# MARICOPA LAWYER

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WHERE THE LEGAL COMMUNITY CONNECTS





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## REAL ESTATE SECTION

# How Do I Get Them Out?


**Stockton Banfield**
Dyer Bregman Ferris Wong Carter PLLC


The rise of interest rates and inflation has caused many Arizona residents to explore more non-traditional options for living.

What often happens is friends or significant others who are not married end up living together in a leased apartment, moving into a home owned by one party, or purchasing a home together. This living situation can cause an issue when the relationship between the parties living in the property becomes strained or broken. If the relationship is broken, what must be done to remove one party from the property?

Removing or dissolving a living situation can vary depending on the parties' interest in the property. The three most common situations where removal is required are: removing a co-tenant, removing a guest, and removing a co-owner.

**Co-Tenant:** If the parties are leasing the property and both parties are on the lease, then the only way to remove one party from the lease is by way of a written release from the landlord signed by both the landlord and the tenant. There is also a physical violence exception under the Arizona Residential Landlord Tenant Act ("Act") that allows the victim of domestic violence to terminate their interest in the lease provided the victim has a police report or a protective order. If this happens, the victim is not responsible for the balance of the lease, but the other party remaining in possession must continue to make the rental payment.

**Owner:** If both parties hold title to the property and the relationship cannot be repaired, the best and most efficient option is for one party to buy out the other parties' interest. If this cannot happen, the Arizona legislature has a set of laws that can assist the joint owners.

Section 12-1211 of the Arizona Revised Statutes provides that where two owners have a dispute as to what to do with real property, a partition action can be filed by one party asking the court to evenly divide the property between the co-owners based on their investment. In most instances a forced sale will take place and the proceeds divided.

**Guest:** What happens if the other party living in the property is not on the title or the lease? Again, the Arizona legislature provided the answer. A person who is not on a written lease or title and remains in the property without permission can be removed by law enforcement. See, A.R.S. § 33-1378. Essen-


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# CourtWatch


**Daniel P. Schaack**


# Once More Unto the Breach: Judges Again Tackle Tort Duty

There appears to be ongoing confusion among appellate judges regarding the element of duty in negligence cases. Last month we discussed *Perez v. Circle K Convenience Stores, Inc.*, No. 1 CA-CV 22-0425 (Ariz. App. April 9, 2024), in which a panel of Division One of the Arizona Court of Appeals disagreed on whether a convenience store owed a duty to a shopper who had tripped over a display of bottled water. The split vote in that case was inconsequential to the outcome because the panel unanimously affirmed the judgment against the shopper on other grounds.

But the case we address today is different. In an opinion released by a Division Two panel shortly before *Perez*, the split vote actually affected the outcome. The majority held that the statutes establishing the DLLC—the Department of Liquor Licenses and Control—and guiding its functions establish a public policy that imposes a tort duty on the State to monitor taverns to ensure that they do not overserve their patrons. *Sanchez-Ravuelta v. Town of Dewey-Humboldt*, No. 2 CA-CV 2023-0059 (Ariz. App. Apr. 3, 2024).

According to the complaint, David Browne did some drinking at the Billy Jack's Saloon and Grill in Dewey-Humboldt and then drove away. He stopped at a nearby intersection but then pulled out into traffic and struck a vehicle that then collided with another vehicle, this one occupied by the plaintiffs, Victor Sanchez-Ravuelta, his wife Janette Dodge, and their children.

The plaintiffs sued Dewey-Humboldt, Yavapai County, and the State of Arizona, claiming that the defendants had failed to warn of the allegedly dangerous intersection and had failed to take proper actions against Browne, who had previous DUI convictions. They also alleged that the State, through the DLLC, had negligently issued or negligently failed to revoke Billy Jack's liquor license because the bar was known to persistently overserve its patrons.

Most of the suit was dismissed because of a deficient notice of claim (a ruling that unanimously affirmed on appeal). The superior court ruled, however, that the notice of claim was adequate as to the charge that the DLLC had failed to properly control Billy Jack's. The court nonetheless dismissed that claim because, it ruled, "the State had no legal duty arising from its issuance of a liquor license to protect plaintiffs from the harm caused when Browne drove drunk and caused the accident that injured them."

Writing for himself and Judge Michael F. Kelly, Judge Peter J. Eckerstrom ruled that the State did owe a duty to the plaintiffs in the circumstances. He relied on statutes governing the DLLC.

One provision mandates that the department issue a liquor license only if the licensee satisfactorily establishes its capability, quali-


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MCBA PRESIDENT

Hon. Glenn Allen

# Professionalism, Reputation, and the Importance of Mentorship

For better or worse, professionalism and reputation are generally built simultaneously. When I was in law school, I had a professor tell the class that a solid reputation as an attorney took years to build, but that it could be lost in a matter of minutes. Those words always guided me to make sure that I was always prepared and acted both professionally and ethically.

Professionalism and building a solid reputation are entirely within our control. Do we show up to court on time and prepared for the case? Do we treat opposing parties and counsel with dignity and respect? How do we treat court staff, starting with the security officers, courtroom/judicial assistants, judges and commissioners? Do we file timely and appropriate pleadings? Sounds simple enough, but in my current role you'd be amazed how often even the most basic principles of professionalism are overlooked. These are all things that we have full control over and that go a long way in shaping our reputation and how others see us as professionals.

As we gain more experience in the legal profession all these things seem like common sense and are simply implemented in our normal day to day practice. But what if building these solid foundations did not require years of trial and error to figure out? That is where the importance of mentorship comes in.

If you work in a large firm setting, mentorship is usually something that is already in place. Whether you're a new prosecutor, defense attorney or associate, you are generally paired with someone more experienced to show you the ropes so to say, and make sure you have all the tools to become successful in your career. But what if you aren't in a large firm setting?

For those that are solo practitioners, especially right out of law school, or those in smaller firm settings, a structured mentorship program likely doesn't exist. Regardless of whether you have an in-house mentorship program, or you must find your own mentor, it is critical to seek out and maximize a mentor for many reasons.

First, as a new attorney, finding a mentor will help you learn the practice of law and aid in your professional development. Starting off with the right guidance will help build your professional development and reputation from the beginning.

Second, learning from an established mentor will assist you as a new attorney in gaining and refining your ability to network and build meaningful relationships with colleagues and clients. This is a skill that will serve you for the entirety of your legal career.

Third, the practice of law is a stressful career, and a mentor is someone who you can rely on and talk to during the more stressful times. Having a good mentor relationship might also help identify burnout related issues before they become a bigger problem.

For the experienced lawyers reading this, next time you see an inexperienced lawyer making some of the mistakes you once did, reach out and offer some guidance. For the younger lawyers, once you become that seasoned professional, make sure to repay the time and generosity that your mentor gave you and lend a hand to the next generation of lawyers. Ultimately, it makes the practice of law better for all practitioners, the legal community, and the people we serve. ■


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**Contact Laurie Williams at lwilliams@maricopabar.org for information.**

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# Exciting Milestone Reached & eFile Next Steps


Greetings,

I hope this message finds you well. Today, I am honored to share a significant milestone with you—one that reflects our commitment to expanding and enhancing online services.

On Friday, May 3rd, our eFile services for mental health cases officially went live. This development is particularly impactful, as mental health matters are among the most critical and time-sensitive cases we handle. Electronic filing in these important cases allows for streamlined intake, processing, and routing of case documents. For the legal and medical professionals involved, this virtually eliminates the need and challenge in having to physically deliver many time sensitive documents to our filing counters. Ultimately, this enhancement promotes the delivery of critical mental health services where urgent needs often exist and minutes matter. This achievement is a testament to effective collaboration and dedication of representatives from our office, the Court, the Arizona Administrative Office of the Courts (AOC), and others. Thank you for your steadfast support and patience throughout the journey that led to this milestone.

Now that mental health eFile has deployed, I am excited to share with you our shift from planning to the development phase of eFile capability in probate matters. Interest in probate eFile among legal professionals in Maricopa County remains high, and I would like to thank you for your continued patience and support as we now enter development that will lead to delivery. It is my hope to be able to share a target timeframe for probate eFile deployment when we meet for the annual MCBA conference.

As my team and I plan for the future, we value your insight and invite your involvement. Soon, we'll be launching surveys to gather feedback as we refresh our strategic agenda. Please be on the lookout for a link inviting you to share your thoughts on how we can continue to improve our services.

Wishing you, your loved ones, and your teams all the best for a safe and enjoyable Summer season. ■

# Finding Your (Legal Writing) Voice


Some legal professionals have expressed concern about generative AI taking over the drafting of legal documents. The one piece that I am not concerned about (yet!) is the ability of generative AI to write in an individual legal writer's voice. A legal writer's voice is a blend of that writer's style, tone, and vocabulary, as well as sentence and paragraph structure. Developing a distinct voice is important because it connects the writer to the audience and builds trust with that audience. Following are some questions to consider in discovering your legal writing voice.

**Word Choice:** Word choice matters. Words can be formal (black-tie language) or informal (T-shirt language). The words "utilize" versus "use" is a perfect example of black-tie/stuffy language versus T-shirt/more informal language. Similarly, the use of Latin phrases indicates more formal language, while the use of contractions (especially in court documents) is considered more informal. Do your word choices make sense for your audience and your role?

**Syntax:** Put simply, syntax is the way that words are arranged in a sentence. Some writers use long sentences more frequently. Other writers focus on short sentences that follow the subject/verb/object order with little to no interrupters. The writers who compose long, complex sentences may be categorized as too flowery or detailed, while the writers who write mainly short sentences may be categorized as robotic or choppy. Ideally, readers prefer a mix of both types of sentences. Do you start detailed (long) and punctuate your point at the end with a short sentence? Or do you start with a simple sentence (short) and work your way up to detail? Can you spot the rhythm of your sentence lengths? You can do this same exercise with use of transition words. Do you use many? Where do they appear most often? Do you have favorites? And do they create a rhythm to your writing? Even the order of words in a sentence can be a part of your unique voice. Notice how I start this paragraph with "put simply" instead of "simply put." Generative AI cannot (yet?) capture those small choices in my writing voice.

If you are interested in assessing your own legal writing voice, I suggest checking out this blog post about the three legal writing personas: https://write.law/blog/three-personas or the more general book "The Sound on the Page: Style and Voice in Writing" by Ben Yagoda. ■


# From Legal Necessities New Legal Professionals Are Born

The rising demand for legal services and the increasing complexity of laws and regulations has always been and will continue to be the reason for the creation of certain positions in the legal field. In the mid-20th Century, as the legal profession began to recognize the need for skilled support staff to manage routine tasks and administrative duties that would allow attorneys to focus on more complex legal work, came the emergence of a new legal occupation known as the Paralegal. A paralegal is a professional who assists lawyers in their legal work and often has formal education, such as an associate's or bachelor's decree in paralegal studies, and others may have gained their skillset though on-the-job training or certification programs. Paralegals perform a variety of tasks under the supervision of an attorney, including legal research, drafting legal documents, organizing case files, and assisting in trial preparation. The Arizona Supreme Court, alongside other legal professionals, educators, policymakers, and other stakeholders, decided to collaborate with the intent to design, implement, and improve programs that increase access to legal services and thus, the Certified Legal Document Preparer ("CLDP") was created.

Certified Legal Document Preparers play a pivotal role in enhancing access to legal services by offering an affordable alternative for individuals facing barriers stemming from cost, geographic location, or their county being considered a legal desert. Legal deserts are geographical locations with very few to no lawyers at all. These professionals streamline legal processes by efficiently preparing a wide array of legal documents—such as wills and contracts—thus alleviating the time and complexity often associated with document preparation, particularly for those lacking legal expertise. Through rigorous training and certification, CLDPs ensure accuracy in document preparation, reducing the risks of errors that could lead to delays or financial losses in legal proceedings. By overseeing routine legal tasks, CLDPs complement the work of attorneys, enabling them to focus on complex legal matters while expanding overall legal assistance to clients. Both paralegals and certified legal document preparers have made considerable contributions in and throughout the legal community. As communities expand, the demand for access to legal services also increases, and thus, the Arizona Legal Paraprofessional was established.

An Arizona Legal Paraprofessional ('LP") is a specific designation in the state of Arizona for non-lawyers who are authorized to provide limited legal services without the supervision of a licensed attorney. Legal paraprofessionals must meet educational and experiential criteria established by the Arizona Supreme Court. They assist clients with tasks like completing legal forms, explaining court procedures, and providing general legal information. Despite similarities with CLDPs and paralegals, LPs can provide legal advice and represent clients in court independently. This position holds significant importance in nurturing legal deserts not only in Arizona but will potentially be available nationwide. Arizona has the exciting opportunity to lead the way in legal innovation by demonstrating that legal paraprofessionals can be a valuable asset to the legal community, setting an inspiring example for other states to follow. By allowing highly qualified non-lawyers to independently provide essential legal services, particularly in underserved areas, legal paraprofessionals can help bridge gaps in access to justice. As legal deserts—areas lacking sufficient legal resources—persist across the nation and in the state of Arizona, nurturing and expanding the role of the legal paraprofessional could play a vital role in increasing legal accessibility and addressing disparities in legal representation.

In summary, while all three roles involve assisting with legal matters, the key differences lie in their scope of practice, level of education and training, and the extent of supervision required by attorneys. Paralegals need oversight from attorneys and manage diverse legal duties, whereas certified legal document preparers operate autonomously but cannot offer legal guidance. Legal paraprofessionals have more autonomy, as they can provide legal advice pursuant to Arizona Code of Judicial Administration § 7-210 without the supervision of an attorney. In an ever-evolving legal ecosystem, continual adaptation ensures equitable access to justice for all individuals. ■



# Artificial Intelligence: Marketing your Law Firm AI

**Kent S. Berk**
Berk Law Group, P.C.


Kent S. Berk

As artificial intelligence continues to rapidly advance, there are new opportunities for legal marketing. The ability of AI to process and generate human-like text and images enables law firms to engage more deeply and effectively with potential clients. This technology not only automates mundane tasks but can enhance the quality and personalization of client interactions, content creation, and overall digital presence.

The potential to generate relevant content more quickly, streamline operations, tailor communications, and analyze data more effectively means that AI is not just an operational tool, but a strategic asset that can save you time, drive growth and make your firm more competitive. Here are some ideas:

1. Content Creation: Generate high-quality, informative content such as blog posts, articles, and newsletters that address common legal issues, updates in law, and guidance on various legal issues. You can ask AI to write content with a particular tone or grade level and easily ask AI to revise or generate different versions of the same article. This content can enhance your website's SEO (Search Engine Optimization) and keep it updated with relevant information.

2. Image Creation: Studies show that readers more deeply engage with content that also includes images. Using AI, you can describe and ask AI to create images that correspond with your content. For example, I recently posted an article about the new Arizona Uniform Partition of Heirs Property Act and asked AI to create an image of a house being torn apart to go with the article. Check it out here or scan the QR code: berklawgroup.com/arizona-uniform-partition-of-heirs-property-act:

3. Client Interaction: Automate initial client interactions on your website with chatbots powered by AI. These bots can answer basic questions (e.g., rates, practice areas, availability), gather client information, and even schedule consultations, making the process efficient and user-friendly.

4. Email Marketing: Craft personalized email campaigns that engage potential clients based on their specific legal needs or previous interactions with your firm. AI can help segment audiences and create tailored messages that resonate with each group.

5. Social Media Management: Generate engaging posts and responses to comments on social media platforms. AI can help maintain an active presence online. Some social media services now have built-in AI capabilities.

6. Market Research: Analyze trends and preferences in your practice area. For example, ask AI to compare your website to others and suggest improvements or identify gaps in information for which readers are searching. This can help make informed marketing decisions and improve the content on your site.

7. Feedback Analysis: Use AI to generate surveys, request reviews and analyze feedback from clients. AI can identify common themes and areas for improvement, helping your firm enhance its services and marketing strategies.

While AI may not yet be able to pass the bar exam, it has robust capabilities that can enhance your marketing efforts. Whether it's drafting the perfect email, charming potential clients on social media, or simply freeing up your schedule to focus on what lawyers do best—lawyering—AI can help. Of course, be aware of and comply with applicable ethical and legal requirements, which are beyond the scope of this article. ■

PARALEGAL DIVISION PRESIDENT

Rebecca Cutliffe

# Registration Is Now Open!

The 2024 Paralegal Conference is only five months away. The Conference Committee is working hard to ensure this year's conference is a success, and we are excited about the wide variety of law our speakers will be presenting. The areas include Real Estate, Civil Litigation, Criminal, AI Law/Ethics, Public Speaking/Writing, Public Law (Appeals), Personal Injury, Family, Probate/Estate Planning, Treatment Court, and Intellectual Property. Registration is now open and can be found at: www.maricopabar.org/2024conference.

This year the committee has selected A New Leaf as recipients of our charity drive held during the conference. In March of 2024, A New Leaf, a leading provider of shelter services and programs for families in need across the Valley, announced a strategic acquisition of Homeward Bound, a prominent shelter and transitional-housing provider known for their robust and top-rated Strong Foundations Early Childhood education program. A New Leaf, with its extensive network of 8 shelters and 30 other programs across the Valley, and operational strengths in finance, human resources, and fundraising, is perfectly positioned to integrate Homeward Bound's programs, furthering the joint mission of providing comprehensive support to the most vulnerable families in our community. A New Leaf believes that we must meet the most urgent needs in our community to achieve their mission of "Helping Families, Changing Lives." For that reason, they operate a wide variety of programs meant to help those most in need of assistance. With seven pillars of service, A New Leaf faithfully operates in service to their mission. Those pillars are Housing and Shelter, Domestic and Sexual Violence Services, Financial Empowerment, Health and Wellness, Family Support Services, Foster Care and Educational Services. We are excited to have them join us at the conference!

### Paralegal Networking

Networking is a way to create connections based on an exchange of experience and mutual professional growth. It helps you develop and improve your skill set and gain access to the necessary resources that will foster your career development. To some, networking comes very easy while others find it challenging, and the old-school exchange of business cards just is not exciting. To bring the paralegal community together in an exciting way, on Thursday, June 13, 2024, at 5:30 p.m., we will be hosting the MCBA Paralegal Game Night at the MCBA's new location: 3550 N. Central Avenue, Phoenix, Arizona 85012-0004. We looking forward to seeing you there. ■


PUBLIC LAWYERS DIVISION PRESIDENT

Kyle Cummings

# The Robots May Not Be Coming, But AI Is Here

I once wrote an article about how AI isn't yet at the point of replacing lawyers. I still believe we're a ways off from having our law school years rendered worthless, but I've also had to accept that we can't ignore AI, if for different reasons.

In March of 2024, the news website *Arizona Agenda* published an article entitled "Kari Lake does us a solid." The article's first few paragraphs claim that former gubernatorial candidate Kari Lake wanted to post a video singing the *Agenda's* praises, and the video did just that, right up until "Kari Lake" explained the entire thing was a "deep fake" created to demonstrate how far the technology has come and how easily disinformation can spread.

So, in a job where we sometimes have to depend on audio and video clips as evidence, the future looks slightly terrifying.

### Some of the Problems

As the *Agenda* article demonstrates, it's becoming easier to create fake videos of people saying whatever the creator chooses. (Check out the article, it's worth a read: https://arizonaagenda.substack.com/p/kari-lake-does-us-a-solid.) The tools use videos and audio of the person being faked, which are increasingly available thanks to social media and the ubiquity of cell phone and computer cameras.

Worse, it's not just videos but also images/photos and "audio cloning" (mimicking someone's voice, without a video). Images and audio should be especially alarming, given that there are fewer clues to spot the fake. While videos might have visible problems when the fake person moves and their lips don't sync up with the words, images or audio don't have such concerns.

For us lawyers, all of these problems could affect our clients. Already, bad actors use the internet for things like cyber-bullying, revenge porn, posting someone's private information, and so on. What happens when they start posting fake videos or pictures of you or your client?

Also, social media sites have become another tool to use in cases – a person suing your client for crippling back injuries posting videos of themselves performing acrobatics can substantially undercut their claims. But we're now reaching the point when faked confessions could become an issue, or an opponent could argue that the evidence you're presenting was itself faked.

### Some Potential Solutions

For fake videos or images of clients, these are problems we still struggle with, and there may be no easy answer. People already anonymously post hostile messages and lies online, and currently there are limited tools: for example, requests to websites to delete anything graphic, having clients quickly address any lies that are spread, limit releasing personal information online (including photos and videos). None of these answers may totally address the problem, and the only real answer may just be to wait things out. Just as we all had to learn that things posted on the internet are not always true, we may simply have to wait for society to become skeptical of any videos or photos they see.

Also, we're probably entering a new arena for battles of the experts. Just as we have handwriting experts and statistics experts, we may reach a point where we'll need to think about hiring experts to analyze and testify as to whether videos are real or faked. On the plus side here, experts acting as witnesses is nothing new, and I imagine we'll start seeing experts on spotting deep fakes emerge fairly soon, if they're not already available.

Another good idea would be to keep the standard discovery methods sharp. Live testimony, documents, DNA evidence at the scene and the like existed before we could hop on Facebook and find the defendant incriminating himself (yes this happens, because life is absurd sometimes), and they'll survive as useful tools even with the advent of AI. While there could be new challenges—such as a fake video of an eyewitness giving a contradictory statement—this would ultimately come down to demonstrating the witness's credibility through other evidence and working with opposing counsel to keep out anything that's been faked.

### Conclusion

The *Agenda* article closed on some good advice that applies in our jobs as well as generally: get information from trusted sources and think critically about what you are seeing and hearing. While comments have been tossed around about how we can no longer trust what our eyes and ears tell us, I think this is inaccurate. Rather, as I think everyone in the legal profession understands, sometimes we'll encounter liars, including ones who will falsify records. It's still entirely possible to separate fact from fiction, and it's just a matter of working through how some record types we used to view as accurate may require closer examination before reaching that conclusion. ■

# REAL ESTATE SECTION

## Putting Out the Fire: Extinguishing Easements

**Elizabeth Moore**
Partner Platt & Westby, PC

An easement is a property right that allows one person, or entity, to use the land of another for a limited use or purpose. An easement runs with the land and is considered a form of real estate. Because it is a property right, an easement cannot simply be revoked at will.

Why extinguish an easement? Because easements are restrictions on the free use of property. They could be obsolete or abandoned. The original purpose may no longer exist, or its use might be improper and not supported by the terms of the recorded easement. Sometimes these conditions occur when land has been repeatedly subdivided, causing, in some situations, parcels which are encumbered by an easement that prevents a landowner's use as intended. Many times easement issues are created or go unnoticed in the innumerable interfamily land transfers accomplished privately without benefit of title company scrutiny.

There are several ways to extinguish an easement.

**Written Release:**

The servient estate may give an express written release. Since extinguishment of an easement is a transfer of right in real property, the statute of frauds applies.

**Misuse:**

If the use of an easement becomes different than originally intended and the result interferes with the parcel's proper enjoyment, then the easement may be extinguished. The unauthorized use must be willful and substantial. But, if the increased burden can be eliminated and the original purpose reinstated, then the easement may not be extinguished.

**Reverse Prescription:**

This method requires the elements to establish adverse possession, for the statutory time period, in detriment to the continued and proper use of the easement. Any permissive enclosures or uses will negate the adverse claim. The benefit of the doubt is given to the owner of the easement.

**Merger of Ownership:**

When the right to both dominant and servient parcels become vested in one owner, the easement is extinguished.

**Elimination of the Original Purpose:**

Because easements are created for a specific purpose, if that purpose is eliminated the easement becomes extinguished. An example of such elimination would be if a construction project had a temporary construction easement. Once the project is complete, the easement is extinguished.

**Foreclosure and Tax Sale**

When a mortgage or deed of trust is executed prior to the creation of an easement, the easement may be extinguished if the property is subsequently foreclosed upon. The courts are split on the result of a tax sale on an easement.

**Abandonment**

Non-use is not enough to constitute abandonment by itself. But it is evidence of abandonment. There must be an intent to abandon and subsequent acts, or omissions, which cause the abandonment. The court will look at the conduct of the parties to discern intent. Clear and convincing evidence is the standard to find abandonment.

There are ways to revive an easement after it has been extinguished if desired, but this is not automatic, except in the case of misuse where the act can be eliminated, and the original purpose reinstated. Many people are moving to, or buying property in, Arizona and although notice is given during the sale, a problem could arise later that requires extinguishment of an easement. The best way to handle these issues is through a formal agreement that is signed by all parties and recorded in the county where the easement is held. Absent an agreement, in order to challenge an easement, one may want to file for quiet title and argue abandonment using one of the aforementioned theories since an easement is a property interest and a quiet title action has a mechanism for recovery of attorney's fees. ■

## Legal Challenges In Repurposing Commercial Real Estate Projects

**James Connor**
Gallagher & Kennedy

**James Connor**

With the desire by many Arizona residents to experience a more urban lifestyle, the repurposing trend of commercial buildings/areas has increased. From the extensive "raze, scrape and re-build," to merely "gut and renovate," developers and investors are creating imaginative and dynamic projects. In most instances, this transformation is a result of market forces, where an office building suffers from a lack of tenant demand, an industrial space gets upgraded to "back office" use, or a regional shopping mall loses the anchor tenants.

With the benefit of a growing population and economy, the greater metropolitan Phoenix area appears to be fostering many repurposed projects, as evidenced in Phoenix by the Seventh Street Corridor, Roosevelt Row, and ASU's downtown campus. Repurposing real estate requires thorough due diligence, significant time, and a relatively large scope of review with the legal and development team.

Adding to the challenges for redevelopment is the state of the current credit market for commercial real estate, which has grown increasingly conservative. This is due in part to the shift in "favored" sectors, where the perception by investors is that retail is struggling, office is generally not desirable, and multifamily housing seems stable primarily as a result of the relatively low supply of new single-family homes and the continued influx of new residents.

The opportunity presented is to purchase the real estate at its existing value (e.g., the current NOI, with the current capitalization rate), then reposition the project for its highest and best use, where the amount of the development investment will be less than the expected appreciation.

The good news is that most of the due diligence areas to be considered are common to any real estate project. The bad news is that the failure to investigate and evaluate the risks might leave an investor with limited prospects for salvaging even the initial investment.

***Some of the key issues to address include:***

**Title Review:** Reviewing the title, including an ALTA/NSPS survey is essential. Obtaining title insurance in the amount of the purchase may not adequately address the scope of the risk, where the "fully developed" value is projected to be worth more than the cost of the land. (Consider obtaining "subsequent issuance" endorsements.) Potential problems include covenants of record, long-term leases, access limitations, easements, mineral reservations, use restrictions, architectural constraints or approvals, or other burdens, including amenity sharing agreements (e.g., parking, signage, retention, etc.) with third parties. In some cases, recorded covenants may not have clear means to amend or terminate or to identify who would be the appropriate parties.

**Zoning and Entitlements:** The regulatory powers of the local municipality must be vetted. Even with the support of a project by city staff, the neighbors may have an opportunity to intervene. Zoning and building codes will control all aspects of a development, including the use, architectural guidelines, density, access, parking, and landscaping. Decisions regarding whether to demolish and reconstruct could be swayed based on grandfathering of non-conforming improvements or uses, applicable fees, and rights of neighbors to object. Historically significant features, if preserved, could give rise to favorable subsidies or tax credits.

**Offsite Infrastructure:** Great care is required where a repurposed use will result in a different impact on the offsite services (e.g., utilities, traffic, drainage, etc.). Project design consultants must evaluate the requirements for the repurposed project and the capacity of the "in place" improvements, or alternatively, the determination of any necessary additional offsite improvements.

**Environmental:** "Legacy" projects often have legacy problems, whether in the form of abatement or remediation of asbestos, underground storage tanks, chemical residue from agricultural uses, or even septic tanks. The environmental consultant will need to review the historical use of the property as far back in time as possible (i.e., even predating the current use which will be terminated), regardless of the applicable ASTM standard.

**Development Matters:** Subdivision plats may need to be abandoned. However, before undertaking this effort, confirm what benefits or issues are addressed by the existing plats. Legal counsel is not always involved with subdivisions, lot splits, etc., yet these recorded covenants can create issues (or problems) if the text (which sets forth dedications, restrictions, "notes," etc.) is not tailored with precision. ■

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*James Connor is a shareholder at Gallagher & Kennedy, practicing in corporate finance and real estate law. Jim represents local and national real estate developers, lenders, and investors with commercial real estate matters including apartments, industrial, office and retail projects, master-planned communities, and shopping centers. With more than 43 years of experience, Jim is well-versed in all corporate finance and real estate matters, having dealt extensively with a wide variety of legal issues.*

# REAL ESTATE SECTION

## A Guide to Commercial Evictions: What To Do If A Tenant Defaults

**By: Timothy C. Bode**
Shareholder, Tiffany & Bosco, P.A.

The current economy can put a number of strains, including inflation and increased expenses, on all types of businesses. This can lead to commercial tenants either being unable to pay rent or prioritizing rent payments to the detriment of other expenses and upkeep, leading to non-monetary defaults under their leases. As a result, many commercial landlords have experienced, or are likely to experience, a rise in defaults by commercial tenants.

People often focus on the impact of economic downturns on consumers or tenants. And for good reason. But if a commercial tenant is unable to pay rent or has otherwise defaulted under its lease, this negatively impacts the landlord, the landlord's employees, and potentially the landlord's ability to pay its debts, including the mortgage on the leased real property. It may be easy for some to forget, but landlords can feel like they are in uncertain and difficult territory when faced with tenant defaults.

Unlike in the residential eviction context, commercial landlords have multiple and varied options at their disposal to address tenants that are in default. What a landlord can or cannot do in these situations is governed by Arizona statutes and the parties' lease agreement. Generally, a landlord has two primary options: (1) re-enter the premises and lockout the tenant; or (2) pursue an eviction action to regain possession. See A.R.S. §§ 33-361(A) and (B).

### OPTION 1: LOCKOUT

Although statutory provisions may afford the landlord various options, be aware that the applicable lease may prohibit a lockout or it may set forth more stringent notice requirements which a landlord must fulfill before proceeding to retake possession. It is essential to review the lease carefully before moving forward.

If the lease does not prohibit a lockout, a landlord can generally re-enter the premises and lockout a tenant when rent is more than five (5) days late or there has been a material breach of the lease. See A.R.S. § 33-361(A).

If rent is owed and a lockout occurs, the landlord can assert a lien over the tenant's non-exempt personal property left in the premises. After satisfying certain requirements and after the requisite passage of time, the landlord can sell the property. This process is statutory and technical. Landlords should consult a lawyer to ensure that statutory procedures are properly followed.

### OPTION2: EVICTION

In some cases, a landlord may not want to lock out a tenant, particularly if there are concerns over the type of business or what would remain in the space should the tenant be locked out (e.g., a medical office with medical records). Or it may be that a landlord does not want to deal with the headache of asserting a landlord's lien. Instead, the landlord can initiate a commercial eviction action in court—referred to as a forcible detainer action or FED. An FED is intended to be a speedy mechanism for a landlord to regain possession of the premises. It is also an initial avenue for obtaining a swift judgment for past-due rent and then-accrued attorneys' fees and costs. An FED judgment will grant possession to the landlord. After gaining possession, if the tenant fails to leave, the constable or Sheriff will remove the tenant and restore possession to the landlord. The FED process typically takes 15-30 days depending on the relevant court's schedule. In general, the judgment and FED mechanisms provide a level of comfort and shield the landlord from removing the tenant directly. And a landlord can typically initiate a separate breach of contract action for damages after the landlord regains possession.

### RE-POSSESSED – NOW WHAT?

Regardless of whether the landlord regains possession through a lawsuit or otherwise, the landlord must be aware of additional non-contractual obligations. Primarily, a landlord cannot let the property sit vacant and simply seek to obtain all future rent due under the lease from the tenant. Rather, a landlord has a duty to mitigate damages. In other words, a landlord must engage in reasonable efforts to market and re-let the premises at a fair rental rate (i.e., not necessarily a monthly rent or term equivalent to those included in the prior lease).

If a landlord pursues the former tenant for damages, the landlord must prove that a contract existed, the tenant breached the contract, and the landlord suffered damages. If there was a written lease, the tenant will likely concede a contract existed and the tenant breached the contract. But the tenant will undoubtedly argue that the landlord did not mitigate the landlord's damages. This dispute will become the primary issue in any litigation. A mitigation dispute can increase the scope and expense of litigation because it is a factual issue which usually requires a trial to resolve, and the landlord will need to present expert testimony regarding its efforts. By engaging in efforts to mitigate damages or, ideally, if the landlord can promptly install a new tenant, the landlord will likely eliminate any factual dispute over damages and can quickly move to have a judgment entered against the former tenant.

Not every commercial lease, factual scenario, or case is the same. It is helpful to have a well-written lease and to know what steps can or must be taken when a commercial tenant is in default. ■

## How Do I Get Them Out?

continued from page 1

tially, the police can be called to remove a guest; however, police often determine that this is a civil matter and will not remove the guest without a court order. If this happens, the guest can be evicted.

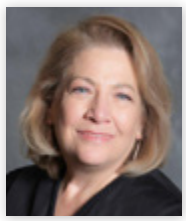
A removal of a house guest often comes up when one party moves into a house owned by the other party. If the owner dies and is survived by the other party, the surviving party becomes a house guest of the owner's estate. Often times, the guest will refuse to leave claiming that they have a right to the property1. When this happens, the estate will have to evict the guest through a forcible detainer action.

To do this, the Estate must provide written notice to the guest to vacate the property. If the guest does not vacate, the estate can commence an eviction action by serving notice to the property and requiring the guest to vacate. Notice can be immediate because the guest is a trespasser; however, up to thirty days' notice is recommended if the guest has been a longtime resident in the property. If the guest does not leave, an eviction action can be filed which will ultimately lead to a Writ of Restitution being issued by the court. Once the Writ of Restitution is issued, the constable will remove the guest.

While no one ever wants to have to remove someone from their property, it is good to know that there are ways to do so. The best and most economical way is always to have a conversation with the party first and see if an agreement can be reached. If not, contact a lawyer to assist. ■

# Arizona's Justice Courts: History, Challenges, and Innovations

**Anna Huberman**
Presiding Judge Maricopa County
Justica Courts



**Anna Huberman**

The Act that established the Arizona Territory in 1863 created a territorial judiciary with "a Supreme Court and such inferior courts as the legislative council may by law prescribe". The territorial legislature established probate courts, three district courts, justice of the peace and municipal courts. Justices of the Peace were included in the Constitution once Arizona became a state.

Justice Courts as well as Municipal Courts are of limited jurisdiction. Although Justice Courts hear a wider range of cases. Close to 90% of all court cases in Arizona are heard in LJ courts. Which means that our courts are the true face of the judiciary.

All full-time justice courts in Maricopa County are housed in shared justice centers. All of them but one, identified by their cardinal location (Northwest, Southeast, etc.) We had two justice courts that shared a name with their regional center. This created much confusion for litigants and additional work for court staff. This year, the San Tan region was re-named Ocotillo Justice Center allowing the San Tan Justice Court to keep their name. Since the Downtown Justice Center could not be renamed, the Downtown Justice Court is now El Centro Justice Court.

Although we don't hear million-dollar lawsuits or high-stakes felony cases, justice courts are high volume courts, with over 300,000 filings per year. 38% of all filings are regular civil cases. Most of the plaintiffs in these case types are professional debt buying entities or debt collectors and are mostly represented by attorneys. 36% of all filings are eviction actions and close to 95% of those landlords are represented by attorneys.

It is probably scary and intimidating to come to court and have to defend yourself. And that might be the main reason many defendants don't come to their hearings.

Our courts are constantly considering the best way to help serve the community and providing services that are best suited to meeting the everyday legal and justice needs of the public. We want our justice system to be effective, responsive, and transparent.

This requires us to have a people-centered approach when delivering legal and justice services to ensure high quality, appropriate, and timely access. We are constantly thriving to make the court experience more efficient and meaningful.

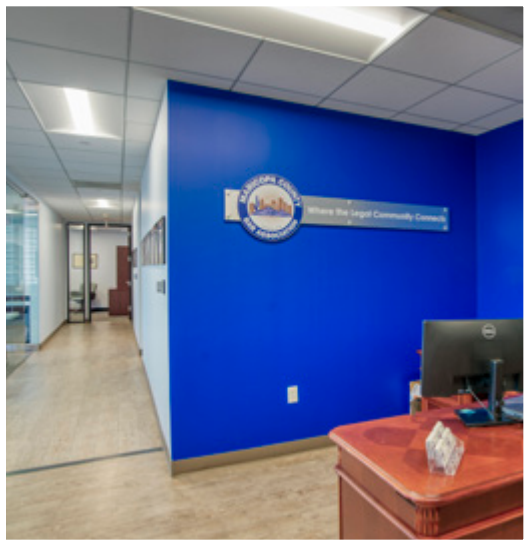
To that end, we have implemented changes, so our court facilities reflect these ideals. This includes new courtroom technology and digital record keeping. We have modernized and updated our signage with electronic monitors help bring the correct information to those who need it.

We have also added Court Navigators in all our regional centers. Navigators provide guidance to individuals who need help figuring out the court system; point court users to where they need to be, they can explain rules and procedures, offer resources and services, and can help steer court users through the complexities of the court system.

Navigators are also helping the courts by providing fingerprinting services, which aids the customers who no longer must go to the Sheriff's facility in the Superior Court –a long drive for many- and aids the courts who no longer spend countless hours tracking fingerprint compliance.

A few years ago, Maricopa County created a Veteran's Treatment Court to serve retired and active-duty military criminal defendants by providing services through the VA and other agencies. Our Veteran's Treatment court has now expanded to four judges spread out throughout the Valley. ■

# we have MOVED



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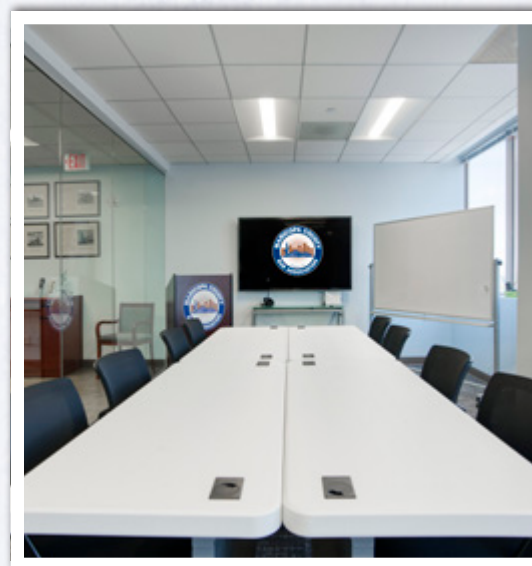
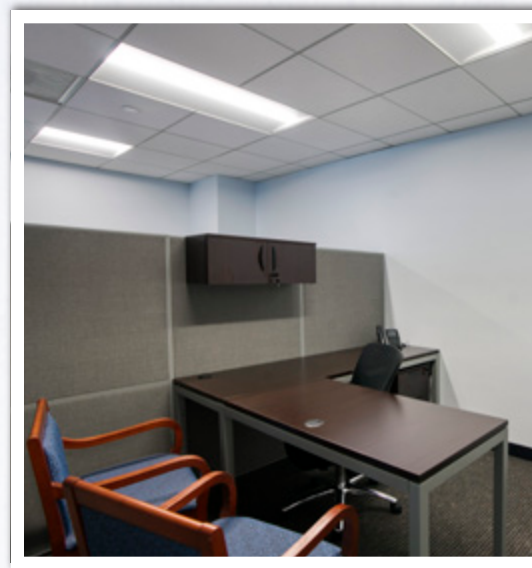




**COME BY, SAY HI, AND SEE OUR NEW HOME. WE LOOK FORWARD TO WELCOMING YOU!**

# 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.**

## DEANGELIS LEGAL

**Garren W. Carroll**, Esq. has joined DeAngelis Legal as an attorney. Garren has been practicing general business and estate planning law since 2005. Prior to joining DeAngelis Legal he worked in private practice and as in-house counsel at a small start-up.

Garren regularly represents clients with their estate planning and probate matters, including simple wills, revocable trusts, powers of attorney and title issues. Over the course of his career he has also assisted small and medium-sized businesses with formation documents, corporate contracts and mergers and acquisitions. Garren is a licensed attorney and a member of the State Bar of Arizona.

## SPENCER FANE

Spencer Fane welcomes two more associates with Product Liability Practices.

Spencer Fane LLP is pleased to announce associates **Ashley R. Dickerson** and **Dontan (Don) K. Hart** joined the firm's Litigation and Dispute Resolution practice group in the Phoenix office, rounding out a powerful new team of 11 litigators with national product liability practices led by partner William Purnell.

Dickerson and Hart expand the firm's product liability team and general business litigation practice with diverse experience defending clients against product liability and tort claims. An agile pair of litigators with markedly strong attention to detail, Dickerson brings an all-encompassing approach to case analysis, investigation, and review while Hart taps into intricate technical education and experience to reinforce robust defense strategies.

# Paralegals in the Community Helping at Special Olympics

**Anabel Quintana, Nilda Maldonado, Elisa Murphy, Silky Sharpe and Lindsay Ann Hiestand**

# CERCLA Joins the PFAS Rodeo

**Tiffany Thomas, PhD**
*Principal Chemist, Emerging Contaminant and Litigation Support Leader*
Haley & Aldrich, Inc.

In less than a month, the Environmental Protection Agency (EPA) finalized two watershed regulatory measures intended to address the growing concerns over per- and polyfluorinated alkyl substances (PFAS), which have been the focus of increasing scientific, regulatory, legal, and media attention since the late 1990s and were central to EPA's PFAS Strategic Roadmap. On 10 April 2024, the EPA promulgated the final Maximum Contaminant Levels (MCLs) under the Safe Drinking Water Act (SDWA) for six PFAS. Shortly thereafter, on 19 April 2024, the EPA announced the final inclusion of two PFAS – perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) – as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which takes effect 8 July 2024.

Last month, a companion piece to this article discussed the ramifications of the final MCL promulgation in tandem with the hypothetical CERCLA listing. With the final details of the CERCLA designation available, entities in Arizona and the other 29 states that have not specifically regulated PFAS, will have less than two months to evaluate the extent to which these developments will apply to their interests and operations. The following is a high-level overview of three technical considerations that may be relevant to such an undertaking.

Due Diligence – CERCLA hazardous substances are "in scope" under EPA's all appropriate inquiry (AAI) rule as defined in the ASTM E1527 Phase I Standard. Moving forward, environmental professionals performing Phase I environmental site assessments will be required to identify PFOA and PFOS use as a Recognized Environmental Condition (REC). Because neither compound has historically been considered hazardous, Safety Data Sheets and other related documentation will not contain specific references to either compound, leaving the tentative identification of PFOA/PFOS–related activities up to the best judgement of the individual performing the assessment. Such assessments will also be complicated by the mobility of PFAS, which is known to be present in atmospheric precipitation, dry deposition, and various commercial products (such as floor waxes, upholstery protectants, etc.). The identification of PFAS as a REC may have unforeseen ramifications to the property transaction, insurance availability, and other regulatory actions. Both sellers and buyers are well served by educating themselves on this topic specifically.

Reportable Releases – Entities are required to immediately self-report in the event of a release of one pound of either PFOA or PFOS. Notably, neither compound is currently produced or distributed by domestic manufacturers. 3M held the exclusive patent for PFOS synthesis domestically until they ceased production in 2002. PFOA was domestically manufactured by multiple entities but was phased out of production in 2015 as part of the PFOA Stewardship Program. Although both PFOA and PFOS remain in production overseas, the total quantity imported to the US is unknown at this time. However, the disclosure of PFAS–containing products and articles under the Toxic Substances Control Act Section 8(a)(7) reporting will better quantify the magnitude of these possible sources. Notably, entities do not need to report past releases of PFOA or PFOS following the requirements of CERCLA Section 103 and 111(g) or EPCRA section 304 if they are not continuing as of the effective date of the rule.

Discretionary Enforcement – EPA stated a list of criteria by which it would consider discretionary enforcement appropriate given the nature and function of the facility in question, which is defined by whether the entity is a state, local, or Tribal government or works on behalf of or conducts a service that otherwise would be performed by a state, local, or Tribal government. By extension, the EPA clarified that such functions/services include 1) providing safe drinking water; 2) handling municipal solid waste; 3) treating or managing stormwater or wastewater; 4) disposing of, arranging for the disposal of, or reactivating pollution control residuals (e.g., municipal biosolids and activated carbon filters); 5) ensuring beneficial application of products from the wastewater treatment process as a fertilizer substitute or soil conditioner; or 6) performing emergency fire suppression services. Although not exhaustive, this framework signals EPA's differentiation of entities they perceive as primary sources (i.e. manufacturing) vs. passive receivers and mandated users (i.e. airports and fire departments). Discretionary enforcement is intended to protect these entities from punitive action from the EPA, but does not extend to other programs, agencies, or third parties.

It does not appear that the EPA intends to stop with PFOS and PFOA—on 13 April 2023, the EPA requested public input regarding the potential listing of an additional seven PFAS under CERCLA. The EPA is not limiting their focus to solely the SDWA and CERCLA either—on 8 February 2024, they announced the proposed rule to classify nine PFAS as hazardous wastes under the Resource Conservation and Recovery Act. If finalized as drafted, the EPA has made significant strides in codifying PFAS under each of the pillars of environmental regulation. Now all that's left is to see how these fledgling regulations are practically instituted. So hang on Arizona – we might be in for a rough ride. ■

## Once More Unto the Breach

CourtWatch, continued from page 1

fications, and reliability. Other provisions require the department to establish a unit to investigate compliance with the liquor laws and allow it to inspect liquor establishments' premises. Still others allow the department to impose fines and to suspend or revoke liquor licenses. Finally, one statute prohibits licensees from furnishing liquor to disorderly or obviously intoxicated persons.

Eckerstrom ruled that "this statutory scheme, which created the Department and provided its authority, expressly identified the overservice of patrons as among the risks to the general public that it sought to prevent." He rejected the State's argument that finding a duty in these circumstances would essentially make it a general insurer of the public's safety. Instead, "those potentially harmed by an overserved patron represent the precise class of persons those statutes were designed to protect," he wrote.

He added that "the state created the Department to oversee only a specific and far more narrow group of actors than the general public: the state's liquor licensees." Furthermore, "The potential harms addressed by the statutory scheme are also specific: those caused by the abuse of alcohol that can be mitigated by the licensees." Thus, he concluded, "the statutory scheme seeks to protect a specific class of persons: those potentially harmed by the abuse of alcohol."

Eckerstrom also found support in another statute, A.R.S. § 12-820.02(A)(5), which does not address liquor regulation but instead immunizes the "issuance of . . . any permit, license, certificate, approval, order or similar authorization" unless the plaintiff shows gross negligence by the defendant. He maintained that the legislature, in enacting this statute, "has provided that our state agencies, like the Department, can be sued for" improper licensing actions. "Were we to find no duty here," he wrote, "we would render that provision a nullity for those persons the Department was created to protect."

"Thus," Eckerstrom concluded, "under the criteria for the statutory creation of a duty articulated by our supreme court, the Department had a duty to plaintiffs in these circumstances."

Judge Karl C. Eppich dissented. He agreed that "a statute reflecting public policy may create a duty when a plaintiff is within the class of persons to be protected by the statute and the harm that occurred is the risk that the statute sought to protect against." He disagreed that the statutes cited by the majority did the trick.

"Most of the statutes on which the majority relies," Eppich wrote, "generally describe the powers, duties, and organization of the Arizona Department of Liquor Licenses and Control." But "to the extent it could be argued that those statutes do regulate conduct, it is not conduct relevant to the issues presented in this case."

Eppich chided the majority for relying on the provision allowing the DLLC to revoke or suspend a liquor license, noting that "the conduct being regulated there is that of the licensee or persons on the licensed premises, not the licensor." The same held true, he believed, for "other statutes, which are more directly linked to the harms the plaintiffs suffered here," which also "tend to govern the conduct of persons consuming or providing the alcohol."

Eppich also disagreed with the majority's conclusion that the duty it recognized protects a specific class of persons. He wrote that the supposedly specific class—"those potentially harmed by the abuse of alcohol"— "is indistinguishable from the general public." He therefore concluded "the statutory authority here is akin to general law enforcement powers, which provide no actionable duty to protect any particular individual member of the public," as previous opinions had held.

Eppich therefore would have affirmed the superior court's ruling on the duty issue. "In all other respects, I whole-heartedly concur in the majority's well-reasoned opinion," he wrote. ■

***Editor's note:*** Daniel P. Schaack was one of the Assistant Attorneys General representing the State in *Sanchez-Ravuelta v. Dewey-Humboldt*.

# PRO BONO PROFILES

## Arizona Honors 21 VLP Attorneys as *2024 Top Pro Bono Attorneys*

The Arizona Bar Foundation has recognized dedicated pro bono attorneys—nominated by Community Legal Services (CLS), other legal aid law firms, and nonprofit organizations—for over 20 years. Kevin Ruegg, CEO and Executive Director of the Foundation, states, "It is the Foundation's privilege and honor to recognize ***Arizona's Top Pro Bono Attorneys for 2024***. Their generosity expands the great and much needed services provided through our legal aid entities across the state."

Twenty-one of Arizona's ***2024 Top Pro Bono Attorneys*** are Pro Bono Attorneys with the Volunteer Lawyers Program (VLP) at CLS. Each of these selfless attorneys dedicated over 50 hours of pro bono service help underserved VLP Clients in 2023. Roni Tropper, VLP Director, applauds our 2024 Top Pro Bono Attorneys: "Congratulations on this well-deserved recognition! We at VLP thank you for your dedication to our clients and commitment to equal access to justice for all."

**Please join VLP and CLS in honoring VLP's 2024 Top Pro Bono Attorneys.**

**PLEASE JOIN VLP'S PRO BONO ATTORNEY TEAM!**
**Visit our website at: https://clsaz.org/volunteer-lawyers-program/**

### Nancy Vottero Anger
*Consumer Attorney of the Year*

**Nancy**, *a retired attorney*, has been a dedicated and committed VLP Attorney since 2017 and volunteers weekly to assist clients in VLP's Attorney of the Day Program. In 2023, Nancy contributed 158 hours of pro bono service and provided weekly interviews and legal assistance to over 110 VLP Clients.

### Robert F. Crawford

Robert, a sole practitioner, helps VLP Clients work through their Motor Vehicle Department and Title issues. In 2023, Robert donated over 55 hours utilizing his expertise and skills to assist our clients and also assisted other volunteer attorneys with research and legal consultations.

### Greg R. Davis

Greg, Warner Angle Hallam Jackson & Formanek PLC, has demonstrated his commitment and dedication to VLP's Family Lawyers Assistance Project (FLAP) since 2022. During 2023, Greg donated over 92 hours, helping 116 families with their family law matters.

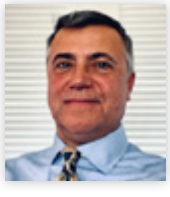
### Honorable Jeanne M. Garcia

Jeanne, CLS/VLP Certified Pro Bono Counsel and retired Maricopa County Superior Court Judge, draws from her experience as a Family Court Judge to help FLAP Clients with their family court issues. In 2023, Jeanne contributed 72 hours and helped nearly 100 clients with their family law cases.

### Stuart J. Gerrich

Stuart, CLS/VLP Certified Pro Bono Counsel, has consistently served as a VLP Attorney since 1995. Stuart has an unwavering commitment to pro bono service and helps over 300 clients per year. In 2023, Stuart assisted 307 clients and donated 245 hours to help FLAP Clients.

### Robert L Hahn



Robert, Law Offices of Robert L Hahn, has assisted family law litigants in Maricopa County through FLAP for over a decade. He now also assists clients in Mohave and La Paz Counties. He donated over 80 hours and helped over 150 clients in 2023.

### Edward J. Hermes

Ed, Partner at Snell & Wilmer, serves as a VLP Pro Bono Attorney and helps clients in the U.S. District Court, District of Arizona Pro Bono Program, the Florence Immigration and Refugee Rights Project, the Young Center for Immigrant Children's Rights, and the Arizona Civil Liberties Union. Ed contributes over 250 hours per year and supervises dozens of associates who also donate their time to help underserved litigants.

### Robert Ito

Robert, Snell & Wilmer, provides pro bono service for clients in the Florence Immigrant and Refugee Rights Project. In 2023, Robert and other pro bono attorneys assisted a teenage minor seeking refuge in the US from Guatemala. This minor is no longer at risk of deportation and will be able to receive a green card and obtain employment authorization.

### Andrew S. Jacob, M.D., J.D

Andrew, CLS/VLP Certified Pro Bono Counsel, volunteers with VLP's Federal Court Brief Advice Only and our Attorney of the Day clinics. In 2023, Andrew helped over 80 clients with negotiating, writing letters, and making calls to resolve their consumer issues.

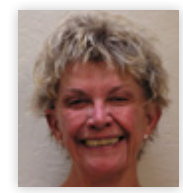
### Scott Klundt

Scott, CLS/VLP Certified Pro Bono Counsel, has been volunteering with VLP since 2022. He's dedicated his time and expertise to respond to questions submitted to the Free Legal Answers website. He states, "This pro bono work has been some of the most rewarding legal work that I have done in my career."

### Christopher Robert Lazenby

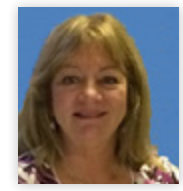
Christopher, Lazenby Law Firm, has provided family law assistance to self-represented litigants in FLAP since 2012. He's never missed a clinic, and in 2023, over 155 families benefited from his generous donation of 124 hours.

### Peggy M. LeMoine



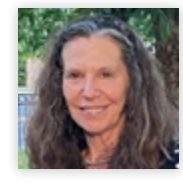
Peggy, CLS/VLP Certified Pro Bono Counsel, has volunteered as a Landlord/Tenant Clinic Attorney for several years. In 2023, she assisted 12 clients and contributed over 50 pro bono hours to help them achieve great outcomes.

### Frances Susan McGinnis



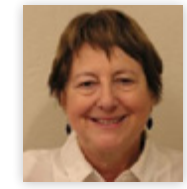
Susan, Law Offices of Thompson & McGinnis, began her pro bono service in FLAP in 2010, and she continues to dedicate her time and expertise to assist FLAP Clients. In 2023, Susan contributed 75 hours and assisted 95 families.

### Diane L. Mihalsky



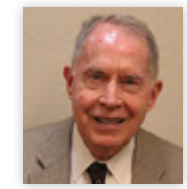
Diane, CLS/VLP Certified Pro Bono Counsel, actively volunteers and helps clients in VLP's Landlord/Tenant Clinic. She offers excellent brief advice, writes letters, negotiates, makes calls and fights for our clients to ensure positive case outcomes. In 2023, she donated 85 hours to help our clients.

### Judith C. Ruhl O'Neill



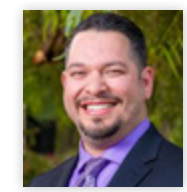
Judy, a retired Sole Practitioner, has volunteered weekly to help clients in VLP's Landlord Tenant Clinic since joining VLP in 1996. She also assists clients in our Attorney of the Day Clinics and recruits other volunteers to help, as well.

### Donald W. Powell



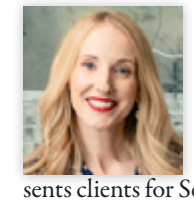
Don, Carmichael & Powell PC, has taken a lead role in our Financial Distress Clinic and often steps in to help other clients who need immediate assistance as they wait for their cases to be referred to VLP Attorneys. In 2023, Don donated 50 hours to help our clients; he also continues to serve as VLP's Advisory Committee President.

### Edwin G. Ramos



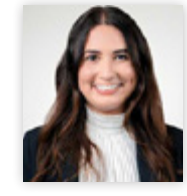
Edwin, De La Ossa & Ramos PLLC, has been a dedicated volunteer with Children's Law Center since 2016. In 2023, he donated over 50 hours to assist many clients with their Minor Guardianship and Adoption cases and routinely advised families through Medical Legal Partnership Outreaches.

### Shawnna R. Riggers



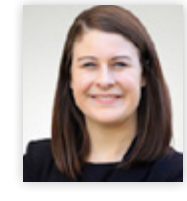
Shawnna, Arizona Family Law Attorneys, began volunteering with Children's Law Center in 2010. She assists clients in Juvenile Law Phone Clinics and represents clients for Severance and Adoption cases. In 2023, she donated 57 hours to help over 60 clients.

### Kaitlyn Elise Salmans



Kaitlyn, Snell & Willmer, joined the VLP Pro Bono Attorney Team in 2022. She contributed 56 hours to help three clients with their Debt and Adult Guardianship cases in 2023.

### Jessica Van Ranken



Jessica, Snell & Willmer, joined VLP in 2022 and assists clients in the Florence Immigrant and Refugee Rights Project. In 2023, she and other pro bono attorneys helped a teenage minor obtain Special Immigrant Juvenile Status and acquire employment authorization so he can remain in the U.S. and pursue a green card.

### Robert Walston

Robert, Walston Law Group, has volunteered in FLAP for the past 29 years. He also assists VLP Clients with their Landlord/Tenant and Bankruptcy cases. In 2023, Bob donated almost 100 hours and helped 122 clients.

# 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 services 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. Attorneys who accept cases receive a certificate from MCBA for a CLE discount. For information on rewarding pro bono opportunities, please contact Roni Tropper, VLP Director, at 602-258-3434 x 2660 or Rtropper@clsaz.org or enroll with us at https://clsaz.org/volunteer-lawyers-program/. ■

## VLP THANKS THE FOLLOWING ATTORNEYS AND FIRMS FOR ACCEPTING CASES FOR REPRESENTATION:

**ADULT GUARDIANSHIP/ CONSERVATORSHIP**

**Angela Sarah Kim**
Snell & Wilmer LLP

**Stephanie M. Rioux**
Snell & Wilmer LLP

**Kevin John Walsh**
Quarles

**COURT APPOINTED ADVISOR**

**Lori A. Bird**
Lori Bird Attorney at Law

**Jennifer W. Shick**
Shick Law Offices PC

**MINOR GUARDIANSHIP/ CONSERVATORSHIP**

**Matthew P. Fischer, III**
Snell & Wilmer LLP

## VLP THANKS THESE VOLUNTEERS WHO PROVIDED OTHER LEGAL ASSISTANCE DURING THE MONTH:

**ATTORNEY OF THE DAY**
Nancy Anger
Andrew S. Jacob

**CHILDREN'S LAW CENTER**
Lori Bird
Kristy Blackwell
John Gordon
Marilyn Gutierrez
Michelle Lauer
Richard Murphy
Edwin Ramos
Isabel Ranney
Shawnna Riggers
Jennifer Shick
Cory Stuart
Brad TenBrook
Gregg Woodnick

**EMPLOYMENT**
Shifa Alkhatib
Josh Black
Bill Hobson
David Nowakowski
Eduardo Robaina
Krista Robinson

**FAMILY LAWYERS ASSISTANCE PROJECT**
Karla Urrea-Berber
Michael Crane
Carrie Cravatta
Greg Davis
Charles Friedman
The Honorable Jeanne Garcia
Stuart Gerrich
Robert Hahn
Christina Hamilton
Kina Harding
Christopher Lazenby
Susan McGinnis
Lisa Stone
Dianne Sullivan
Robert Walston
Marie Zawtocki

**FEDERAL COURT ADVICE CLINIC**
Michael DiGiacomo
Timothy Eckstein
Daniel Ortega
Nicole Stanton

**FINANCIAL DISTRESS CLINIC**
Tracy Essig
Donald Powell

**INTEL**
T. Romy Drysdale

**PROBATE LAWYERS ASSISTANCE PROJECT**
Alexus Anderson
Marlene Appel
Kent Berk
Emily Burns
Thomas Hickey
Kelly L. Kral
Tracy M. Marsh
Jimmy Rohde
Ryan Talamante
Kyle Bycroft—ASU Extern
Shannon Kavanagh—ASU Intern
Lexa Oakeson—ASU Extern
Alexandra Wilson—ASU Intern

**SNELL & WILMER**
Megan Carrasco
Reid Edwards
Kourtney George
Scott Hancock
Edward Hermes
Brett Johnson
Ryan Konsdorf
Craig Logsdon
Kaitlyn Salmans
Tyler Thomas
David Wilhelmsen

**TENANTS' RIGHTS CLINIC**
John Gordon
Peggy LeMoine
Diane Mihalsky
Judy O'Neill

## VLP THANKS THE FOLLOWING VOLUNTEER ATTORNEYS WHO RECENTLY ENCOURAGED COLLEAGUES TO VOLUNTEER WITH VLP:

Nick Bauman | Daniele Morales | Patricia Norris | Nina Targovnik
David Wilhelmsen | Laurie Williams

***PRO BONO SPOTLIGHT ON CURRENT NEED FOR REPRESENTATION***

Attorneys are needed to help consumers with contract matters.
Attorneys' fees can be claimed if litigation is required.

**The Volunteer Lawyers Program provided $2,034,915 in measurable economic benefit to families in 2022, in addition to improving safety and well-being for children and adults.**

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

# SUBMISSIONS POLICY

**Members and non-members are encouraged to submit articles for publication. The editorial deadline for each issue is generally the 8th of the month preceding the month of issue.**

**Judge Glenn Allen Presents Gavel to the Hon. Melody Harmon at her investiture on April 12, 2024**

CONTINUING LEGAL EDUCATION **CLE** MARICOPA COUNTY BAR ASSOCIATION

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**FRI ▪ JUNE 7 ▪ 12-1 PM**

## Candor, Courtesy, and Confidences: Ethical Obligations and Pitfalls

Virtually or in-person at MCBA, 3550 N. Central, Suite 1101, Phoenix, AZ

This CLE will cover ethical rules addressing a lawyer's obligations of candor, courtesy (professionalism), and maintaining client confidences as well as relevant discipline cases addressing the failure to fulfill those obligations. The Rules of the Arizona Supreme Court and specific Ethical Rules addressed include:

Candor – ERs 3.1, 3.4, 4.1, 8.4(c), and 8.4(d)
Courtesy (professionalism) – Rule 41 and ERs 3.4, 3.5(d), 4.4, 8.2(a), and 8.4(d)
Confidentiality – ER 1.6, 1.9, 1.16, and 8.4(d)

PRESENTER: **Greg Cahill**

**THUR ▪ JUNE 20 ▪ 12-1:30 PM**

## Legal Ethics for Legal Paraprofessionals and Firms Working With LPs


Virtually or in-person at MCBA, 3550 N. Central, Suite 1101, Phoenix, AZ

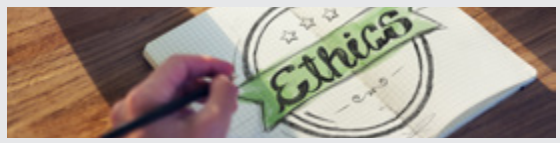
Lynda Shely will provide an overview of the scope of services Legal Paraprofessionals may provide in family law and criminal law matters as well as ethics tips for:

- The scope of family law services that may be provided by an LP
- Who can prepare and file a Consent Decree for Dissolution per Rule 45.1
- What to do with the division of a business
- The scope of criminal defense services that may be provided by an LP
- Whether an opposing counsel must communicate with an LP
- Fee sharing with LPs
- General ethics updates on use of AI and recent Rule changes in Arizona

PRESENTER: **Lynda Shely**

**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.**

Q&A




LAWYER LIABILITY AND ETHICS

# What's the Matter with California?

Joseph Brophy

United States Supreme Court Justice Warren Burger once stated: "Lawyers who know how to think but have not learned how to behave are a menace and a liability." He was right. The legal profession has worked hard to earn its reputation as a group of bombastic, know it all jerks. As federal Judge Marvin Aspen once observed, "ethnic and blonde jokes have been replaced by equally tasteless lawyer jokes." He was also right. But not all jurisdictions are the same in this regard.

If you have litigated with California lawyers in California cases, you probably noticed they are not as civilized as the ladies and gentlemen of the Arizona bar. The contrast is stark. Many California lawyers need a smack upside the head, or a hug, or maybe both. A recent California appellate decision is illustrative. The story begins how most stories of lawyer incivility do – with a discovery dispute.

Lawyer represented defendants in a civil fraud case. Plaintiff served interrogatories and requests for production of documents. Lawyer responded with boilerplate objections and not a single substantive response. A discovery referee was appointed. Following a motion to compel, Lawyer agreed to provide supplemental discovery responses. However, Lawyer took the opportunity to add additional objections while keeping the impermissible boilerplate objections from the original responses. Moreover, the supplemental responses contained no additional substance, unless you count as substantive providing the defendant's date of birth, current residence, educational history, and admitting to having a driver's license and speaking English. Perhaps sensing what was coming, Lawyer withdrew. Another motion to compel followed.

The discovery referee, who expected Lawyer to provide substantive supplemental responses, was not amused or deterred by Lawyer's withdrawal. He sanctioned Lawyer in the amount of $10,000, notwithstanding Lawyer's withdrawal before the second motion to compel. Lawyer appealed the sanction. The California Court of Appeals affirmed in a reported decision, and paid particular attention to Lawyer's civility, or lack thereof.

When plaintiff's counsel tried to meet and confer over the discovery responses, Lawyer refused, stating "your remedy is elsewhere, and an attorney with your billing rate should know that. We are not here to educate you." When plaintiff filed its motion to compel, Lawyer responded with an email with the subject line "You are joking right?" and stated in the email: "In 30 years of practice this may be the stupidest thing I've ever seen. Robert is this really why you went to law school? Quit sending us paper. You know we are out of the case so just knock it off and get a life. Otherwise we're going to be requesting sanctions against your firm for even bothering us with this nonsense." Lawyer made good on his promise to seek sanctions for "bothering" him. He was unsuccessful.

The appellate court's opinion might fairly be characterized as a cry for help. The court noted that, in prior opinions, it traced the "deterioration in the way attorneys now address and behave toward each other" and observed "our profession is rife with cynicism, awash in incivility. Lawyers and judges of our generation spend a great deal of time lamenting the loss of a golden age when lawyers treated each other with respect and courtesy." There are more than a handful of California appellate decisions going back 30 years expressing similar sentiments with increasing alarm. In a 2021 opinion, California's appellate court noted that "language addressed to opposing counsel and courts has lurched off the path of discourse and into the ditch of abuse. This is not who we are." At a certain point one must wonder if maybe that is who they are.

Notably, Arizona does not have appellate decisions expressing similar laments.

The California courts' palpable frustration is better understood against the backdrop of California's efforts to address the California bar's civility problem. In 2014, the California Supreme Court enacted Rule 9.7 of the California Rules of Court, which required anyone thereafter admitted to practice law to affirm: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity." Hopefully you are sitting down, because the new affirmation did not fix the California bar's civility problem. In a 2021 report, the California Civility Task Force concluded that "many who have taken the oath have forgotten their promise" and "the legal profession suffers from a scourge of incivility."

In 2023, the State Bar of California's Board of Trustees, at the task force's recommendation, approved what the task force described as "powerful proposals to improve civility in California's legal profession," including: (1) requiring lawyers to annually affirm their civility oath; (2) requiring one hour of CLE each year devoted to "civility training"; and (3) imposing discipline upon California lawyers who violate any oath they have taken. Neither the task force nor the trustees explained how they concluded that the 2014 civility oath was ineffective because it was not repeated often enough.

Of those new measures, the third option has the potential to make a difference. But given the California State Bar's dysfunction in recent years, it is questionable whether that body can impose collegiality in California's legal community.

You might think that jurisdictions where lawyer civility is a problem would be interested in implementing procedures from jurisdictions where it is less of a problem. You would be wrong. I am referring specifically to Arizona's mandatory affirmative disclosure obligations in Rule 26.1 and its expedited discovery dispute resolution process in Rule 26(d), which dramatically reduce discovery games and disputes that increase the cost and contentiousness of litigation.

Several years ago, I asked Ninth Circuit Judge Andrew Hurwitz, formerly of the Supreme Court of Arizona, why Arizona's judges did not push for similar rules in federal court. Judge Hurwitz smiled, told me he was on a committee that governed those issues in federal court, and that when he raised the concept of mandatory, substantive disclosure like the kind Arizona has enacted, lawyers and judges looked at him like he was crazy. The notion that a party would be required to hand over relevant evidence, identify witnesses and the substance of their testimony, and explain legal theories, all without being asked, is viewed as somehow antithetical to the adversarial process.

This is not to suggest that Arizona's procedural rules are a panacea or that Arizona's lawyers are fanatical acolytes of the great Judith Martin, also known as Miss Manners. And although picking on California is easy, that state is not alone in having lawyer civility issues. But the case discussed above, which resulted in yet another reported California decision bemoaning a lack of lawyer civility, was ultimately a discovery dispute involving two motions to compel, much of which would not have occurred under Arizona's procedural rules. ■

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