. A lawyer, even with good intentions, may be inclined to offer advice so as not to seem unhelpful. However, the most helpful response would be to say "I don't know" and direct that person to a lawyer who specializes in the relevant practice area. I hope this seems obvious to lawyers, but to lay people it may not.

The events of the last couple of years have been "good" in terms of the interest of the general public in the law. Unfortunately, that interest has been due to things like the impeachment of President Trump, the Mueller Report, foreign election interference, alleged voter fraud, mask mandates, vaccination "passports" and a variety of other topics that can, shall we say, elicit emotional responses.

The events are fast changing and unprecedented, and should be analyzed with care. Yet, if you took a spin through cable news or Twitter as these events unfolded, there was little nuance to be found. Think about it: how many times have you seen a commentator on cable news say "I don't know" and explain the reasons why? On Twitter, every breaking news report had count-

less replies, many declaring that a crime had certainly been committed and that law enforcement was already on its way.

This phenomena got so ridiculous that now there is a popular Twitter account, @BadLegalTakes, that does nothing more than repost the worst legal takes on Twitter. As an example, a recent post showed a Twitter user claiming, "It can't be unconstitutional if the voters agreed to it." Frankly, that is one of the more subtle examples.

Law school often gets a bad rap since it "doesn't teach you to be a lawyer." However, other than a few immovable classmates, I found that during those three years, my colleagues gained a better appreciation of seeing both sides of an issue, and how almost nothing is as black or white as some might claim.

MCBA members have and will continue to serve the public with unique legal skills and counseling. But in addition to the service we can capture in a billing entry, I believe we can also serve the public by remaining intellectually curious and acknowledging that despite our advanced degrees and training, there are plenty of things we just aren't qualified to speak on. It is more valuable to be able to find an answer for a client or potential client, than it is to simply claim to know the answer.

If we disclose our limitations to family, friends and potential clients, it is not a sign of a weakness or an admission of a "blind spot," it is a sign of integrity and humanity. In formal engagement discussions, conversations at a cocktail party, and yes, even posts on social media, we can advance our profession and inform others that law is not a singular topic that you either know or don't know, but a layered practice that requires significant thought and research before rendering a useful and often limited opinion. ■

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# Focus on Community Needs Becoming Clearer



Greetings legal professionals of Maricopa County. I hope this message finds you, your family and your loved ones well. It's that time of the year again—the time of the year when we put our minds together to focus on the greater service needs of the community. I mentioned in the previous Clerk Corner that we had just begun the process of evaluating the outcomes of the 2021 Leadership Summit. There were so many incredible ideas, that we are only now beginning to bring these ideas into focus. This focus on vision and strategy requires us to consider both the short-term and long-term needs of the community, so great care and consideration goes into this process, from considering the thoughts of our leadership and management team to gathering ideas, thoughts and feedback from individuals such as yourselves.

I'm pleased to share that there continues to be tremendous support for initiatives that we have either already considered, or are already putting time and effort into implementing. Some of these initiatives you may have heard about previously, but I can say with great confidence that we expect two of these efforts to "go live" this fall.

Juvenile eFile Expansion: This expansion will provide support for both case initiation and subsequent filings for Juvenile case types

using our eFiling Online website. This went "live" on September 1st.

Family Court Case Initiation for eFiling: We are nearing completion of this new capability in partnership with the Arizona Supreme Court/AOC. This will enable the ability to eFile new cases for Family Court through the AOC's statewide eFiling portal. We anticipate this going live in October of this year.

Probate/Mental Health eFiling: We have heard you loud and clear when it comes to the need for probate and mental health eFiling. Expansion to support eFiling for Probate cases is now underway! The Clerk's Office is working closely with the AOC and the Probate bench to determine requirements for enabling Probate eFiling through the AOC's statewide eFiling portal. At this time, no date has been set for a target launch for this new capability, but this has been prioritized as an active project for both the Clerk's Office and the AOC. Additionally, the Clerk's Office is exploring requirements for enabling Mental Health eFiling through our eFiling Online website.

I'm very excited to see these initiatives gradually come to life! Our staff has been working around the clock to make sure these technology innovations continue to run smoothly. When it comes to expanding our services, you can rest assured that we are thinking about your needs too. I hope to expand more about some of the additional outcomes from our Leadership Summit, including our long-term vision, at next month's 2021 Bench Bar Conference. I will be speaking during the lunch session after Presiding Judge Joseph Welty's State of the Court Address. I look forward to seeing you there! ■

# Where Do "I" Stand?



Word order is tricky because how I say something in conversation is not the way I would write the same sentence in a document. Pronouns can be particularly vexing. Here is an example where both pronoun orders sound right (at least to my ear):

*Her assistant gave the files to Diane and me.*  
*Her assistant gave the files to me and Diane.*

Equally vexing is that my grammar checker says both orders are correct. According to most grammar and style guides, though, the first example above is the correct one.

Specifically, most guides agree that first-person pronouns should go last in a list, whether using "I," "me" or "my." The guides suggest this order is the polite way to handle the issue, especially in a formal or business setting such as law practice.

*Diane's and my meeting starts in an hour.*

This example also illustrates another common rule: when using the possessive form of a pronoun, any noun in the list should also be in the possessive case. If the list is all nouns, however, and the nouns are sharing the object, then only the last noun in the string needs to be possessive.

*Diane and Harvey's meeting starts in an hour.*

As for the order of other pronouns, such as "you," "she" and "they," for example, the guides

do not mandate a proper order. Thus, either of the following examples would be correct:

*Harvey and you should visit tomorrow.*  
*You and Harvey should visit tomorrow.*

Just between you and me, I confess that the second option sounds better to my ear. I put any second-person pronouns first, followed by any third-person pronouns, for the same reason mentioned above: respect. ■

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## Amazon Prime Settlements: Convenient Compensation or Callous Carelessness?

Last month, retail giant Amazon announced a revolutionary new policy that may transform how we think about liability for commercial suppliers whose wares cause damage or injury to consumers.

The new policy, pioneered by Amazon, is to pay all legitimate products liability claims for all items bought through its online marketplace, up to \$1000, regardless of whether the customer bought the product from Amazon itself or simply from a third-party seller through Amazon's website.

On its face, this drastic decision appears counterintuitive; why would a company essentially invite some less-than-honest customers to file potentially flimsy claims, and incentivize some sellers to put out less-than-safe products? According to the company, settling these claims without involving the third-party sellers avoids protracted legal battles that drain the company of more resources overall. On the whole, Amazon predicts it will be more cost effective to settle the claims quickly, while also requiring all third-party sellers to be insured.

However, there is likely another motivating factor behind Amazon's apparently generous new policy: fear of being held responsible for much worse and far less controllable risks.

Although most states, like Texas, have held that Amazon should not be strictly liable for defective third-party products that are simply purchased through the Amazon website, that view is not universal. According to the Supreme Court of Texas, "We conclude that when a product-related injury arises from a

transaction involving a sale, sellers are those who have relinquished title to the allegedly defective product at some point in the chain of distribution," and because Amazon never technically had title to the products, it is not a "seller" such that the duties (and strict liability) of a commercial supplier would attach. See *Amazon.com, Inc. v. McMillan*, Supreme Court of Texas, No. 20-0979 (June 25, 2021).

However, other states, like California, have held that when Amazon actually stores its third-party seller's products in its own warehouses before they are distributed to consumers, that Amazon can be held strictly liable because it has entered the stream of commerce. See *Loomis v. Amazon.com, LLC*, 63 Cal. App. 5th 466, 486 (CA Ct. App. 2020). The California Court of Appeals hoped that "[a]pplication of strict liability in this case may incentivize Amazon to expand its safety compliance requirements to more products and thus further the goal of product safety." Id.

It appears that rather than expand their safety inspections and oversight of the products they sell, Amazon believes they will have more success by enticing injured consumers to quickly settle what could otherwise be gargantuan claims for pennies on the dollar, and inadvertently providing negligent manufacturers with added cover as well. Like everything else in its corporate structure, Amazon wants claims settled fast, cheap and with as little human interaction as possible. ■

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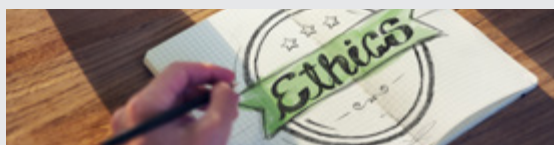
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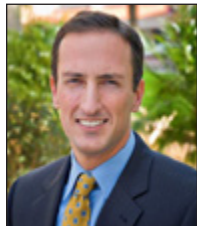
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# Q&A



## LAWYER LIABILITY AND ETHICS

### Truth in Advertising



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Lawyers are like actors in the sense that both the legal and entertainment industries like to give themselves awards to convince the public of how wonderful and smart they are. And because if we do not, no one else will. We are all familiar with titles such as “AV Preeminent,” “BV Distinguished,” “Super Lawyers” and “Rising Stars.” The use of these titles is so common in our profession that few stop to think about the ethical implications of using them when advertising for legal services.

ER 7.1 governs communications concerning a lawyer’s services. False or misleading statements are prohibited. Implying that a lawyer is certified as a specialist in a particular field of law is also prohibited, unless the lawyer complies with Arizona Supreme Court Rule 44. But advertisements of awards are not mentioned in the text of the Rule or the comments.

Arizona ethics opinion 05-03 concluded that it is ethical for a lawyer to advertise that he is listed in The Best Lawyers in America, if the lawyer is in fact listed in that publication, and the advertisement includes the year and specialty for the listing. The ethics opinion relies on the Eleventh Circuit’s opinion in *Mason v. Florida*, 208 F.3d 952 (11th Cir. 2000), where the court concluded that a lawyer’s advertisement representing his “AV rating, the Highest Rating” was not misleading because, while the AV rating system is not generally known to the public, the statement can be verified. According to the court, “[a] rating, like a claim of certification, is not an unverifiable opinion of the ultimate quality of a lawyer’s work or a promise of success, but is simply a fact, albeit one with multiple predicates, from which a consumer may or may not draw an inference of the likely quality of an attorney’s work.” Id. at 957.

Recently, however, New Jersey’s Supreme Court Committee on Attorney Advertising reviewed numerous lawyer awards commonly given in that jurisdiction. The Committee concluded that some of the awards were the result of “a cursory survey of lawyers in the area with no subsequent, independent

vetting by the conferring organization” or “popularity contests” based upon email or text message voting. The Committee warned New Jersey lawyers that they may not advertise receipt of such awards unless, as a threshold matter, the conferring organization made adequate and individualized inquiry into the lawyer’s professional fitness. Assuming that threshold is met, the lawyer must provide a description of the standard or methodology on which the award is based, either in the advertising itself or by reference to a “convenient, publicly available source.”

New Jersey’s Rule 7.1 is far more extensive than Arizona’s, and the Committee’s notice to the New Jersey bar relies on provisions of the Rule that Arizona does not have. But there may be less difference between the two states than meets the eye. Arizona’s opinion 05-03, in addition to being expressly limited to a lawyer’s advertisement for a listing in The Best Lawyer’s in America, cites the United States Supreme Court’s decision in *Peel v. Attorney Registration & Disciplinary Comm’n*, 496 U.S. 91 (1990), which states that “if the certification had been issued by an organization that had made no inquiry into [a lawyer’s] fitness, or by one that issued certificates indiscriminately for a price, the statement, even if true, could be misleading.” Id. at 102.

The primary difference between Arizona and New Jersey appears to be that New Jersey puts the burden on the attorney to make available to legal consumers the standard and methodology for any advertised awards, while Arizona, at least according to opinion 05-03 (a non-binding opinion), finds it sufficient that “[a] consumer who wishes to investigate the underlying basis for a lawyer’s [award] can simply read the [the basis for themselves].” But in either case, lawyers should not be advertising for awards that they paid to have bestowed upon them, or for which no inquiry is made into the lawyer’s qualifications.

Long story short, you still get to engage in the indecorous but self-satisfying practice of showing off by advertising the legal awards you have received. But do consider the standard and methodology used to issue those awards when deciding whether to advertise those accolades. And if you must pay an organization to “certify indiscriminately for a price” that you are a great lawyer, it is probably better, ethics aside, to keep that to yourself in the first place. ■

*Joseph Brophy is a partner with Jennings Haug Cunningham in Phoenix. His practice focuses on professional responsibility, lawyer discipline and complex civil litigation. He can be reached at JAB@JHC.law.*

### SEPTEMBER CALENDAR

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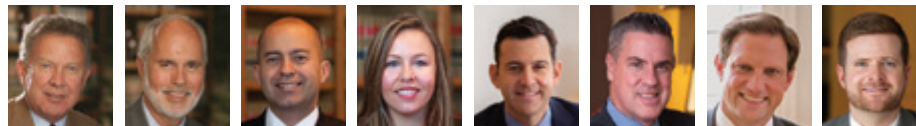
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2021

# Bench Bar Conference

**Friday,  
October 1**

**Phoenix Country Club  
2901 N. 7th Street**

## MORNING SESSION

8:30 a.m. **Check In & Continental Breakfast**

9-11:30 a.m. **Courtroom Advocacy** (2 hours CLE)

Judicial Panel: **Judge Brad Astrowsky, Judge Stacy Click, Judge Lisa Vandenberg, Judge Danielle Viola**

Presenters: **Leon Silver**, Managing Partner at Gordon Rees Scully Mansukhani LLP;

**Cynthia Ricketts**, Co-Founding Partner at Sacks, Ricketts & Case LLP

**Nicole Goodwin**, Managing Shareholder at Greenberg Traurig LLP

**Tim Medcoff**, Managing Partner at Farhang & Medcoff

This program will give litigators (and future litigators) of all levels of experience a chance to hone their courtroom advocacy skills. Experienced lawyers will offer tips on effective opening statements, witness examination, and closing argument. After each presentation, participants may volunteer to present an opening, closing or examination of a witness on a hypothetical case and receive feedback from a Superior Court judicial panel. No advance preparation is necessary as participants will be provided with a fact pattern of a hypothetical case at the beginning of the program.

## LUNCH

11:45 a.m. Opening and Introductions by **MCBA President Tyler Carrell**

**Presiding Judge Joseph Welty** | State of the Court Address

**Clerk of the Superior Court Jeff Fine** | State of the Court Clerk's Office

## AFTERNOON SESSION

1:15-2:15 p.m. Interactive Ethics Session led by **Lynda Shely** (1 hour Ethics CLE)

**Arizona's New Rules: How is it Working so Far?**

In January, Arizona became the first state to completely eliminate the prohibition on sharing legal fees with nonlawyers and the prohibition against paying for referrals. Lynda will update attendees on how these changes are working so far, how many "alternative business structures" have been certified by the Arizona Supreme Court, and how the new category of legal service providers—legal paraprofessionals—are working alongside lawyers.

2:25-2:55 p.m. Tips on Using **Court Connect** (1/2 hour CLE)

Learn tips and pitfalls of the Superior Court's new video conference platform for remote court appearances.

3-4 p.m. **Practice Area Breakout Sessions** (1 hour CLE) with:

Civil | **Presiding Judge Pamela Gates**

Criminal | **Presiding Judge Patricia Starr**

Family/Juvenile | **Presiding Judge Bruce Cohen** and **Presiding Judge Joseph Kremer**

Probate/Mental Health | **Presiding Judge Jay Polk**

4-5 p.m. **Cocktail Hour** – Join presenters and attendees for a casual cocktail hour

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Friday, All Events (includes continental breakfast, lunch & cocktail hour) – Members \$150 • Public Lawyer/Paralegal/Student \$95 • Non member \$300

Friday Morning Only (includes continental breakfast), 8:30 a.m.-11:30 a.m. – Members \$65 • Public Lawyer/Paralegal/Student \$40 • Non member \$130

Friday Afternoon Only (includes lunch & cocktail hour), 11:45 a.m.-5 p.m. – Members \$100 • Public Lawyer/Paralegal/Student \$75 • Non member \$200

For Friday afternoon, Judges pay only for attending lunch (\$25)

Maricopa County Bar Association ■ 3030 N. 3rd Street, Suite 1260 ■ Phoenix, AZ 85012 ■ 602.257.4200 ■ maricopabar.org

**Avoiding COVID-19**

continued from page 1

to remember that employees should not be contacted or expected to work while on a protected leave. Although employees who are working from home can be expected to answer work calls and emails, the same is not true while the employee is at home, but on a legally protected leave, such as FMLA or an ADA accommodation, or even sick leave under state law. And vacations – even staycations, should be respected to avoid burnout.

The potential for lawsuits alleging unlawful retaliation regarding alleged employer interference with protected leave or other alleged issues has also increased in the return-to-work environment. The most common litigation will likely relate to retaliation for reporting unsafe work conditions or requesting and/or using leave. Critically, these types of lawsuits could arise quickly. Unlike discrimination claims under federal EEO laws, employees may be able to allege retaliation under certain leave laws without exhausting administrative remedies. That means employees can file lawsuits immediately after they feel they have been aggrieved.

To avoid potential retaliation claims, employers should properly manage communications. If possible, appoint specific members of management to handle requests for leave or concerns about unsafe working conditions. The fewer people involved, the less likely that communications will be misconstrued, mishandled, or delayed. The communications and investigations should also emphasize that retaliation will not be tolerated and employees are free to ask questions and express concerns. Those concerns are often not bases for changing policies, but unless communications are well-managed, even a lawful employer action can result in a retaliation claim.

Another crop of expected return to work lawsuits relates to allegations of discrimination, particularly disability discrimination. For example, if an employee asks for the ability to continue to work from home because she has a condition that puts her at a heightened risk if she contracts COVID-19, then employers should engage in the interactive process before summarily denying the request. It is tempting to have a rigid policy that applies to everyone and adheres to specific dates, but it is legally imprudent, and may also cost an employer many talented workers. Indeed, if that employee has been performing her job duties satisfactorily from home for the last year and a half, she may have a strong argument that continuing to work remotely is a reasonable accommodation. The issue of accommodations could also arise if an employee cannot receive a COVID-19 vaccine because of a medical condition. If the employer mandates the vaccine, and requires the employee to return to work, the employee may have a claim for disability discrimination if the employer does not accommodate his medical condition. In light of these circumstances, employers should be flexible in considering and granting accommodations, while understanding that if the accommodation constitutes an undue hardship, then the employer and employee will need to make the

difficult choices. In addition to engaging in an “interactive process” involving open and honest communication about the requested accommodation and what is achievable for the employer, it often helps to have an outside party provide objective advice. Lawyers, call your lawyers.

To further mitigate against discrimination lawsuits, employers should ensure that any recall to the office decisions are based on objective and nondiscriminatory standards. Without clear, documented and communicated business reasons for personnel actions, employees will file claims if they are terminated and can establish a claim that their termination was based on his or her protected status.

Finally, employers should be prepared for potential wage and hour lawsuits. Again, employers should have documented expectations—which employees acknowledge—to help strengthen their position in the face of a lawsuit. For example, if employers will continue to allow employees to work remotely, then employers should enact remote work policies that clearly delineate procedures for meal and rest breaks, timekeeping and work hours. By instructing employees on how to track their time, and that they are not to answer phone calls or emails while on break, employers can minimize the risk of such claims. It is also perfectly reasonable, and advisable to have written remote working policies, that cover wage and hour matters, responsiveness requirements, and guidelines on childcare and discouraging employees from taking care of personal business during work hours. Be wary of micromanaging, but don’t eschew setting standards for working hours, responsiveness and productivity.

All of these protective approaches do not alter the fact that where employers have employees returning to the workplace, they should ensure that COVID-19 related safety protocols will not lead to wage and hour lawsuits. Specifically, if employers require employees to wait to have their temperatures checked or to complete a health survey at the start of the workday, employers should consider whether that time could be compensable. The most conservative approach to avoid lawsuits is to pay employees for time spent waiting to complete these screenings.

Although widespread vaccination, hybrid work arrangements and other strategies continue to evolve, employers remain vulnerable to employment lawsuits as more employees return to the workplace. While we may no longer need to rely on many of the avoidance techniques that we developed at the start of the COVID-19 pandemic, lawyers as counselors to clients and as employers themselves who are looking to avoid lawsuits do need to continue to deploy their litigation avoidance strategies and consult with their own legal counsel (in-house or outside) who stays updated on the latest employment regulations to keep a distance between themselves and employee claims. ■

*Jay Zweig is an employment law partner in Ballard Spahr’s Phoenix Office. Jessica Federico is an employment law associate in Ballard Spahr’s Denver Office.*

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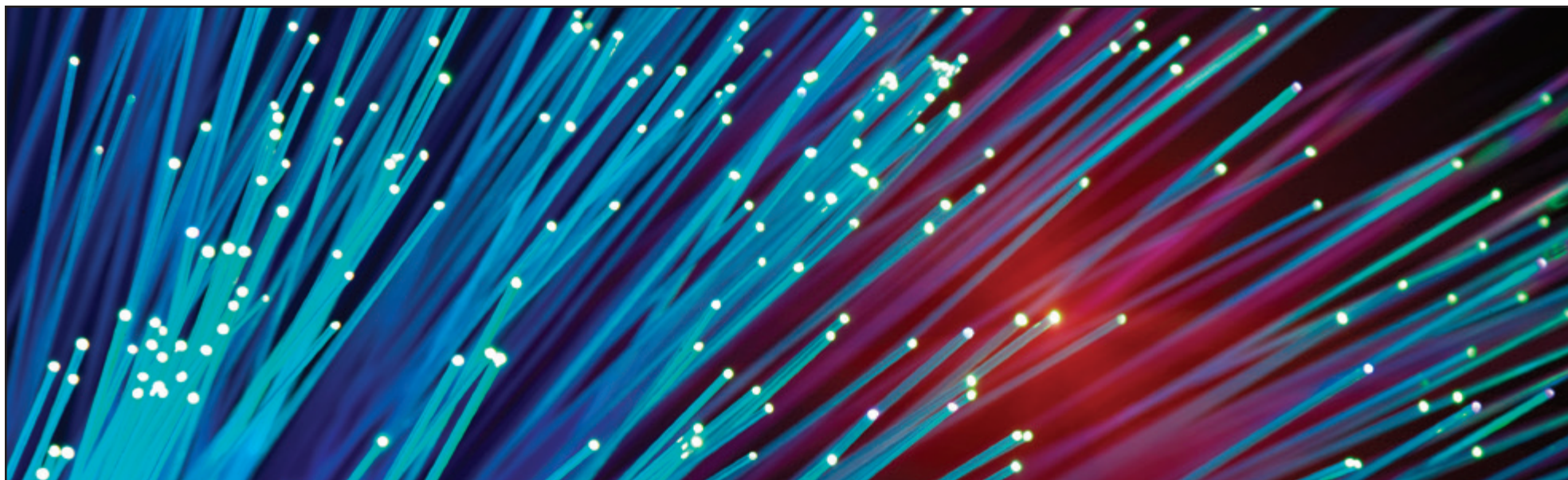
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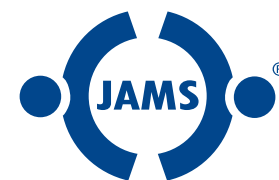
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### Fathers Have Rights—Too... CourtWatch, continued from page 1

tice advised Cox that if he wished to contest the adoption, he was statutorily required to file his paternity suit within 30 days. The child was born 18 days later. Twenty-seven days after that—15 days after the statutory deadline—Cox's paternity action was filed.

The superior court dismissed it. Cox filed a special action, but the court of appeals declined jurisdiction. Cox sought and was granted review in the supreme court. But the outcome wasn't what he had hoped for. *Cox v. Ponce*, No. CV-20-0173-PR (Ariz. July 26, 2021).

It was clear that Cox's paternity suit was late. Writing for the court, Justice James P. Beene noted the statutory consequences of that tardiness. First, under A.R.S. § 8-106(J), a late-filing father "waives his right to be notified of any judicial hearing regarding the child's adoption or the termination of parental rights and his consent to the adoption or termination is not required." Second, A.R.S. § 25-804 requires dismissal of any proceeding barred under § 8-106(J). "The controlling law in this case is clear," Beene wrote.

Given this clear mandate, all that was left was to decide if equitable principles—such as excusable neglect or equitable tolling—could save Cox from his tardiness. With no explicit guidance in the statutory language, Beene turned to the differences between statutes of limitations and statutes of repose. "Whether principles of equity (such as excusable neglect and equitable tolling) apply to provide relief in this case depends on the nature of the statute," he wrote. The ques-

tion was whether the statute acted as a statute of limitations or a statute of repose.

Statutes of limitations "identify the outer limits of the period of time within which an action may be brought to seek redress or to otherwise enforce legal rights," Beene noted, quoting a court of appeals case. And "a statute of repose (sometimes called a nonclaim statute) likewise acts to extinguish legal rights if they are not enforced by a specific deadline."

Despite these similarities, there is an important difference between the two types of statutes. While both impose deadlines, Beene noted that "they differ in one important way: equitable principles may provide relief only from deadlines imposed by statutes of limitations." This results from the differences in how they work.

Drawing on a previous supreme court opinion, Beene described those differences. Statutes of limitations, he wrote, "generally begin to run after an injury occurs and is (or reasonably should have been) discovered." By contrast, "a statute of repose is intended to establish a limit beyond which no suit may be pursued, and sets a period of time within which claims must be brought regardless of when the cause of action may accrue." A statute of repose is thus evidently more rigid—more powerful, even—than a statute of limitations. Beene wrote that statutes of repose may bar a claim even "if it does not accrue within the allowable statutory period." And while statutes of limitations are considered procedural in nature, statutes of repose are substantive.

Beene alluded to an Indiana Court of Appeals opinion holding that "nonclaim statutes impose a condition precedent to

the enforcement of a right of action and are not subject to equitable exceptions." That court had applied these principles to Indiana's counterpart to § 8-106(J), calling it a nonclaim statute, not one of limitations, because it "imposes a condition precedent to the enforcement of a right, i.e., the filing of a motion to contest a petition for adoption."

"If the condition precedent is not met, the right of action is lost and the adoption may not be challenged," the Indiana court had ruled. Thus, "the legislative intent to take away a right of recovery is clear from the language utilized." Supporting that conclusion was the legislative "objective of avoiding unnecessary instability and uncertainty in adoption proceedings." Beene found that reasoning both persuasive and applicable to Arizona's statute, for two reasons.

"First," he wrote, "like the Indiana statute, § 8-106(J) requires the potential father to file and serve on the mother a paternity action in order to preserve his right to be notified of any subsequent proceeding regarding the child's adoption. The failure to satisfy this condition precedent divests the father of any further involvement in the adoptive proceedings."

"Second," he added, like the Indiana court, "Arizona courts have held that a statute of limitations may be waived and is subject to equitable principles whereas these concepts do not apply to a nonclaim statute or a statute of repose." Furthermore, the Arizona statute reads as a statute of repose because it "imposes a condition precedent to the enforcement of a right."

"This interpretation is further bolstered by § 25-804's requirement that the court 'dismiss any proceeding that is barred pursuant to §

8-106, subsection J,'" Beene added.

At this point, *Frank R.* reared its head. Beene cited it in noting "Arizona's strong public policy favoring finality in adoptions." He repeated *Frank R.*'s language that "prompt finality that protects the child's interests in a stable, permanent placement—either with a biological parent or an adoptive parent—is paramount."

Based on this reasoning, Beene held that "§ 8-106(J) is a statute of repose" and therefore "is not subject to equitable exceptions." Thus, Cox's "failure to timely file a paternity action is not excusable under principles of equitable relief." His paternity action was therefore "barred as a matter of law."

Echoing *Frank R.*, Beene acknowledged the harshness of the result: "This Court is not without sympathy for Father, but the clear meaning of the statute must prevail." Any recourse would therefore have to come from statutory amendment. "If there is a remedy in these circumstances, it lies with the legislature," he wrote. But Cox would not benefit, even if a legislative fix were in the offing: "This Court is bound to apply the law as written," Beene wrote, "and, therefore, we affirm the dismissal of Father's paternity action."

Joining Beene were Chief Justice Robert M. Brutinel, Vice Chief Justice Ann A. Scott Timmer, and Justices Clint Bolick, John R. Lopez, IV, and William G. Montgomery.

So, fathers intent on asserting their parental rights will evidently continue to face a legal minefield. ■





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# MCBA Paralegal Conference



**November 12, 2021**

**7:15 a.m. to 5 p.m.**

**Desert Willow Conference Center**

**4340 E. Cotton Center Blvd. • Phoenix**

Breakout Sessions  
Speakers  
Raffle Prizes

## CONFERENCE SCHEDULE – Morning

- 7:15–8:00 a.m. **Registration and Breakfast Buffet — Visit Valued Partners**
- 8:00–8:30 a.m. **Opening Announcements and Introductions**  
Paralegal Day Proclamation – Tyler J. Carrell, President of the Maricopa County Bar Association  
Overview of Division Committees  
Scholarship Awards –  
Division Scholarship/MCBF Scholarship  
• Recipient 1 (MCBA)  
• Recipient 2 (MCBF)
- 8:30–9:30 a.m. **General Session: “Arizona Ethics Update: Do You Know the New Rules?”**  
Presenter: Lynda C. Shely, *The Shely Firm P.C.*
- 9:30–10:00 a.m. **Morning Break – Visit Valued Partners!**
- 10:00–11:00 a.m. **1st Breakout Session**
- A) Immigration Law – “What Employers Need to Know About Immigration Law, I-9s, and E-Verify”**  
Presenter: Heidi Nunn-Gilman, *Gammage & Burnham PLC*
- B) Juvenile Law – “Adoption Law TBD”**  
Presenter: Commissioner Nicole Stoutner, *Maricopa County Superior Court*
- C) Business Law – “Business Contracts: A Paralegal’s Ultimate Guide”**  
Presenter: TBD
- 11:00–11:45 a.m. **Lunch Break**

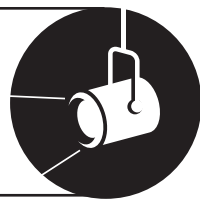
## CONFERENCE SCHEDULE – Afternoon

- 11:45 a.m.–12:45 p.m. **2nd Breakout Session**
- A) Trial Track – “Discovery Pitfalls and Cost Saving Options”**  
Presenters: William McDonald, *Teris*
- B) Family Law – “Legal Presumptions in Family Law”**  
Presenter: Mervyn Braude, *Jaburg & Wilk, P.C.*
- C) Blockchain Laws and Regulations – “Blockchain & Cryptocurrency”**  
Presenter: Kendra L. Haar, *Perkins Coie LLP*
- 12:45–1:45 p.m. **3rd Breakout Session**
- A) Real Estate – “Selling, Buying and Resolving Real Estate Disputes, in a Post-COVID World”**  
Presenter: Beth Jo Zeitzer, *R.O.I. Properties, LLC*
- B) Environmental Law – “What is Trending, What is Your Role?”**  
Presenter: Barbara Rodriguez Pashkowski, *Gust Rosenfeld P.L.C.*
- C) Trust Law – “Sticks & Mud: Foundations of Trust Drafting”**  
Presenter: T.J. Ryan, *Frazer Ryan Goldberg & Arnold LLP*
- 1:45–2:00 p.m. **Afternoon Break**
- 2:00–2:30 p.m. **Valued Partners Raffle!**
- 2:30–3:30 p.m. **General Session – “Excel Tips for Becoming Paralegal Power Users”**  
Presenter: Kerri Bourland, *Training at Your FingerTIPS™*
- 3:30–3:45 p.m. **2021 Paralegal Member of the Year Award Recipient**
- 3:45–4:45 p.m. **Keynote Session – “Motivational Speaker TBD”**  
Presenter: Landon Merrill
- 4:45–5:00 p.m. **Closing Announcements**



# SPOTLIGHT ON

## 1700 WEST WASHINGTON



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## To Mask or Not to Mask. To Vaccinate or Not to Vaccinate



Barrett Marson

Families and communities are wrestling with these two subjects increasingly as the Delta variant of COVID takes hold in Arizona and around the country.

Not just families, though. Businesses, small and large, and schools must also make a decision: Masks or vaccination. Or both. The shortened summer of freedom is giving way to a reality that we might not be done with masks and other COVID mitigation efforts as quickly as we had hoped.

After a year of lockdowns, work from home and learn from home, life began returning to normal thanks to a trio of vaccines from the world's most vaunted drug companies.

Lines of cars snaked through State Farm Stadium and other Arizona-sponsored sites that jabbed the arms of thousands of residents and visitors every day. Getting an appointment was like buying a ticket online for your favorite band or sports team. Refresh. Refresh. Refresh. Until finally an appointment popped up and you felt like Willy Wonka handed you the golden wrapper himself.

Every day, our vaccine numbers rose and our COVID case counts dropped. On some days, just 200 new cases were reported. From March to July, we marched on but with just triple digit daily case growth. Hospitalizations and deaths plummeted.

Off came the masks as we rolled up our sleeves.

In the spring, we went to baseball games, began traveling to far off vacation destinations and dined in restaurants—even if we were seated farther apart from other guests than was the norm pre-2020.

But as summer turned sweltering in Arizona and we sought relief from the 115-degree inferno, we went inside. That deadlier and more transmissible Delta variant spread like a June wild fire in our parched forests. The vaccine protected millions in Arizona from serious illness or death. Millions more, however, developed a vaccine hesitancy that now has helped COVID spike in the state and around the country. Hospitalizations are dramatically increasing as are case counts. Those days of adding just a few hundred cases a day are over. Now, we see 2,000 or even 3,000 a day. Thankfully, deaths from the virus remain low.

Vaccine hesitancy has taken hold. Many point out the various vaccines only have emergency use authorization from the federal government. With the U.S. Food and Drug Administration moving to full authorization, health professionals hope more vaccines will make it into arms.

Should government mandate this vaccine? Red and blue state leaders have diametrically opposed opinions. Some Democratic led cities and states are requiring vaccines for all employees while some schools mandate either a vaccine or rigorous testing. States led by Republicans, like Arizona, encourage more personal responsibility and vaccinations.

In Arizona, corporations are making their own rules. Hospitals are mandating vaccines for its employees. Some retailers are now demanding masks as the price for entrance. Private entities have more leeway to implement policies to protect their customers and employees. In fact, the Legislature considered a bill to ban companies from implementing mask or vaccine mandates. However, that proposal could not gain the required votes.

The vaccines have been shown to be safe as more than half the U.S. population is fully vaccinated with little side effects. The science is clear: The vaccines from Pfizer, Johnson and Johnson and Moderna are generally effective and safe.

To get a vaccine is to get one day closer to returning to our normal lives. Government, schools or businesses shouldn't have to mandate that we take care of our health by getting a shot or two of a proven anodyne. But we should take that personal responsibility to protect ourselves—and our communities.

Thanks to the vaccine we won't see a repeat of last year when morgues overflowed with the victims of COVID. Get a vaccine. The life you will be saving may just be your own. ■

## Diversity Legal Writing Program Closes Out Another Successful Year

For nearly 20 years the State Bar Council on Women & Minorities in the Law and the Maricopa County Bar Foundation have partnered with private law firms throughout the Valley to promote the recruitment and retention of diverse lawyers through the Diversity Legal Writing Program, which is facilitated by Greg Gautam, a partner at Snell & Wilmer.

For those who are unfamiliar, the program provides diverse law students at Arizona State University with a 12-week private law firm internship during their spring semesters. While an internship may not lead to a full-time job offer, these students receive invaluable mentorship, critical feedback on their writing and access to resources they might not otherwise have.

Gautam said, "The success of this program is largely attributable to the financial support of the participating law firms, the hard work of the student interns, the tireless efforts of their law firm mentors and the volunteer coordinators of the program."

This year's law firms include:

- Bowman and Brooke
- Carvana
- David Miles McGuire Gardner
- DLA Piper
- Greenberg Traurig
- Husch Blackwell
- Jones, Skelton & Hochuli
- Lewis Roca
- Limelight
- Littler Mendelson
- Osborn Maledon
- Quarles Brady
- Righi Fitch
- Ryley Carlock & Applewhite
- Shawn Steinberg
- Sherman & Howard
- Snell & Wilmer
- Squire Patton Boggs

We asked a few recipients about their experiences:



Jorge Coss

The Diversity Legal Writing Program helped shape my legal career. The program allowed me to significantly improve my legal writing and gain practical experience in different areas of law. I also learned about the business of a law firm, which greatly prepared me for private practice. Most importantly, I built strong relationships with my law firm mentors, who I now have the privilege of calling my colleagues.



Kaylena Ferrin

The Diversity Legal Writing Program has been the best decision that I could have made for myself—both personally and professionally. As a student with five years of work experience before beginning law school, I knew that I wanted a legal education that consisted of more than learning the law; I wanted a legal education that was informed by unique, practical experience based on real-world client matters. By working in a small internship cohort with a talented team of mentors, I was able to develop strong research and writing skills that will help me to succeed as an attorney. While most of my coursework has focused on corporate law, Greenberg Traurig does outstanding work in several practice areas, such as real estate and commercial litigation, which allowed me to expose myself to several substantive

areas of law. Equally important, I was also able to build relationships and broaden my professional network with other diverse attorneys in the Arizona community. I have been continuously inspired by the warmth and kindness of my co-interns and the other law firms in the program, and I firmly believe that each of these relationships will influence my identity as a lawyer for years to come.



Hayden Hilliard

The Diversity Legal Writing Program is perhaps one of the most important opportunities available to minority students seeking to launch their careers in the legal profession. As a former Snell & Wilmer diversity intern, I was able to work on substantive projects, secure comprehensive feedback from experienced attorneys, and foster long-lasting mentorships that ultimately helped me obtain a permanent position with the firm. The program also provides a judgment-free environment for diverse students, especially those that are first-generation lawyers, to ask questions about the in-and-outs of the profession.

The feedback during the program was open and honest, and incredibly candid—which ultimately set me up for success with successive internships and my associate position. Even students who ultimately decide not to pursue work in the private sector get the benefit of the experience and connections that are unparalleled.

Now—as a practicing attorney, my journey having come full circle—I frequently serve as a mentor to the diversity interns that Snell & Wilmer takes on each spring semester. This program continues to inspire me, and I'm forever grateful for being part of it. For diverse students on the fence about applying, and for firms and in-house lawyers thinking about participating, I strongly encourage it!



Nyla Knox

I truly enjoyed my experience while participating in the Diversity Legal Writing Program. While externing with Snell & Wilmer, I had the opportunity to work on legal issues that aligned with my interests and received constructive feedback on my work product. The variety of legal issues and types of projects helped to strengthen my research and writing skills. I attended associate training sessions and observed a deposition, which exposed me to a side of the legal profession that law school does not teach.

Each week, all of the program's participants attended a workshop. The topics of each workshop varied, but they supplied us with helpful information about litigation, legal writing, and different pathways within the legal profession. One of my favorite workshops allowed us to speak with a panel of diverse attorneys, who discussed the importance of diversity in the law and ways to overcome obstacles in post-graduate endeavors.

I am glad that I had the opportunity to participate in the Diversity Legal Writing Program, and I hope it continues to provide diverse students with valuable experiences in the years to come. ■

### STAY SOCIAL WITH THE MCBA



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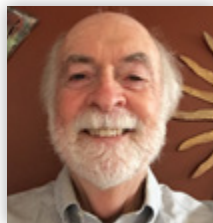
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# PRO BONO PROFILES

## Recovering Attorney Fees in a Pro Bono Case: Who Knew?

The next time you approach the managing partner about taking on a new pro bono case, the reaction might be a tepid, “Yes, of course we value pro bono work, but I wish we could recover some fees if we do a good job.” You can now respond that “If we win, we can seek an award of our fees against the other party, at no cost to our pro bono client.”



David Ouimette

The next time opposing counsel in a pro bono case refuses to compromise, saying that they’ll just proceed with what you regard as a bogus litigation position, you can now counter that you’ll be asking the judge to award substantial fees for your work when you win.

A recent decision of the Arizona Court of Appeals has confirmed that recovery of substantial attorney fees may be available even in a pro bono case, at no cost to the client. This should be a game changer in many contract-based pro bono cases, which would include consumer cases, landlord/tenant cases and others.

In February 2020, the Court of Appeals decided *Fields, et al. v. Elected Officials Retirement Plan and State of Arizona*, 248 Ariz. 241 (App. 2020), affirming the Trial Court’s grant of attorney fees to the plaintiffs (retired judges) in an action for declaratory relief against the State and the Elected Officials Retirement Plan. The issue on appeal was whether the attorney fee agreement between plaintiffs and their counsel (the Osborn Maledon firm) created a “genuine financial obligation” of plaintiffs to compensate their attorneys, as required to support a fee claim under A.R.S. Section 12-341.01.

The fee agreement in *Fields* was contingent, insofar as the plaintiffs agreed to compensate their lawyers only if fees were awarded by the Court and collected from the opposing party. Otherwise, plaintiffs had no obligation to compensate their lawyers. Despite the objections of the State and Retirement Plan, The Court of Appeals found this to constitute a “genuine financial obligation” upon which to base a fee award, not materially different from other types of contingency fee agreements under which attorney fee awards have histori-

cally been permitted, typically in cases for recovery of damages.

Based upon *Fields*, the pro bono attorney wishing to preserve the possibility of a fee award should enter a written fee agreement with the pro bono client in which the representation is defined and the lawyer’s hourly rate is agreed, but which also

provides that the client is obligated to compensate the lawyer only if fees are awarded by the Court and collected from the opposing party. The intention to seek fees should then be disclosed to the Court and opposing party at the outset of any formal proceedings. The claim for fees should also invoke any applicable fee recovery clause in the contract, as an alternative basis for the claim, because the award of fees under the fee statute is discretionary with the Court.

*Fields* thus provides a new basis for pro bono lawyers to claim an award of fees for their work, and offers a new bargaining chip in dealings with opposing parties in these cases. For those hesitant to turn pro bono work into a revenue generator by seeking a fee award, you can always opt to “pay it forward” to a worthy cause of your choosing, including donating the fees to the pro bono program that referred the case. For cases referred by the Volunteer Lawyers Program, the Program urges volunteer attorneys to claim and receive fees when they are recoverable, and then either donate or keep the fees. Volunteer attorneys can also reimburse their firms for recoverable costs.

In addition to the many other good reasons for undertaking pro bono legal work, the potential for recovery of attorney fees in some cases may provide another reason to consider taking on these cases, especially to assist low-income consumers with a variety of contract-based legal difficulties.

Caveat: Absent an amendment to Arizona Supreme Court Rule 38(d)(2)(E), Bar members in retired status, who may handle certain pro bono cases through approved organizations including the Volunteer Lawyers Program, may not claim or receive attorney fees for that work. ■

## Saying Goodbye to Michael Hurley

Michael Hurley was a generous steward of pro bono for the Volunteer Lawyers Program. Sharing gratitude often falls short on the written page, so VLP staff members hope to keep our memories of this dedicated volunteer close to our hearts as we say goodbye and a final thank you.



Michael Edward Hurley  
March 29th, 1941 –  
July 2, 2021

The Family Lawyers Assistance Project (FLAP) Coordinator Karen Jackman summarizes Michael’s extraordinary commitment stating: “He was a class act—the best and the brightest of volunteers. Since becoming a VLP member in 1993, it seems he dedicated half of his law firm time helping low-income families, individuals with disabilities, victims of domestic violence or anyone else in need. He volunteered with FLAP two times

a month, and also accepted cases for VLP clients needing representation in court for family law and domestic violence issues. He will forever be in our hearts as one of FLAP’s most dedicated and gracious volunteers. We lost the best of the best.”

The positive impact and depth of Michael’s service can easily be imagined. He volunteered to assist multiple families, twice a month since 1993. He donated 50 hours on his last family law case helping a CLS client experiencing domestic violence and language barriers. This was accomplished while he was still actively practicing law with his own private practice. We remain thankful.

See *Saying Goodbye* page 13



Volunteer Lawyers Program  
A Division of Community Legal Services in partnership with the Maricopa County Bar Association

### 50 WAYS Private Attorneys Help VLP Achieve Its Mission

#4 Help a client get out of default on student loans and get reduced payments

### Volunteer Lawyers Program Thanks Attorneys

The Volunteer Lawyers Program thanks the following attorneys and firms for agreeing to provide pro bono representation on cases referred by VLP to help people with low incomes. VLP supports pro bono service of attorneys by screening for financial need and legal merit and provides primary malpractice coverage, verification of pro bono hours for CLE self-study credit, donated services from professionals, training, materials, mentors and consultants. Each attorney who accepts a case receives a certificate from MCBA for a CLE discount. For information about ways to help, please contact Pat Gerrich at VLP at 602-254-4714 or pgerrich@clsaz.org. ■

HOMEOWNERSHIP:	BANKRUPTCY:	CONTRACT/WARRANTIES:	MINOR GUARDIANSHIP:
Charles L. Oldham Nearhood Law Offices, PLC	Kenneth L. Neeley Neely Law Firm, PLC Robert Ray Teague Teague Law Firm	Josiah Raymond Reid Buchalter, PC	Christina W. Kelly Squire Patton Boggs

#### The Volunteer Lawyers Program thanks the following volunteer attorneys who provided other assistance during the month:

Nancy Anger	Kina Harding	Rodney Alan Malpert	Edwin Ramos
Robert Crawford	Thomas Hickey	Tracy Marsh	Shawna Riggers
Otilia Diaz	Betty Hum	Kevin McFadden	Jared Sandler
Romy Drysdale	Kelly Kral	Susan McGinnis	Annette Cox Sandoval
Angela Christine Duhon	Kathryn Kraus	Kristina Morrison	Gaya Shanmuganatha
Scott Ferris	Michelle Lauer	Ross Mumme	Jennifer Shick
Shana Fish	Christopher Lazenby	Judith O’Neill	Dan Staren
Stuart Gerrich	James Leather	David Ouimette	Ryan Talamante
Philip Jon Giles	Margaret Mary LeMoine	Alan Pedersen-Giles	Karla Urrea-Perry
Robert Hahn	John Lomax	Robin Petrowski	Jennifer Walston
		Donald Powell	Robert Walston

#### VLP also thanks these other volunteers who assisted during the month:

Ryley Arter	Alexander Eagle	Ben Zinke
Streator Bates	Owen Toepfer	

#### \*\*\*PRO BONO SPOTLIGHT ON CURRENT NEED\*\*\*

Attorneys are needed to help families avoid evictions and homelessness. For more information about ways you can help through VLP, please contact Pat Gerrich at pgerrich@clsaz.org

During 2020, VLP’s legal services provided families with more than \$1,300,000 in economic benefit.

Thanks to all who participated and supported VLP!

The Volunteer Lawyers Program is a joint venture of Community Legal Services and the Maricopa County Bar Association

## COLLECT THOSE JUDGMENTS!

Get them out of your files and generate revenue  
Let an AV Rated Attorney with 34 years of experience handle them for you  
Get help collecting past due child support and delinquent spousal maintenance

**MICHAEL J. FULLER, ESQ.**

3030 North Third Street, Suite 200, Phoenix, Arizona 85012

**602-241-8599**

michael@mjfullerlaw.com | www.mjfullerlaw.com

Contingency Fee Splitting available in compliance with Ethical Rule 1.5(e)

## Saying Goodbye

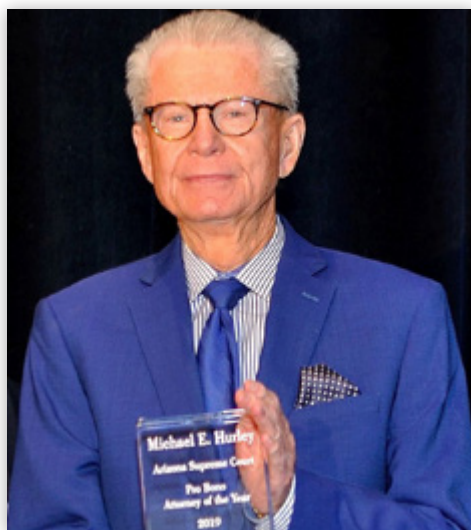
continued from page 12

Referring to VLP's gestures of gratitude over the years, Karen added, "Michael was very humble and greatly appreciated the VLP awards he received for his service to the community."

Pat Gerrich, director of the Volunteer Lawyers Program shares: "Michael was respected and admired by his colleagues and received recognition for his contributions by being honored with the following prestigious awards: VLP's Volunteer of the Year in 1995; VLP's Joseph H. Mahowald in 2001; the Arizona Foundation for Legal Services & Education's Top 50 Pro Bono Attorneys in Arizona in 2005; the Family Lawyers Assistance Project Attorney of the Year Award in 2006; and more recently the Supreme Court's Pro Bono Attorney of the Year Award in 2019."

### Plans to Recognize Those Who "Never Stop Helping"

According to Tania Rathburn, legal assistant for FLAP, "Michael Hurley was one of the FLAP attorneys that NEVER stopped helping people. The word exquisite comes to



Michael Hurley receives the 2019 Supreme Court Pro Bono Attorney of the Year Award.

mind when I think of Mike. We will miss his huge heart and contagious smile. Always!"

VLP has memorialized Michael's generous contributions and qualities of character by creating a new award. This award will recognize and honor other family law attorneys who exemplify the same qualities and commit

to "never stop helping" individuals and families in need. Many qualities needed to carry on this legacy are exemplified in the nearly 50 family law attorneys on the FLAP roster. We are sure Michael would agree. Please watch for news this fall of the first recipient of this VLP Distinguished Service Award named for Michael Hurley.

### A Final Gift That Will Keep on Giving

VLP would like to thank those of you who have recently donated in Michael's honor to the Family Lawyers Assistance Project.

Pat added, "We are deeply grateful that Michael's family suggested that people consider making donations to Community Legal Services designated for the Family Lawyers Assistance Project where Michael devoted much of his volunteer service."

These additional resources, a final gift from Michael, will support the family law services offered through FLAP and have a lasting impact.

If you are an experienced family law attorney and are interested in volunteering with FLAP, please contact Pat Gerrich at [pgerrich@clsaz.org](mailto:pgerrich@clsaz.org). ■

## POTENTIAL CLIENTS CAN BE YOURS WITH THE MCBA LAWYER REFERRAL SERVICE

The LRS receives more than 10,000 calls per year from people seeking legal assistance as well as attorneys referring clients outside their practice area.

### AMONG THE AREAS NEEDING COVERAGE ARE:

- administrative law
- SSI-SSD/Medicare law
- workers' compensation
- immigration



Spanish-speaking and West Valley attorneys are especially needed.

It's easy to join! Call Anjali Patel at [apatel@maricopabar.org](mailto:apatel@maricopabar.org)



# THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS

## www.AZMediators.org

Available Dates and Profiles now online for Arizona's Premier ADR attorneys

 Mark ACETO TEMPE	 Kevin AHERN PHOENIX	 Shawn AIKEN PHOENIX	 Rebecca ALBRECHT PHOENIX	 Maureen BEYERS PHOENIX	 Brice BUEHLER PHOENIX	 Jonathan CONANT PRESCOTT	 David DAMRON PHOENIX	 Michele FEENEY PHOENIX	 Ken FIELDS PHOENIX	 Larry FLEISCHMAN TUCSON
 Sherman FOGEL PHOENIX	 William FRIEDL PHOENIX	 Rick FRIEDLANDER PHOENIX	 Renee GERSTMAN SCOTTSDALE	 Greg GILLIS SCOTTSDALE	 Alan GOLDMAN PHOENIX	 Evan GOLDSTEIN PHOENIX	 Marc KALISH PHOENIX	 Joseph KELLY SCOTTSDALE	 Andrew KLEIN PHOENIX	 Jerome LANDAU SCOTTSDALE
 Michelle LANGAN TUCSON	 Mark LASSITER TEMPE	 Amy LIEBERMAN SCOTTSDALE	 William MALEDON PHOENIX	 Paul McGOLDRICK PHOENIX	 Bruce MEYERSON PHOENIX	 Chuck MUCHMORE PHOENIX	 Michael MURPHY PRESCOTT	 Robert OBERBILLIG PHOENIX	 Craig PHILLIPS PHOENIX	 Winn SAMMONS SCOTTSDALE
 Robert SCHMITT PRESCOTT	 Barry SCHNEIDER PHOENIX	 Chris SKELLY PHOENIX	 Tom TOONE PHOENIX	 Jon TRACHTA TUCSON	 Burr UDALL TUCSON	 Mark ZUKOWSKI PHOENIX				

In 2020, 2965 mediation appts. were expedited by 1600+ Arizona legal staff - all at no charge.

Need a top mediator or arbitrator outside of Arizona? Visit our free national roster of litigator-rated neutrals at [www.NADN.org/directory](http://www.NADN.org/directory)

NADN is the official neutrals database provider for the national trial (AAJ) and defense (DRI) bar associations - for more info, see [www.nadn.org/about](http://www.nadn.org/about)

CONTINUING LEGAL EDUCATION



MARICOPA COUNTY BAR ASSOCIATION

## WAYS TO REGISTER

## ONLINE

To register, go to [www.maricopabar.org/events](http://www.maricopabar.org/events) and select your CLE from the calendar. Follow the link to the registration page. If you need assistance, please email: [cle@maricopabar.org](mailto:cle@maricopabar.org)

## PHONE

Call (602) 257-4200

**PROGRAM LOCATION** Self Study courses are online courses. Interested in presenting a CLE? Email [cle@maricopabar.org](mailto:cle@maricopabar.org)

## ATTENDANCE POLICIES

## ADVANCE REGISTRATION

Full payment must be received in advance of the program before you are considered registered.

## LATE REGISTRATION

Early Bird registration ends five days prior to the program date. Late registration is an additional \$15. For example, registrations for a Sept. 17 program must be paid by Sept. 12 in order to receive early bird pricing.

## WALK-INS

You may register at the door if space is available; the \$15 fee will apply. If you do not register at least five business days in advance of a program, MCBA cannot guarantee space or availability of materials.

## CANCELLATIONS/REFUNDS

Refunds, less a \$25 fee, will be issued only if the MCBA receives your cancellation, in writing by mail, fax at (602) 257-4200, or email [cle@maricopabar.org](mailto:cle@maricopabar.org) at least two business days prior to the program.

## NO SHOWS

If you registered and paid, but could not attend, you may request that materials be sent to you, free of charge (allow 3-4 weeks). If audio media is available, registrations may be converted to a self-study package for an additional \$15 charge.

**FRIDAY** LOCATION: ONLINE  
**SEPT. 17** ■ 12 - 1 PM

## I Sue Dead People



*Nothing can be said to be certain, except death and taxes - Benjamin Franklin.*

This seminar addresses some of the most asked questions about death and personal injury litigation, for example: Can you sue a deceased defendant? If so, how and what for? Can you get punitive damages against the deceased? Can a deceased person sue for personal injuries? If so, how? And what can they sue for? This seminar is ideal for the personal injury litigator and estate planning attorneys who may be called upon to assist with setting up the necessary probate matters.

## PRESENTER:

**Mick Levin**, Mick Levin PLC; Mr. Levin has been an attorney in private practice since 2003. He is a member of the Arizona Trial Lawyer's Association as well as the American Board of Trial Advocates. Mr. Levin's practice is dedicated to the representation of personal injury and insurance claimants.

**WEDNESDAY**  
**SEPT. 29** ■ 4:30 - 7 PM

LOCATION:  
UNIVERSITY CLUB, 39 E. MONTE VISTA

Meet the Probate  
Judicial Officers CLE & Reception

Come meet the judicial officers of the Probate and Mental Health Department of the Superior Court in Maricopa County. You will be presented with court updates, practice tips and the opportunity for an open give and take with the Judges and Commissioners. Immediately following the presentation will be the Maricopa County Bar Association Probate & Estate Section Annual Reception. The CLE is scheduled 4:30-5:30 pm followed by a reception.

## JUDICIAL OFFICERS ATTENDING:

**Hon. Jay Polk**, Presiding Judge,  
Probate and Mental Health  
**Hon. Dean Fink**  
**Hon. Thomas Marquoit**  
**Hon. Amy Kalman**  
**Hon. Brian Palmer**  
**Hon. Jane McLaughlin**

**Hon. Paula Williams**  
**Hon. Joseph Kiefer**  
**Hon. Elisa Donnadiue**  
**Hon. Christian Bell**  
**Hon. Sara Selzer**  
**Hon. Annielaurie Van Wie**

**THURSDAY** LOCATION: ONLINE  
**SEPT. 30** ■ 12 - 1 PM

Claims Against  
Government Entities: A  
Perspective from Both Sides

This course will cover insights and tips for governmental entity litigation from both sides of the "v." Topics discussed will include public records requests, open meetings law, governmental immunity, Section 1983 litigation, other civil rights laws, and interacting with governmental agencies as clients and as opposing parties.

## PRESENTERS:

**James Cool**, Partner, Honor Law Group  
**Benjamin Rundall**, Partner, Honor Law Group  
**Steve Coleman**, Partner, Piece Coleman, PLLC

**WEDNESDAY**  
**OCT. 27** ■ 6 - 8:30 PM

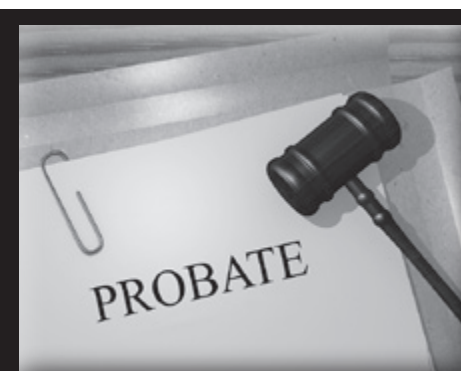
LOCATION:  
PHOENIX COUNTRY CLUB, 2901 N. 7TH ST.

Speed Networking with  
the Family Law Judges

## JUDICIAL OFFICERS ATTENDING:

**Hon. Bruce Cohen**, Family Department  
Presiding Judge  
**Hon. John Blanchard**  
**Hon. Mark Brain**  
**Hon. Stasy Click**  
**Hon. Gregory Como**  
**Hon. Max Covil**  
**Hon. Monica Edelstein**  
**Hon. Melissa Iyers- Julian**  
**Hon. David McDowell**  
**Hon. Suzanne Nicholls**  
**Hon. Susanna Pineda**  
**Hon. Adele Ponce**  
**Hon. Michael Rassas**  
**Hon. Andrew Russell**  
**Hon. Tracey Westerhausen**

**FRIDAY** LOCATION: TBD  
**NOV. 5** ■ 9 AM - 12 PM

Evidence & Trial  
Advocacy for Probate  
Lawyers

Alisa Gray and Jim Fassold return with their popular seminar on negotiating the ethical minefields of estate planning and probate – and doing so with mindfulness and compassion, for yourself and others. Who's the client? What's the scope of representation? Do I have a conflict? Is my file protected from discovery? What do I do if my client is incapacitated? How do I maintain a sense of focus and calm while managing the rigors of our profession, and the challenges of our ever-changing world? Join Alisa and Jim, and many of your colleagues, for an interactive and timely program.

## PRESENTERS:

**Hon. Jay Polk**, Associate Presiding Judge, Probate and Mental Health Department,  
Superior Court of Arizona for Maricopa County;  
**Kent Berk, Esq., Jerome Elwell, Esq. and Lorena Van Assche, Esq.**

The State Bar of Arizona does not approve or accredit CLE activities for the Mandatory Continuing Legal Education requirement. The activities offered by the MCBA may qualify for the indicated number of hours toward your annual CLE requirement for the State Bar of Arizona, including the indicated hours of professional responsibility (ethics), if applicable.

# THE BULLETIN BOARD

*News from the legal community*

The *Maricopa Lawyer* invites members to send news of moves, promotions, honors and special events to post in this space. Photos are welcome. Send your news to [maricopalawyer@maricopabar.org](mailto:maricopalawyer@maricopabar.org).

## FROMM SMITH & GADOW



Marilyn Gutierrez



Karen O'Brien

Fromm Smith & Gadow PC is pleased to welcome two new associate attorneys, **Marilyn Gutierrez** and **Karen O'Brien**.

Gutierrez has been licensed since 2017 and focuses her practice on family and juvenile law matters. She was born in Mexico, is fluent in Spanish, and began her legal career representing the Department of Child Safety (DCS) as an assistant attorney general. In that capacity, she litigated on behalf of DCS in matters regarding dependency, guardianship, adoption and termination of parental rights. She has appeared in countless juvenile court trials, evidentiary hearings and mediations. Since entering private practice, she has handled family and juvenile matters. She empathizes with each client's unique situation and is committed to helping clients through difficult challenges with dignity and respect.

O'Brien began practicing law in 2004 and now focuses her practice exclusively on complex family law matters. She obtained her Bachelor of Arts degree in political science from the University of California—Irvine, and her Juris Doctor degree from Southwestern Law School in Los Angeles. Her law school accomplishments include placing as a semi-finalist in the Cardozo Moot Court Competition in New York and as a finalist in the Southwestern Intramural Moot Court Competition. Shortly after graduation from law school, she went to work for the Los Angeles County District Attorney's Office, soon becoming a major crimes prosecutor. She joined a special unit that prosecuted the most serious and violent domestic violence and sexual assault crimes. Her passion is being in trial. She loves the practice of law, such as presenting evidence, facing procedural challenges and the making of and responding to objections in the midst of a fiercely contested hearing.

## GUST ROSENFELD



Michael C. S. J. Goodman

Gust Rosenfeld PLC is pleased to announce that **Michael C. S. J. Goodman** has been appointed to the Arizona Board of Osteopathic Examiners in Medicine and Surgery.

The Arizona Board of Osteopathic Examiners' mission is to protect the public by setting educational and training standards for licensure, and by reviewing complaints made against osteopathic physicians, interns and residents to ensure that their conduct meets the standards of the profession. The Board is made up of five osteopathic doctors and two members of the public who do not have financial ties to the osteopathic profession. The Governor appoints each member.

Goodman's practice focuses on government, municipal and public law, including land use; development; open meeting law; conflict of interest; public records; construction law; elections; campaign finance law; annexations; civil rights; code enforcement and compliance; community facilities districts; procurement; utilities; and water resources.

Goodman earned his J.D. from the Sandra Day O'Connor College of Law at Arizona State University and his B.S. in sociology from Arizona State University. While in law school, he gained legal experi-

ence externing and law clerking for various law firms and organizations, including the City of Tempe and the U.S. Department of the Interior, and by practicing as a Certified Limited Practice Student through the ASU Civil Litigation Clinic.

## JENNINGS, STROUSS & SALMON



John C. Norling

Jennings, Strouss & Salmon PLC, a leading Phoenix-based law firm, is pleased to announce that Managing Attorney **John C. Norling** has been appointed as a member of the Arizona Center for Nature Conservation/Phoenix Zoo's Board of Directors.

Since 1962, the Phoenix Zoo has worked with the Arizona for Nature Conservation to continue its mission to advocate the conservation of animals and their habitats. Through interaction with nature, they provide visitors with experiences and inspiration to make a difference. This makes the Phoenix Zoo one of the most visited and largest non-profit attractions in the United States.

"The Phoenix Zoo is an incredible institution and has made amazing strides in supporting conservation," stated Norling. "I look forward to playing a role in helping to further their mission and achieve their short and long-term goals."

Norling is the managing attorney of Jennings Strouss and serves on the Firm's Management Committee. His practice is focused on advising clients on all aspects of their operations, including but not limited to, commercial transactions, real estate, business organizations, corporate law, mergers and acquisitions, automobile dealership law, and federal and administrative compliance, business contract negotiations and advertising law.

Norling serves his clients by providing advice on issues ranging from day-to-day operations to strategic planning. He is recognized as an industry leader in the retail automotive industry and advises dealer clients on the legal and practical aspects of the operation of a retail automotive dealership, including, without limitation, the acquisition or sale of a dealership; the commencement of dealership operations, whether through an add-point or newly acquired dealership; manufacturer and lending relationships; operational and consumer issues; ownership succession issues; licensing issues; federal and state compliance; and advertising law. Norling also has significant experience advising commercial lenders in the business of providing financing to automobile dealerships. This experience includes loan documentation and structuring, workouts, enforcement and consumer-related financing issues.

As part of his practice, Norling serves as general counsel to the Arizona Automobile Dealers' Association; Valley Chevrolet Dealers Advertising Association; Valley Honda Dealers Marketing Association; Tucson Chevy Dealers Local Marketing Association; and several other industry related associations.

## JONES, SKELTON & HOCHULI



Elizabeth B. N. Garcia

Jones, Skelton & Hochuli is pleased to welcome associate attorney **Elizabeth B. N. Garcia** to its Appellate Group, as she focuses her practice in federal and state appellate matters.

Garcia joins the firm after gaining experience at a multi-state firm, where she handled

class action defense and other complex litigation. In addition to her class action experience, she has handled breach of contract and other sophisticated commercial litigation for clients across industries. Garcia previously worked for the Arizona Attorney General's Office as an assistant attorney general for criminal appeals and was named the 2017 Emerging Star for the Solicitor General's Office. Garcia honed her appellate writing and research skills through a judicial clerkship for the Honorable Maurice Portley at the Arizona Court of Appeals.

During law school, Garcia worked as a law clerk for a Phoenix litigation firm that handles consumer and employment class-action lawsuits. She was named a Willard H. Pedrick Scholar and volunteered as a Rule 38(d) certified limited practice student at the ASU Immigration Law & Policy Clinic.

Garcia earned her legal degree from Arizona State University's Sandra Day O'Connor College of Law, where she was honored with an Outstanding Performance in Oral Advocacy Award and a Snell & Wilmer Scholarship. She worked as a legal researcher for Icon Professional Services during her first year of law school. She earned her undergraduate degree in political science from Stanford University. At Stanford, she received the Dean's Award for Academic Achievement. She was also awarded the Stanford Award of Excellence and was a nominee for the Boothe Prize.

## MACQUEEN & GOTTLIEB



Dan Thiel



Josh Perlman

MacQueen & Gottlieb PLC (M&G), Arizona's top-ranked real estate law firm, today announced the hiring of attorneys **Dan Thiel** and **Josh Perlman**.

Thiel brings over a decade of experience and has practiced in state and federal courts throughout the nation. He began his career practicing in general commercial litigation. After that, he spent four years representing large pharmacy retail chains in complex antitrust actions pursuing claims against brand and generic drug manufacturers for attempting to monopolize the prescription drug market. He has also devoted a portion of his practice to representing life insurers in stranger originated life insurance (STOLI) litigation, a niche area of the law in which insurers challenge an investor's attempt to cash in on individual life insurance policies for lack of insurable interest. Thiel earned his Juris Doctor from the University of Pennsylvania where he received honors in legal writing & research. He completed his undergraduate studies *summa cum laude* from Villanova University with a Bachelor of Arts in psychology.

"Thiel's diverse experience will make him a perfect fit here at M&G," Patrick MacQueen said. "We want our attorneys to have experience in a range of practice areas and Thiel brings just that. He is eager to use his 'big firm knowledge' at a top-ranking firm with a great sense of culture, hard work and teamwork. We are really excited to have him."

Perlman comes to M&G from a judicial clerkship with the Honorable Timothy J. Thomason of the Maricopa County Superior Court, specializing in commercial and complex civil litigation matters. He brings a depth of local knowledge in business law, in-house counsel experience and real estate litigation. Perlman began his law career practicing in the areas of appeals, arbitration, construction law, employment law, franchise law, and insurance coverage and defense litigation. He earned his Juris Doctor from Boston University School of Law and completed his undergraduate studies *magna cum laude* at Boston University, receiving a Bachelor of Arts with a double major in history and political science.

According to Benjamin Gottlieb, one of the firm's founding partners: "Attorneys like Perlman fit Mac-

Queen & Gottlieb's growing needs perfectly. Perlman is an experienced and passionate attorney who enthusiastically enjoys deep diving into the case."

## RYLEY CARLOCK & APPLEWHITE



Jerry D. Worsham II

Ryley Carlock & Applewhite is pleased to announce that **Jerry D. Worsham II** has joined the firm's Phoenix office as a shareholder.

With 30-plus years of experience, Worsham has an extensive practice in environmental compliance, related litigation and natural resource development. His experience includes: Climate Change and Environmental and Social Governance (ESG) including comment on issues and regulation development; approvals and permits for natural resource development; litigation defense on numerous cases involving the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); compliance with the Resource Conservation and Recovery Act (RCRA); civil and criminal liability defense on environmental matters; ASTM Phase I and Phase II Environmental Site Assessments coordination; emergency incident responses; Prospective Purchaser Agreement negotiations; creation of Conservation Easements; and due diligence associated with mergers, acquisitions and initial public offerings.

Worsham regularly speaks and writes on legal and environmental issues. He serves as a guest lecturer on Hazardous Waste Regulation for Arizona State University's Fulton School of Engineering and Polytechnic School of Environmental and Resource Management, and he has been published in trade and legal journals including the America Bar Association's Trends eNewsletter.

Worsham earned his JD from the University of Denver Sturm College of Law, an MBA from Pepperdine University and a BSS from Cornell College.

## SPENCER FANE



Jim Baglini Jr.

Spencer Fane LLP is pleased to announce **Jim Baglini Jr.** will join the firm's Phoenix office as an associate in the Intellectual Property Practice Group.

Baglini provides clients thoughtful counsel leaning on years of experience in technology and engineering, crafting innovative industry-specific strategies and managing legal matters important to businesses of all sizes, entrepreneurs and innovators. He brings more than 10 years of business and technical experience in the aerospace and engineering industries to his legal practice, giving him unique insight into understanding issues and how to provide clear interpretations to applicable laws.

Baglini aligns IP needs within a client's overall business strategy, handling proprietary information to assist businesses in identifying monetizable assets and protecting them. He also regularly helps clients navigate contract negotiation, review and enforcement, including supply chain management and drafting enforceable non-disclosure agreements for partners and employees and high-value agreements with larger corporations or governmental entities.

"Jim brings a thorough understanding of the legal strategies businesses can utilize to protect their greatest assets: employees and ideas," said Andy Federhar, office managing partner for Spencer Fane in Phoenix. "IP continues to be a growing need for our clients in Phoenix and throughout our firm's footprint, and Jim will help us maintain our commitment to high levels of client service."

Steven Laureanti, IP lead in Phoenix and a partner for Spencer Fane, said. "Jim brings a wealth of knowledge in the technology and engineering sectors that will make a great addition to our practice and expand our ability to serve our clients." ■

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