

# MARICOPA LAWYER

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WHERE THE LEGAL COMMUNITY CONNECTS

## CRIMINAL LAW SECTION

### The Importance of Reasonable Suspicion

Shayna Frieden



Why can the police not pull you over at any time? Or stop and search you when walking down the street? The answer is “reasonable suspicion.”

Under the Fourth Amendment of the United States Constitution, and Article II, § 8 of the Arizona Constitution, you have the right to be free from unreasonable searches and seizures. Searches and seizures performed without a warrant are per se unreasonable, subject to only a few exceptions. See *State v. Fisher*, 141 Ariz. 227, 236 (1984) (citing *Jones v. United States*, 357 U.S. 493, 499 (1958)).

In 1968, the United States Supreme Court held that brief investigatory detentions are reasonable if the officer has “reasonable suspicion.” *Terry v. Ohio*, 392 U.S. 1, 20–22 (1968). For example, if an officer sees you speeding, a

common traffic violation, the officer can pull you over. The subsequent investigation must be “brief,” meaning the traffic stop cannot last longer than necessary to complete the purpose of the stop. See *State v. Sweeney*, 224 Ariz. 107, 112 (App. 2010) (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983)). Typically, that consists of checking your identification records, such as license and registration, and issuing a ticket for the violation. In fact, the Supreme Court has advised that traffic stops lasting just a second longer than the time it reasonably takes to effectuate the purpose of the stop are unlawful. See *Rodriguez v. United States*, 575 U.S. 348, 354–55 (2015).

Of course, there are a few exceptions. Reasonable suspicion is again one of them. If, during a traffic stop, the police officer develops reasonable suspicion of a different offense, the officer may lawfully extend the stop to investigate that offense. See *United States v. Landeros*, 913 F.3d 862, 867 (9th Cir. 2019)

(citing *Rodriguez*, 575 U.S. at 356–57); see also *Sweeney*, 224 Ariz. at 112; *State v. Kjosrud*, 239 Ariz. 319, 323 (App. 2016).

The key question, then, is what exactly constitutes reasonable suspicion. Because the initial detention and subsequent investigation must be brief, the standard for reasonable suspicion is very low. Imagine a spectrum: “beyond a reasonable doubt,” the standard for a criminal conviction at trial, would be on one end as the highest standard in the law; on the opposite end would be reasonable suspicion. By definition, “reasonable suspicion” is a minimal, though specific and objective, basis to believe that a person is or has been involved in criminal activity. See *United States v. Sokolow*, 490 U.S. 1, 7 (1989). Reasonable suspicion cannot merely be based on a hunch or unparticularized suspicion. And while courts afford deference to an officer’s training and experience, simple good faith on

See **The Importance of Reasonable** page 3

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SEE PAGE 8  
FOR DETAILS

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### A Dry Heat



Stan Watts

For the lawyers of Maricopa County, the summer of 1916 was hot. No hotter than normal for their chosen jurisdiction, but memorably hot. The bar suffered at least two casualties to the heat that summer that would be sorely missed.

The citizens of southern Arizona in this era before air conditioning and before swamp coolers took some pride in their ability to adapt to the scorching summer heat. Distant relatives could not understand how anyone could survive the months of 100 degree plus temperatures. Ingenuity and pride, in equal parts, helped those unfortunate enough to have to spend the summer “in town,” to amble through the season. The ability of residents to adapt the pace of their lives to the climate was reflected in the frequent postcard to the folks back home stat-

ing that the coyotes still chased rabbits in the Arizona summer, but they both walked.

#### Escape

A number of the wives and families of the area’s legal fraternity were part of the lucky annual mass migration to mountain retreats of northern Arizona or coastal resorts in Long Beach, San Diego, or Santa Barbara. Train fare to the coast could be had for under \$25, and fine resort lodgings cost \$1.50 per day. Beach diversions and coastal breezes, or tennis in the pines, cooled and entertained these escapees from the Valley of the Sun. Whenever possible, the summertime bachelors left behind would make weekend trips or shorter vacation visits to these cooler locales. Nearly everyone who could afford to leave made these migrations for at least a portion of the summer.

Only those compelled by extreme motivation came to Phoenix in summer. Much of the business community suspended operations or operated at a reduced capacity. For example, hotels would close entirely or shut down the upper floors. When Tommy Howard, the elevator operator at the state capitol, took his vacation to northern Arizona in August, state officials (if any were in town) and voters were obliged to climb the long stairs to conduct government business on the upper floors.

#### Diversions

On the other hand, certain enterprises thrived in the summer months. The Ford Hotel on Washington and Second Avenue had a busy soda fountain and Donofrio’s Candy and Ice Cream Store on the south side of Washington near First Avenue, provided delicious temporary relief from the rising temperatures (Arizona had passed a prohibition amendment a few years earlier, so a cherry phosphate or a cool root beer were the peak of legitimate liquid refreshment). Ice companies like Crystal Ice worked overtime to deliver their valuable wares in 50 and 100 pound blocks.

The Carnegie Public Library (now the Arizona Women’s Hall of Fame) had a busy July in 1916—over 3,000 patrons used the reading rooms, checking out over 6,000 books. Readers enjoyed the newest publications, including *Roberta of Roseberry Gardens*; *Rich Man, Poor Man*; *Return of Dr. Fu Manchu*; and Zane Grey’s *Border Legion*. That month, the library collected fines of \$27.37 and bought \$8.55 worth of new books.

#### Departure from Precedent

Until the summer of 1916, many of the county’s attorneys had participated in the

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# Preserving Professionalism in a Virtual Practice

Travel anywhere around the United States, and you'll find that a community's most impressive architectural specimen is often its courthouse. These sanctuaries of justice evoke imagery of fiery debates, passionate advocacy, and dramatic trial theater. The buildings themselves signal the importance of the proceedings inside, where the health of our democracy undergoes a rigorous daily test.

In the wake of the pandemic, safety required a shift to virtual courtrooms. Attorneys and judges have come to appreciate the long-term utility of these tools, and today many court hearings take place over a computer. Along the way, however, we are forgetting the reverence and respect that the practice of law deserves. Respect and the rule of law go hand in hand; maintaining this perception is crucial for fostering public trust, encouraging civic engagement, and recruiting and retaining sharp legal talent.

**1. Uphold Professional Standards**

Connecting to the courtroom from home or the office is convenient, and while you can avoid time snags with security and parking, when you join a Teams meeting, you are still entering a

court of law. To maintain respect and decorum for the institution, it is important to dress as you would for in-person court. Ensure your presentation is appropriate by either tidying up your workspace or using a neutral background. Avoid calling in from your car or outside.

When you're in court, be mindful of how you're treating other participants and act respectfully. Avoid interrupting other parties or the judicial officer. Be aware of your facial expressions; in a traditional courtroom, the parties are not standing right next to each other when they speak. In a virtual setting, however, the camera captures what might otherwise go unnoticed. If you are prone to eye-rolling or throwing your hands up in frustration, maintain proper decorum to instill confidence in your clients and any observers. Prepare your clients in advance of the hearing and ask them to abide by the same standards.

**2. Maintain In-Person Connections**

One of the primary challenges of a digital practice is the loss of personal connection. Instead of socializing with opposing counsel during the morning calendar, attorneys now

log in and out of hearings without a chance for greetings or pleasantries. While some might welcome this change, the nuances of body language and facial expressions—essential for building trust and rapport—are often lost in virtual settings. Additionally, networking and mentorship opportunities suffer as spontaneous interactions become rare, weakening the overall quality of lawyers in the courtroom. Make a commitment to attend one social event every quarter. You can find these opportunities within the Maricopa County Bar Association. Alternatively, reach out to other practitioners with whom you enjoy working, and schedule time to get together to discuss best practices and exchange ideas. Consider mentoring less-experienced practitioners. It might help reinvigorate your passion for the law.

**3. Enhance Communication**

Digital communication, while efficient, often leads to miscommunication and misunderstandings, unnecessarily escalating what would have otherwise been smooth negotiations. Emails and messages can be misinterpreted, lacking the tone and context that face-to-face conversations provide. While face-to-face conversations aren't always possible, consider calling opposing counsel to discuss issues and, if necessary, memorialize your conversation later in an email. Feeling bold? See if you can chat over a cup of coffee if your offices are nearby or you have time after court. Positive working relationships will lead to a smoother experience in the courtroom and benefit your client.

**4. Balance Work and Life**

In a virtual law practice, the boundary between work and personal life can quickly blur,

See **Preserving Professionalism** page 3

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## On Every Legal Writer's Mind: Generative AI

### LEGAL WRITING

Tamara Herrera



Just about every CLE or professional conference this summer has a session about the use of generative AI in legal practice and, specifically, legal writing. The consensus of these sessions is that there is no consensus on its use. The most agreed-upon guideline is to caution legal writers about the reliability of generative AI because it has been known to make up (hallucinate) results, especially with research prompts. We should review all generative AI-produced results for accuracy and reliability. We should also be concerned about copyright issues (who owns the results if it was produced by generative AI?) and ethical concerns (how much detail should you put in a prompt, especially keeping in mind client confidentiality?) Even if we determine that using generative AI makes sense, we are left with two big questions: Do we need to cite to it? And how?

One argument is to treat generative AI like any other writing tool that does not require citation, such as Grammarly. Generative AI trains itself with every new prompt posed, so getting the same result each time is

not guaranteed. Thus, citing to generative AI does make sense because the reader cannot recreate the exact same result.

The counter-argument is be transparent about the use of generative AI until you know what your audience expects. Because of the questions posed above about generative AI use, I suggest adopting the following approach for legal writing:

1. Introduce where you use generative AI in the text. Example: "Generative AI produced the following summary."
2. Use Bluebook Rule 18.2 on internet sources as a general guide for the citation format. Although Bluebook does not currently have a rule on generative AI, most legal sources agree that this rule is a good model. It requires an institutional author (the name of the company), the descriptive title (the prompt), the main page title/name of the chatbot, a parenthetical with date and time the result was produced, and the URL.

This advice comes with one large caveat: if your audience has a policy about the use and citation of generative AI, make sure to follow that advice. Although this column is full of uncertainty, I am sure of one thing: I will be revisiting this topic again soon because I am attending a conference soon — on generative AI. ■

## Dedication to Service: Celebrating Our Clerk Team

### CLERK'S CORNER

Jeff Fine  
Clerk of the  
Superior Court



I wish to dedicate this month's column to acknowledging the inspiring nature and impact of the individuals that make up our Clerk Team.

Among items on the walls of my office are a few thought-provoking statements. Examples of these include, "There is no greater exercise for the heart than lifting people up," and "We may not be able to change the world, but we can change the world for those we serve and those we serve with." These words resonate with me, emphasizing the profound impact that serving others can have. Another statement that particularly stands out to me is a quote from Dr. Martin Luther King Jr that says, "Life's most persistent and urgent question is, what are you doing for others?" I firmly believe these statements encapsulate the essence of our team here at the Clerk's Office.

As evidence of these ideals being emphasized in the Office, a few years ago, a team of representatives from across the organization developed the phrase "Start with People" as we set out to establish a vision and plan for the future. More recently, a survey of our team members

reflected that they view our work as ultimately being about people's lives, beyond the tasks of processing documents, funds, and data. This perspective is further demonstrated in the communications/nominations I receive through our annual Employee Recognition "CASE Awards" Program that allows peers to recognize each other for exceptional acts of customer service, excellence, teamwork, and leadership. Remarkably, each nomination not only highlights outstanding service to customers, but also underscores the support team members provide to one another.

I believe this commitment to people-first service has fueled the many innovations and improvements we have seen in recent years. This month, I am proud to share news that the National Association of Counties (NACo) will be honoring our team with four national achievement awards for their excellence and innovation in developing programs and offering services—an accomplishment that reinforces the impact of our staff's work and mindset, and celebrates the difference they make.

I am proud of our team and honored to serve with them. Thank you for allowing me to share this celebration with you. And many thanks to every member of our Clerk Team for the ideals they embody and difference they make in delivering access to justice, and in serving our community. ■

### The Importance of Reasonable continued from page 1

the officer's part is not enough. See *e.g.*, *Terry*, 392 U.S. at 22.

Going back to our previous example, let's say you get pulled over for speeding. Without more evidence, the officer would not have reasonable suspicion that you're DUI to order you out of the car to participate in field sobriety tests. If it's also 10 PM, your eyes are red, and you say you're coming home from a restaurant that the officer knows serves alcohol, that could raise some suspicion. But you have a strong argument that there is still no specific and objective basis to think you are under the influence. Indeed, red eyes have many innocent causes, none of the National Highway Traffic Safety Administration's published cues of impaired driving have been observed, and there is no evidence that you even consumed alcohol.

For defendants, being able to identify when an officer lacked reasonable suspicion is critical.

This is because the usual remedy for an unlawful police search is to suppress the evidence found as a result. See *Mapp v. Ohio*, 367 U.S. 643 (1961); see also *Kjolsrud*, 239 Ariz. at 326. And without any evidence, there can be no conviction.

Too often, reasonable suspicion is overlooked and taken as a given. But beyond the decisive legal issue it can present, reasonable suspicion is paramount to protecting one of our most important constitutional rights. Without the requirement for reasonable suspicion, any person could be stopped, searched, and investigated at any time and for any reason, or no reason at all. ■


*Shayna focuses her practice in the areas of commercial litigation and contract disputes, catastrophic personal injury, and criminal defense, including right-to-counsel issues, DUIs, and board advocacy for licensed professionals. In particular, Shayna has developed a niche practice handling administrative cases and representing licensed professionals before the Arizona State Board of Nursing. She also defends clients in matters involving university campus police.*

### Preserving Professionalism continued from page 2

leading to burnout, frustration, irritability, and increased stress. After a day of back-to-back contentious hearings, one might feel so rushed and exhausted that they question why they practice law at all. Without observing multiple court hearings or seeing other attorneys and litigants, the virtual setting can make individuals feel isolated. Approach each court appearance with the goal of fostering diplomatic dialogue while remaining firm in your

advocacy. Find outside hobbies to balance your workload and maintain your well-being, allowing you to best serve the legal community.

As we continue to navigate the shift to virtual courtrooms, it is crucial to address the associated pitfalls and uphold high standards of professionalism. By remembering courtroom etiquette, maintaining in-person relationships, honing interpersonal skills, and balancing a stressful profession with other fulfilling activities, we can transform these spaces into the inspiring courtrooms that we have the privilege to visit in person. ■




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As Arizona's first and leading hospice provider, Hospice of the Valley provides specialized care for people facing a life-limiting illness doing all that they can do to meet the physical, emotional, social and spiritual needs of their patients, families and caregivers. On August 24, 2024 at 10:00 a.m., the paralegal division will be hosting an arts and craft event making origamis, blankets and sock puppets for Hospice of the Valley. The event will take place at the Maricopa County Bar Association; 3550 N. Central Avenue, Suite 1101, Phoenix, Arizona 85012. Please come join us as we create gifts that will bring smiles by letting people know that someone is thinking of them.

The June Paralegal Game Night was a success and I want to thank First Legal, our Valued Partner who sponsored the event. We could not have been successful without their sponsorship. Because we received great feed-

back, another game night is scheduled for September 5, 2024 at 5:30 p.m. to 7:30 p.m. at the MCBA. This is a great opportunity to meet and network before the MCBA Paralegal Conference held on October 25, 2024. You do not want to miss this one!

**Speaker Highlights of the  
2024 Paralegal Conference:**

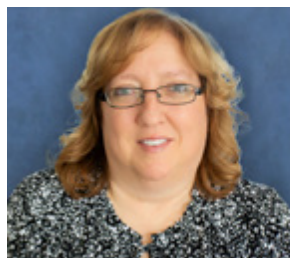
**Chelsea Hesla—Probate/Estate Planning  
*When? Why? And How?: An Introduction  
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This presentation will provide an introduction to estate administration, including helpful tips and tricks, pitfalls to avoid, and how to set your clients up for success throughout the probate process.

**Kent Burke, Lynda Shely and  
Judge David Gass**

***Ethical Use of AI in Your Law Practice***

This presentation will cover what IS "Artificial Intelligence", Terminology, How can it help paralegals, Ethics Considerations, Court Considerations and Practical Consideration. ■



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Jamie Wright

**Got Your Education Order for  
Your Child's School?**

In the month of August, many families have children starting or going back to school here in Arizona. If any of them have had a recent family law matter resolved, it is very likely the Court issued a separate Education Order that will need to be given to their child's school.

The reason this is happening is because beginning January 1, 2024, the Arizona Supreme Court ordered that all final orders involving parenting time and legal decision-making will require the family law court to also issue a separate education order. This includes any post-decree modification cases along with all decrees and judgments involving minor children. Luckily the family law court can provide the parties with two templates of the Education Order based on whether the case involves sole legal decision making or joint legal decision making of the minor child or children. Essentially the Education Order assists the school in knowing who can make various education decisions and much more.

In the past, schools were handed copies of court orders that contained parenting plans which may not have been as detailed as the new Education Order to make it clear what individuals are permitted to pick up the child from school, who can authorize extracurricular activities and sign permission slips, and which par-

ty(ies) may confer with teachers and counselors.

One of the biggest disagreements between parents with minor children has been over school choice, especially when the child lives between two households with different feeder schools to select from depending on their grade level. Which school will the child attend for middle school or high school? The new Education Order identifies which parties are permitted to select the school, school district, and curriculum / instruction for the child.

The Education Order is supposed to eliminate some of the loopholes that caused the schools or the parties major headaches when certain details may have been overlooked in the parenting plan. Additionally, the order is helpful for the schools to have some clear and concise guidance that is in writing and the parents have a binding agreement which should reduce any disputes that could lead to litigation.

Our schools and teachers should be focused on educating our children and not being put in the middle of refereeing parents who cannot get along for sake of their child's education and academic success. The new Education Order was an insightful way for the Court to assist with resolving various education issues and reduce the number of education related cases filed in the family law court every year. ■

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## In Defense of the Good Faith Consult

Whether by Court order or rule, sometimes lawyers have to engage in a good faith consultation with opposing counsel. And while we'll certainly act 'in good faith' to reach a resolution, most of us have probably had times when we felt it would be more productive to argue with a wall.

Still, even if we're fairly sure any form of agreement is impossible, there can be benefits to such consultations.

...And candidly, writing this article will help remind me of said benefits.

### Partial Resolutions

Although totally resolving a matter may not happen, that doesn't mean progress can't be made. A good faith consult need not necessarily reach a global resolution. Using a Motion to Dismiss as an example, while convincing opposing counsel to dismiss the entire Complaint may be unlikely, certain individual counts in said Complaint might be ripe for dismissal. In the past, I've seen reasonable opposing counsel dismiss counts once it's been pointed out that there have been changes in the law, as well as when an allegation incorrectly mixed up two completely different statutes.

Also, a good faith consult can be an opportunity to address small housekeeping matters. Even if it's just to organize the schedule or streamline briefing, Judges are always happy to see the parties working together where they can.

### Interacting with Opposing Counsel

There are a good number of lawyers in Arizona, so sometimes we may be meeting the other party's lawyers for the first time during a case; a good faith consultation may thus be the first meeting with them in real-time.

These interactions can be revealing. Sometimes, I've met counsel during a good faith consult who have written vicious briefs attacking everyone and everything, yet face-to-face they're polite and professional. On the other hand, opposing counsel might be as rude during a consult as they are in their writing,

which also tells you something about them.

Also, it's possible to gain some insight regarding the specific case. When a case involves specialized subjects, a conversation may show gaps in opposing counsel's knowledge where a well-researched brief does not. At times I've seen lawyers demonstrate that they're brand new to a subject, making mistaken assumptions on procedures and case law where an experienced practitioner knows better.

Finally, there's also an opportunity to simply build good relations with opposing counsel. Even as you see how they act, you're also demonstrating your own level of professionalism, and showing yourself to be reasonable and practical can help during future discussions.

### What the Court Sees

As previously mentioned, Judges prefer parties to work together on matters, rather fighting just for the sake of it; one guaranteed way to anger a Judge is making them ask "this could have been resolved amongst yourselves, why didn't you do so?"

So, one's own conduct during a good faith consultation may become a factor weighed by the Judge overseeing your case. By not only participating in the consult, but also demonstrating that you were legitimately trying to settle matters, you show yourself to be both reasonable and credible in your dealings. This

can prove especially important in those cases where the opposing party is taking a ridiculous position.

As an aside, one good practice pointer is to get in the habit of sending an email to opposing counsel after the consultation, summarizing the discussion. This email may become necessary documentation of what happened during the meeting, should opposing counsel attempt to shift positions later.

### Conclusion

Despite sometimes feeling like a chore, a good faith consultation does serve a necessary purpose. Maybe it will ultimately go nowhere, but there are benefits to it even where there's no resolution to the underlying matter. So, even if you think your office wall would make a better conversational partner than the opposing counsel, the consult shouldn't be dismissed out of hand. ■

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## CRIMINAL LAW SECTION

# Understanding Criminal Record Sealing in Arizona

**Tyler M. Allen**  
Law Offices of T. M. Allen

A single mistake can cast a long shadow over one's life, affecting job prospects, housing opportunities, and personal relationships. In Arizona, individuals burdened by a criminal record have the option to mitigate these consequences through a legal process known as criminal record sealing.

### The Impact of a Criminal Record

A criminal record can significantly limit life choices. It reduces the likelihood of being hired or promoted by employers, and landlords may hesitate to rent to those with a criminal past. Financially, obtaining loans or mortgages becomes more challenging. Moreover, the stigma of a criminal record can strain personal relationships and social interactions, affecting one's reputation and community standing.

### Arizona's (New) Law on Criminal Record Sealing

Arizona Revised Statutes Section 13-911, effective from December 31, 2022, outlines the process for sealing criminal records. Eligibility hinges on three scenarios and other exceptions as outlined in the statute may affect whether someone is eligible to petition to seal criminal case records:

1. Completed Sentencing Requirements: Individuals convicted of a crime must have fulfilled all sentencing obligations, including victim restitution.

2. Dismissed Charges or Acquittal: Those whose charges were dismissed or who were found not guilty at trial.

3. No Charges Filed: Individuals who were arrested but never charged with a crime.

Upon filing a petition to seal a record, the court must wait at least 30 days before rendering a decision to allow time for objections from prosecutors or victims.

### Waiting Periods for Sealing

The waiting period to seal a record varies based on the type and class of the offense:

- Misdemeanors: Generally eligible upon completion of sentencing requirements, with no subsequent convictions. For convictions of class 2 and 3 misdemeanors the waiting period is two (2) years from fulfilling all court obligations and sentencing terms. For convictions of class 1 misdemeanors the waiting period is three (3) years.
- Felonies: Waiting periods range from two to ten years, depending on the felony class and any subsequent criminal activity. For class 4, 5 and 6 felonies the waiting period is five (5) years from fulfilling all court obligations and sentencing terms. For class 2 and 3 felonies the waiting period is ten (10) years.
- Charges Not Filed or Dismissed: Generally, if charges are not filed within the applicable statute of limitations or if charges have been filed and subsequently dismissed, the statute is silent on a waiting period there-

by allowing a petition to seal criminal case records to be filed upon dismissal or expiration of the statute of limitations.

These waiting periods ensure a demonstrated period of rehabilitation before the court considers the sealing petition.

### Limitations of Sealed Records

While sealed from public access, a sealed criminal record may still be used for specific purposes, including:

- Satisfying elements of subsequent criminal charges.
- Serving as a prior felony conviction.
- Impeaching witnesses in trials.
- Enhancing sentences for future offenses.

Certain job applications may require disclosure of sealed records, particularly if required by state or federal law including for positions involving vulnerable populations, law enforcement or financial responsibilities among several other exceptions that will require disclosure.

### Process of Petitioning to Seal Criminal Case Records

Sealing a criminal record is not automatic and requires proactive steps:

- Complete Requirements: Ensure all court-ordered penalties, including fines and restitution, are satisfied. If convicted, determine if the applicable waiting period has passed.
- File Petition: Submit a petition to the appropriate court along with supporting documentation of rehabilitation and com-

pletion of obligations.

- Legal Consultation: Consider consulting with a criminal defense attorney to navigate the process effectively to ensure a premature of incorrect filing does not cause the petition to be denied which would require an additional three (3) year waiting period in most cases before refileing the petition.

### Sealing vs. Expungement

It's essential to distinguish between sealing and expungement:

- Sealing: Hides records from public view but retains access for legal purposes and other exceptions as outlined in the statute.
- Expungement: Erases records entirely, as if the crime never occurred. Arizona generally does not allow for expungement except in specific cases, such as certain marijuana offenses.

### Conclusion

Sealing a criminal record in Arizona offers individuals a chance to move forward without the permanent stain of past mistakes. While it doesn't erase the record entirely, it provides significant relief from the negative impacts of a criminal history. Understanding the process, eligibility criteria, and implications is crucial for anyone seeking to regain control of their future and reintegrate into society.

By taking proactive steps to seal a criminal record, individuals can pave the way toward greater opportunities and a brighter future, free from the limitations imposed by past legal challenges. ■

## Criminal Charges in Sports

**David Black, ESQ**  
Law Offices of David Black

We are certainly not the only ones who have wondered why, after a flagrant foul, a fight, or other violence not within the scope of playing basketball, there are no criminal charges filed against basketball players in the NBA (or other professional sports). We wonder how Draymond Green gets to choke, punch, and step on other plays, and why he and others are not charged with crimes.

The answer is that there have been criminal charges filed as the result of sports attacks, but they are so rare that most of us missed them. And it seems the charges miss the star players for obvious reasons.

The first area to look at in trying to understand the issue of sports violence and criminal charges is the issue of violence that occurs naturally during a sporting event. In basketball, pushing and shoving, while it may sometimes constitute a "foul," is an accepted and expected part of the sport. In football, what would ordinarily be considered extremely violent behavior is an expected part of a football game. And in boxing, violent assault is the sport!

The lack of criminal charges for this type of violence and physical contact is fairly simple. When you engage in activities, for example, professional basketball, you consent to the "violence" generally considered as part of the game,

even fouls. But what about "flagrant fouls" designed to inflict serious injuries on another player? And how does consent apply to physical fights during, let's say, a basketball game?

Probably the most disturbing example of a fight in the NBA came many years ago, in 1977, during a game between the Los Angeles Lakers and the Houston Rockets. A fight broke out involving players from both teams. During the melee, LA forward Kermit Washington punched Rockets forward Rudy Tomjanovich in the face. As a result of the punch, Tomjanovich suffered a fractured skull, broken jaw, broken nose, and spinal fluid leakage. You would think that if any violence would produce a criminal charge, it would be that one. In fact, Washington was fined and suspended by the NBA for 60 days, but no criminal charges were ever filed.

Interestingly, there have been criminal charges filed against amateur football players, as well as recreational basketball players. There is also at least one case of criminal charges being filed against players in the NBA for on-court violence. That took place in 2004 in a game between the Indiana Pacers and the Detroit Pistons. As a result of a brawl, 5 Pacers were charged with misdemeanor assault. We should add that the charges could have been the result of the fact that the participants included fans attending the game. ■

## Arizona's State Legislature Addresses Issues with Admin Per Se and Implied Consent Laws and Cleans Up Statutory Language to Provide Clarity and Uniformity and Hold Law Enforcement Accountable

**Chris Culbert**  
Mayes Telles

Arizona's 56th legislative session ended on June 15, 2024. Among several new bills passed is a partial rewrite of the admin per se/implied consent laws that control administrative driving privilege suspensions resulting from DUI arrests, specifically Arizona Revised Statutes § 28-1321 and -1385.

A.R.S. § 28-1321, Arizona's implied consent law, provides the Arizona Department of Transportation ("ADOT") the authority to suspend the driving privilege of a person arrested for DUI if he or she refuses to consent to a law enforcement officer's request for a sample of that person's breath, blood, urine, or other bodily substance to determine alcohol concentration or drug content. This refusal or implied consent suspension is for 12 months — or two years if the DUI arrestee has previously refused to consent to testing within the last 7 years.

The updated law, set to take effect in September 2024, will require law enforcement officers to submit the implied consent suspension report to the Motor Vehicle Division within 30 days of the arrest. If the

report is not received by the MVD within 30 days, the department is precluded from entering a suspension of the arrestee's driving privilege.

In contrast, the current law imposes no time limit on law enforcement to submit the report, much to the chagrin of both DUI arrestees and criminal defense practitioners. For practitioners, the absence of a deadline for law enforcement, combined with the ADOT Executive Hearing Office's practice of disposing of Hearing requests where law enforcement had not yet submitted their report, resulted in multiple hearing requests being filed with the ADOT Executive Hearing Office and DUI arrestees waiting for several weeks to several months for an officer to submit the suspension paperwork.

A.R.S. § 28-1385, Arizona's admin per se law, has very similar language to A.R.S. § 28-1321. A.R.S. § 28-1385 gives ADOT the authority to suspend the driving privilege of a person arrested for DUI for ninety days if: (i) the arrestee consents to testing, and (ii) the results show an alcohol concen-

See [Arizona's State Legislature](#) page 11

## CRIMINAL LAW SECTION

### What's the Deal with Case Center?

**Manny Alemany**, ASU Law Intern  
DM Cantor

As explained by Summer Dalton, eCourt Services Manager from the Administrative Office of the Courts, Case Center (formerly Case Lines) is an online platform that facilitates the submission, management, and presentation of digital evidence at trial. This digital evidence includes videos, images, audio files, and documents.

The implementation of Case Center was motivated by the findings of a 2017 task force assigned to examine how Arizona courts were managing digital evidence. This task force found that there was no uniformity in the management of digital evidence among the Arizona courts as digital evidence was submitted and stored in various media forms such as CDs and thumb drives. This lack of cohesion led to problems with the presentation of digital evidence at trial and with the preservation of evidence after trial as these tangible storage devices were collected and stored by the court, but there was no guarantee that these devices would be functional or accessible in subsequent years if they were needed for appellate purposes. This problem coupled with the increasing amount of digital evidence, particularly as it pertained to the growing use of body worn cameras by law enforcement, inspired the Administrative Office of the Courts to find

a standardized solution that Arizona courts could opt into (for all or certain case types) to bring about uniformity and efficiency in their management of digital evidence. The AOC ultimately found their solution in Case Center and the system was adopted in Maricopa County on November 22, 2021, and is currently available for use in family, civil, and criminal cases.

Case Center offers a wide range of benefits as well as solutions to the problems that plagued Arizona courts' old system for submitting, storing, and presenting digital evidence. Specifically, Case Center now allows for digital evidence to be preserved in a standardized fashion to ensure that it is accessible for appellate purposes, even if that appeal is years later. Moreover, Case Center has Optical Character Recognition (OCR) capability which allows for digital documents uploaded to the portal to be easily searched for specific words and phrases. Additionally, Case Center creates a transcript of audio and video files that are uploaded to the system that can also be read and keyword searched. Furthermore, Case Center helps facilitate virtual and hybrid court appearances, which was particularly useful during the COVID pandemic and helped expedite the rollout of the system, as the parties do not have to manually plug in

a physical storage device or screenshare to see the digital evidence. Instead, the parties can log into the portal and access the uploaded evidence on their own device. These advantages of Case Center have led to a more efficient and convenient administration and presentation of digital evidence.

However, the aforementioned benefits of Case Center do not mean that the system is without its faults. The two main issues reported to the AOC by users of Case Center revolve around complaints regarding small file size limitations and slow upload speeds. Currently, the file size limitation of evidence uploaded to Case Center is two gigabytes. This means larger sized files, typically lengthy body worn camera footage, must be split up into smaller files in order for them to be properly uploaded and accessed. Additionally, AOC has received complaints regarding slow upload speeds, particularly when the file is close to the two-gigabyte limit. The vendor who

provides and services Case Center has reportedly committed to address and remedy these problems, however, there is no timeline on when their proposed solutions will be implemented.

The AOC has a plethora of informational videos and materials on its website that are available to attorneys and self-represented litigants who wish to educate and familiarize themselves with Case Center. Additionally, the AOC provides live, virtual training every week at no cost for those who would like more in-depth and interactive training on the system.

Moreover, it is recommended that attorneys and self-represented litigants confer with the judge in cases where Case Center will be used to ensure that the submission and presentation of the digital evidence at trial coincides with the preferences of the court. ■



### Statutes of Limitations Arizona

**David Black**, ESQ  
Law Offices of David Black

Most people are aware that statutes of limitations generally provide time limits for commencing a civil lawsuit. But are you aware that statutes of limitations also apply in some – but not all – criminal prosecutions as well? What this means, generally, is that if you are not charged with a particular offense within the time period applicable to that crime, the case is barred, and you may not be charged with the offense thereafter.

Of course, as in many areas of criminal law, there are exceptions, and exceptions to those exceptions. In the end, while the statute of limitations for most offenses can be readily obtained from the penal code (specifically, A.R.S. 13-107), that statute covers most, but not all, statute of limitations issues regarding criminal charges.

#### General Rules on Criminal Statutes of Limitations

The law is fairly clear when it comes to identifying the time period for bringing certain criminal charges. For example:

- Petty offenses – 6 months
- Misdemeanors – 1 year
- Class 2 through class 6 felonies – 7 years

Note that the time period begins to run when the crime occurred, or when it should have been discovered. It ends with the filing of an indictment or information, or a crimi-

nal complaint.

The law in this area would be fairly simple if these were the only rules governing time periods for commencing a criminal case. But, as you might have guessed, the exceptions make the analysis somewhat more complicated. Here are a few examples:

If you are accused of a moving motor vehicle violation which allegedly resulted in death or serious injury, the statute of limitations is 2 years. And in the case of murder, conspiracy to commit murder resulting in death, certain felony weapons offenses, stealing public funds, and a number of other crimes, there is no statute of limitations at all. There are also rules regarding when the statute begins to run. If, for example, the defendant is outside the state of Arizona or has no known place of residence here, the statute does not begin to run during that period.

One of the most interesting questions surrounds innocent clients and the start of the statute of limitations. The caselaw posits that the proscribed period began to run when law enforcement should have, with reasonable diligence, discovered the crime. What if there was no crime? Would there be no statute of limitations?

More aptly I wonder if we find out 20 years later than Suzy smacked Bob, does the statute for this low-level misdemeanor bar prosecution? Oddly enough, no. ■



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The 2024 Barristers' Ball beneficiary is Friends of The Court AZ. Their mission is to provide Treatment Courts with essential resources to help participants regain their footing & become productive members of the community. Established over 20 years ago, they focus on providing vital, but unfunded elements of the Treatment Courts program, especially in the areas of Rewards & Incentives. These courts, including Veterans' Courts, Drug Courts, & Homeless Courts, aim to help participants achieve sobriety, stability, & a crime-free life.





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conference schedule

<p>7:15-8:00 A.M. <b>REGISTRATION &amp; BREAKFAST BUFFET</b>                  Visit Valued Partners</p> <p>8:00-8:30 A.M. <b>OPENING ANNOUNCEMENTS &amp; INTRODUCTIONS</b>                  Paralegal Day Proclamation</p> <p>8:30-9:30 A.M. <b>ETHICS SESSION</b>                  Ethical Use of AI in Your Law Practice  <b>PRESENTERS:</b>                  Kent Berk, the Berk Law Firm                  Lynda Shely, the Shely Firm                  Hon. David Gass, Arizona Court of Appeals</p> <p>9:30-9:45 A.M. <b>MORNING BREAK</b></p> <p>9:45-10:45 A.M. <b>1ST BREAKOUT SESSION</b></p> <p><b>A) Family Law</b>  <b>PRESENTERS:</b>                  Hon. Ronda Fisk, Family Law Presiding Judge, Superior Court in Maricopa County</p> <p><b>B) Criminal Law: C.A.R.S. Method of Communication—How to Effectively Communicate with Upset Clients</b>  <b>PRESENTERS:</b>                  David Cantor, DM Cantor                  Christine Whalin, DM Cantor</p> <p><b>C) Personal Injury Law</b>  <b>PRESENTERS:</b>                  Jennifer Rebholz, Zwilliger Wulkan, PLC                  Kelsey Brophy, Law Offices of Collin T. Welch                  Jennifer Elias, Burg Simpson</p> <p>10:45 A.M.-11:45 P.M. <b>2ND BREAKOUT SESSION</b></p> <p><b>A) Probate and Estate Planning</b>  <b>PRESENTER:</b>                  Chelsea Hesla, Tiffany &amp; Bosco, PA</p> <p><b>B) Solving Real Estate Issues in Family Law, Probate, and Other Joint Ownership Disputes</b>  <b>PRESENTER:</b>                  Beth Jo Zeitzer, ROI Properties</p> <p><b>C) Public Law—Appeals and Post Conviction Proceedings</b>  <b>PRESENTER:</b>                  Phillip Garrow, Maricopa County Attorney’s Office</p>	<p>11:45 A.M.-12:30 P.M. <b>LUNCH BREAK</b></p> <p>12:30-12:45 P.M. <b>TBD</b></p> <p>12:45-1:45 P.M. <b>3RD BREAKOUT SESSION</b></p> <p><b>A) Civil Litigation—Care and Feeding of Trial Counsel-A Paralegal’s Guide</b>  <b>PRESENTER:</b>                  Tom Moring, Jaburg Wilk</p> <p><b>B) Treatment Courts</b>  <b>PRESENTER:</b>                  Robin Hoskins &amp; David Hintze</p> <p><b>C) Intellectual Property</b>  <b>PRESENTER:</b>                  TBD</p> <p>1:45-2:15 P.M. <b>VALUED PARTNERS RAFFLE!</b></p> <p>2:15-2:30 P.M. <b>AFTERNOON BREAK</b></p> <p>2:30-3:30 P.M. <b>GENERAL SESSION</b>                  Writing to Persuade and Build Expertise  <b>PRESENTER:</b>                  Tim Eigo, State Bar of Arizona</p> <p>3:30-3:45 P.M. <b>2023 PARALEGAL MEMBER OF THE YEAR AWARD RECIPIENT</b></p> <p>3:45-4:45 P.M. <b>KEYNOTE SESSION</b>                  Different Viewpoints of the Paralegal Profession  <b>PRESENTER:</b>                  TBD</p> <p>4:45-5:00 P.M. <b>CLOSING ANNOUNCEMENTS</b></p>
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**Konnie K. Young, Attorney**  
VLP Pro Bono Attorney Coordinator

Arizona's Ethical Rules for lawyers recognize, "The efforts of individual lawyers are not enough to meet the needs of the poor. The profession and government have instituted programs to provide direct delivery of legal services to the poor. The direct support of such programs is an alternative expression of support to provide law in the public interest," and

Lawyers should voluntarily render public interest legal service. A lawyer may discharge this responsibility by rendering a minimum of fifty hours of service per calendar year by . . . providing professional services at no fee or at a substantially reduced fee to the poor or near poor or to organizations that have as a principal purpose promoting the interests of the poor or near poor, or to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights . . . (Rule 42. Arizona Rules of Professional Conduct, ER 6.1)

The **Volunteer Lawyers Program (VLP)** at **Community Legal Services** provides a wide array of pro bono opportunities for VLP Attorneys, including—but not limited to—the following practice areas and clinics: **Bankruptcy Law, Consumer Law, Contracts & Warranties, Debt Issues, Landlord/Tenant Law, Social Security, Tax Assistance, Family Lawyers Assistance Project (FLAP), Children's Law Center Assistance, Probate Lawyers Assistance Project (PLAP), Adult Guardianships, Federal Court Advice Only Clinic**, and more.

VLP has a strong team of pro bono attorneys, but we always need more attorneys to provide for the unmet needs of our VLP Clients who otherwise will not have the legal assistance and access to justice they so desperately need. Roni Tropper, VLP Director states, "Our VLP Clients' successes are the results of our VLP Attorneys' dedication and selfless pro bono service. We appreciate each and every one of you."

*Here's what some of VLP's Attorneys have to say about their pro bono service and benefits they receive as VLP Pro Bono Attorneys:*

**Andrew S. Jacob** has been volunteering in VLP's Federal Court Advice Only Clinic since 2016 and with VLP since 2022. Claims made by self-represented clients in the Federal Clinic often allege civil rights or ADA violations. Andy also helps VLP Clients who are being sued on debts that they cannot pay or often are making claims because they are dissatisfied with a used car purchase or car repair. Andy provides an average of about 10 VLP consults a month. He explains,

*Occasionally I'm able to negotiate a settlement for them based on their lacking means to pay the debt. In other cases, I reassure them that the Arizona garnishment laws usually protect them from execution of a judgment. It would be great if there were volunteer attorneys I could refer a matter to who would be willing to litigate valid claims.*

**Andy** recalls, *I started to volunteer in earnest when I fully retired. I enjoy staying involved in legal practice on a part-time basis. Because I do all my consults by telephone, my commitments of a few hours a week does not interfere with travel activities.*

# PRO BONO PROFILES

## Go PRO BONO with VLP!

**Please help us help our clients—  
join our VLP Pro Bono Team today!**

Contact: Roni Tropper, VLP Director at [rtropper@clsaz.org](mailto:rtropper@clsaz.org) &  
Konnie K. Young, VLP Pro Bono Attorney Coordinator, at [kyoung@clsaz.org](mailto:kyoung@clsaz.org)  
Visit our website: <https://clsaz.org/volunteer-lawyers-program/>

**Blake Mayes** has been a VLP Pro Bono Attorney since 2019 and has assisted clients with bankruptcy, landlord/tenant matters, and consumer matters. Blake states,

*VLP helps so many people in our community who cannot afford legal services. VLP's attorneys are able to help many of them in-house, but they need help from other attorneys in the community for certain scopes including bankruptcies, guardianship, and litigation matters (consumer, landlord/tenant, etc.). Many of your colleagues already contribute their time and expertise, but VLP needs your help with a growing list of individuals and families in need.*

**Blake** adds, *VLP allows you to choose which clients you are able to help and when by providing a list of volunteer opportunities by practice area with a brief synopsis of the prospective clients' needs. It is always rewarding to be able to help, the clients are very grateful and a pleasure*

*to work with, and the opportunity for free CLE's is an added bonus that includes the opportunity to learn new practice areas.*

**Janet Story** joined VLP's Pro Bono Attorney Team in 1995, when she took her first VLP case helping a grandmother seeking to adopt her grandson. In 1996, she taught her first seminar on termination of parental rights and adoption law for other VLP attorneys. She's helped multiple VLP Children's Law Center (CLC) Clinic clients as a juvenile law volunteer attorney, and she encourages other attorneys to volunteer:

*I'd love to see more attorneys volunteer to represent clients in the area of termination of parental rights and adoption. There are many people caring for children in our community who would really love to adopt them, but they don't have the funds to hire an attorney to rep-*

**Please contact Andy, Blake, Janet, and Gregg, to learn more about the pro bono services they provide to our clients and the many benefits they receive as VLP Pro Bono Attorneys.**

**Andrew S. Jacob, M.D., J.D.**  
VLP Consumer Law Attorney



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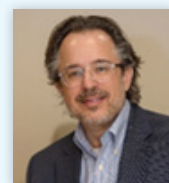
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*resent them. It gives me a great feeling knowing that I'm helping provide peace of mind to these families and permanency and stability to the children in their home.*

**Gregg Woodnick** has been volunteering with VLP for many years as a Court Appointed Advisor (CAA) and helping with minor guardianships. He encourages all attorneys to provide pro bono service:

*There is a tremendous need for VLP lawyers. I know some lawyers are trepid about volunteering because they do not think they have the experience. That should not be a concern. There are amazing training opportunities and resources available to volunteers. VLP has an incredible network of experienced attorneys eager to guide those willing to give of themselves. The most rewarding work I have done as a lawyer has been through volunteering.*

**Gregg** continues, *I am proud to manage a law firm where everyone finds some time to give back to our community. It makes a difference, and it feels good! As an experienced VLP attorney and mentor, I am happy to help new volunteers. I welcome calls and am happy to buy lunch for anyone needing time to talk through case challenges.*

### TOP 10 REASONS TO DO PRO BONO THROUGH CLS VLP

**10**

VLP provides a wide range of opportunities that can fit any attorney's interests, skills, and schedule.

**9**

Many VLP pro bono opportunities require only a limited amount of time such as 2-3 hours to do interviews or provide brief advice or limited help.

**8**

VLP provides primary malpractice coverage.

**7**

Pro bono service can provide opportunities for recognition from VLP, members of the Judiciary, the Bar, and others.

**6**

VLP can provide verification of pro bono hours of service so you can claim self-study CLE credits (up to 5 self-study CLE credits for 25 hours of pro bono service per CLE year, July 1 through June 30).

**5**

VLP provides orientation, free training, CLE's and new opportunities so you can learn and improve your skills.

**4**

You can meet and network with other great lawyers who volunteer as you observe or work with a consultant or mentor through VLP.

**3**

There is a GREAT need for help because there are so many people with low incomes who have civil legal needs who cannot be served by legal aid because of limited staff and resources.

**2**

Community Legal Services staff screen clients in advance so you know clients are financially eligible and cannot afford to hire a lawyer.

**1**

It is personally rewarding to help people!

## 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](mailto: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:

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

<p><b>ATTORNEY OF THE DAY</b> Nancy Anger Robert F. Crawford Andrew Jacobs David Ouimette</p> <p><b>CHILDREN'S LAW CENTER</b> Kristy Blackwell David Engelman Christina Kelly Sarah J. Michael Edwin Ramos Shawna Riggers Cory Stuart</p> <p><b>EMPLOYMENT</b> Shifa Alkhatib Morgan Bigelow Josh Black Clara Bustamante Rich Harris Kevin Koebel Joel Mueller Edmundo Robaina Kristen Robinson Alden Thomas Dan Treon Necole Walloch</p> <p><b>FAMILY LAWYERS ASSISTANCE PROJECT</b> Karla Berber-Urrea Steve Cole Michael Crane Carrie Cravatta Greg Davis</p>	<p>Charles Friedman Stuart Gerrich Robert Hahn Kina Harding Lowen Jones Katherine Kraus Elizabeth Langford Christopher Lazenby Shannon Lewis Susan McGinnis Daniel Rodriguez</p> <p><b>FEDERAL COURT ADVICE CLINIC</b> Andrew Jacob Kristina Morrison Nicole Stanton</p> <p><b>FINANCIAL DISTRESS CLINIC</b> David Engelman Tracy Essig Donald Powell Travis Monroe Wheeler</p> <p><b>INTEL</b> T. Romy Schlect Drysdale Misbah Rashid</p> <p><b>PROBATE LAWYERS ASSISTANCE PROJECT</b> Mark Bregman Emily Burns Kelly L. Kral Michelle Lauer Tracy M. Marsh Jim McDougall Troy McNemar</p>	<p>James Rayburn Ryan Talamante Shannon Kavanagh – ASU Intern Alexandra Wilson – ASU Intern</p> <p><b>SNELL &amp; WILMER</b> Christian Fernandez Trent Lee Hoffman Lucinda Nkechi Iheaso Christina Jutzi Craig O'Loughlin Cynthia Pillote Paloma Maria Scheiferstein Tyler Wolf</p> <p><i>Snell &amp; Wilmer Summer Associates:</i> Lian Ascher Kylie Cochrane Bennett Houck Connor O'Loughlin Matthew Racioppo Heather Reed Hadley Sayers Mia Sen Kaitlyn Vance Sydney Virtue</p> <p><b>TENANTS' RIGHTS CLINIC</b> David Engelman John Gordon Peggy LeMoine Nature Lewis Diane Mihalsky Judy O'Neill</p>
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### VLP THANKS THE FOLLOWING VOLUNTEER ATTORNEYS WHO RECENTLY ENCOURAGED COLLEAGUES TO VOLUNTEER WITH VLP:

<p>Tracy Essig Veronika Fabian Michael Jones Christina W. Kelly</p>	<p>Richard J. Murphy Joel Nomkin Donald Powell Shawna Riggers</p>	<p>Gus Schneider Janet Story Nina Targovnik David Wilhelmson</p>
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\*\*\*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.

VLP WOULD LIKE TO CONGRATULATE THE 2024 SUPREME COURT DISTINGUISHED SERVICE AWARD FOR OUTSTANDING PRO BONO SERVICE RECIPIENT:  
Christina W. Kelly

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

## MEMBER SPOTLIGHT

# KINA HARDING

## The Harding Firm



### HOW LONG HAVE YOU BEEN A MEMBER OF THE MCBA?

I am proud to say that I have been a member of the MCBA practically my entire legal career. It was one of the first organizations I joined. We are required to be a member of the State Bar, but the Maricopa County Bar is a choice. Not only is it a choice, it is an organization designed to serve its members. An organization that focuses on me, how wonderful!

### HAVE YOU EVER BEEN INVOLVED WITH ANY SECTIONS OR DIVISIONS?

I have had the privilege to serve on the Bench and Bar committee, The Diversity and Inclusion committee, and I just finished a term on the Board of Directors.

### HOW LONG HAVE YOU BEEN PRACTICING IN YOUR FIELD?

Criminal defense is what inspired me to become an attorney. The notion of fighting for the disenfranchised always appealed to me. Then, I focused on family law for years. Now, I am back to my first love, criminal defense.

### WHAT WAS YOUR FIRST AREA OF PRACTICE?

I interned at the Public Defender's Office, Juvenile Division, my last semester of law school. It was tough yet fulfilling. The folks who work for the Public Defender's Office fight hard for their clients. Anyone who talks about not having a good lawyer because they are a public defender did not have someone who worked in the Mesa Division – we worked hard for our clients.

### WHAT ISSUES DO YOU SEE FACING THE LEGAL COMMUNITY IN ARIZONA?

The biggest issue facing the legal community is equity in the legal system. It is very easy to be complacent and only see justice from the perspective of someone with

means. Lawyers make things happen or they know who to contact to make things happen. That is not the case for the common man. It is oh so important to see issues from the common, lay-man's perspective.

### IF YOU HADN'T BEEN AN ATTORNEY, WHAT ELSE WOULD YOU BE?

I thought it would be cool to be in the foreign service and live abroad. I traveled a lot in college and law school. I loved being connected to other cultures and seeing how differently people lived, depending on their location.

### IF YOU COULD BE ANY FICTIONAL CHARACTER—ON TV, IN BOOKS, IN MOVIES—WHO WOULD IT BE AND WHY?

One of my favorite movies is Beauty and the Beast. I identified with Belle as she knew from a young age that she wanted something different. Instead of doing what was expected of her, she defied social norms and lived a life of adventure. Belle looked past the beast's exterior and saw what he could be. That is similar to how I pursue my passion for helping others. I advocate for others; I do not believe that anyone should be defined by a single act. If you judge a person's whole life by one moment in time, you could miss out on some great stuff!

### WHAT'S THE STRANGEST JOB YOU'VE EVER HELD?

I've always been an entrepreneur. One of my first businesses was mowing lawns. I could make up to \$50 a weekend, which at 12 years old, meant I was rich! I thought grass was God's gift to every person who was too young to work a regular job. 30 years later, I live in a place where most folks don't even have grass, ha! ■

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### Arizona's State Legislature continued from page 6

tration of .08 or greater for a non-commercial vehicle, .04 or greater in a commercial vehicle (also now to include rideshare drivers such as Uber and Lyft), or the presence of any drug or its metabolite listed in A.R.S. § 13-3401.

The current statutory language of A.R.S. § 28-1385 provides different time requirements based on whether the law enforcement officer obtained a breath sample or a blood, urine, or other bodily substance sample. If an officer failed to submit a timely report to MVD, the only consequence was that the report would be inadmissible in a Hearing contesting the suspension.

As with the implied consent law (A.R.S. § 28-1321), the Arizona legislature's rewrite of the admin per se law (A.R.S. § 28-1385) re-

quires law enforcement officers to submit the admin per se suspension paperwork to MVD within 30 days of the arrest — regardless of the type of sample obtained. As with the admin per se law, if law enforcement does not timely submit the required documentation, the MVD is precluded from suspending the arrestee's driving privilege.

The current version of Arizona's admin per se law also contains a catchall provision allowing law enforcement to submit the suspension paperwork any time after receipt of testing results. Thereafter, MVD is required to notify the arrestee via mail of an impending suspension. With the rewrite, the Arizona legislature struck this provision in its entirety, and the amended statute will require law enforcement to submit within 30 days under all circumstances. ■

## Q&amp;A



## LAWYER LIABILITY AND ETHICS

## Debate Over Regulation of Lawyer Speech Continues



Joseph Brophy

The last several years have seen a number of cases where courts state bars and courts have sanctioned lawyers for statements about political matters that were unconnected to any judicial proceeding in which that lawyer was involved. Most of these cases involved lawyer statements regarding the disputed 2020 presidential election. A recent case pending in Florida and a statement from the State Bar of Connecticut illustrate that the effort to expand restrictions on attorney speech through the Rules of Professional Conduct are not limited to electoral matters.

In Florida, the Girleys represented a plaintiff in a racial discrimination suit that resulted in a \$2.75 million jury verdict. Judge Kevin B. Weiss of the Orlando Circuit Court entered a judgment notwithstanding the verdict one week after the trial ended. The Girleys subsequently gave interviews on two podcasts in which they criticized Judge Weiss's ruling and how the judicial system treats minority litigants. Brooke Girley wrote on social media that "[e]ven if we win, it only takes one white judge to reverse our victory." Brooke Girley called for Judge Weiss's removal from office and said that she intended to run against Judge Weiss when he ran for reelection.

The Florida bar found that the Girleys violated ER 8.2 (prohibiting impugning the integrity of the judiciary) by "convey[ing] that the court system is unfair, biased and does not provide equal justice to everyone," and "impugning the integrity of Judge Weiss, the Judiciary, and the court system as a whole." The bar required the Girleys to provide an objectively reasonable factual basis for the opinions they expressed and sanctioned them for failing to do so.

The Girleys have challenged the Florida bar's decision on First Amendment grounds. Specifically, the Girleys argue that: (1) the 1st Amendment permits lawyers to express opinions as long as consumers (clients and potential clients) are not misled and cases in which they represent a party are not prejudiced; and (2) because the Girleys made their comments after the trial concluded, there was no chance that the Girleys' out of court statements could potentially prejudice a pending judicial proceeding. Moreover, if lawyers have to walk around with a burden of proof to show that their political opinions are objectively reasonable, then the political speech of lawyers would be significantly chilled. The Girleys case is on appeal to the Supreme Court of Florida.

Meanwhile, on June 14, 2024, the leadership of the Connecticut bar issued a statement addressing the criticism of prosecution and trial in New York of former President Trump as a politically motivated show trial, stating that such

criticism has "no place in the public discourse" and calling on lawyers "to defend the courts and our judges." While the threat to Connecticut lawyers who might express a negative opinion on how the New York trial was conducted was merely implied, it was also unmistakable.

The Girley case and the admonition of the Connecticut bar raise the same issue: what are the rules governing lawyers who speak out about what they believe to be a two-tiered justice system? The courts and state bars have a blind spot in this area. They cannot see the disrepute brought upon them when they punish and silence those who are in the best position to identify problems with the justice system. In the case of the Connecticut bar, the leaders who wrote the above-referenced statement appear to not have considered how demanding that Connecticut's lawyers defend the process and judge in a politically charged case in another jurisdiction might lead to the impression that the people who run America's legal system are committed to enforcing homogenous political thoughts and agendas.

The media is not an informed substitute for lawyers when it comes to informing the public on matters related to the justice system. If you think the media is capable of accurately educating the public on civil or criminal procedure or the justice system, try reading media articles that discuss those topics and see how many years

it takes to find even one that is mostly accurate. They do not exist.

Lawyers are by far the most likely group of people to understand if a certain proceeding has gone awry (like a political show trial in New York), or a certain judge is problematic for some reason (i.e., unfair to minority litigants). And lawyers are among the relatively small group of people able to explain the existence and cause of problems in the justice system that is run by the courts (i.e., a two-tiered justice system). Unsurprisingly, the courts, which regulate themselves, do not take kindly when lawyers have the temerity to express a negative opinion about the system or the people who run it. Perhaps the Girleys are wrong about how the justice system treats minority litigants. But a state bar punishing them for giving voice to an opinion that many people in this country have does not help the Florida courts' image. Nor does sanctioning a lawyer who expressed her intent to run for office against a judge as Ms. Girley did with Judge Weiss.

Yes, the case law is replete with statements that the purpose of the Rules of Professional Conduct is to protect the public's view of the ju-

dicial system's integrity, not to shield judges from criticism. The fact that they provide such a shield – a shield that the courts have never extended to protect the images of the other branches of government or public figures – is simply a happy and coincidental byproduct of those rules. But as Justice Hugo Black once commented, "an enforced silence [on criticism of the judiciary], however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect."

The Girleys have received some help in the form of amicus briefs filed on their behalf by the ACLU on the 1st Amendment issues raised in their appeal. Perhaps the Supreme Court of Florida will provide some additional guidance on the line where a court's authority to regulate attorney speech ends and an attorneys' 1st Amendment rights begin. ■

*Joseph Brophy is a partner with Jennings Haug Keleher McLeod Waterfall in Phoenix. His practice focuses on professional responsibility, lawyer discipline, and complex civil litigation. He can be reached at [jab@jkwlawyers.com](mailto:jab@jkwlawyers.com).*

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**Dry Heat**

continued from page 1

mass communal migration because, as a rule, no cases were heard in Superior Court during July and August. Unfortunately for the legal community in general, and County Attorney Clyde M. Gandy, in particular, Judge Frank S. Lyman announced in early July that the court would depart from precedent and remain in session throughout the summer to address a heavy docket. Gandy was in court every day in July—he and his assistant prosecuted more than twenty cases without a loss, and obtained guilty pleas from almost ten other defendants. Judge Lyman still found time for a few weeks on the coast, but County Attorney Gandy was lucky to get away for a weekend camping trip.

**Adaptation**

The demise of the court’s summer holiday—the first casualty of the summer of 1916—meant many local attorneys had to take steps to adapt to their warmer environs. Most public buildings of 1916, including restaurants, hotels, the courthouse and offices, had the benefit of simple electric fans, either the large ceiling type or smaller portable appliances. Unfortunately, the primary effect of these fans was to stir the superheated air like a convection oven, rather than to generate the desired cooling. Movie theatres furnished patrons hand-powered cardboard fans—each with an advertisement for a nearby ice cream parlor.

Phoenix’s summertime bachelors of the bar certainly must have frequented the

swanky American Kitchen restaurant on the east side of Central, north of Washington—a short walk from the courthouse. Diners were aerated by an arrangement of large flat fans on the ceiling of the main dining room, attached to each other by a cord that pulled them back and forth.

The lobby of the elegant Adams Hotel, the meeting place for the community’s prominent attorneys and citizens, was cooled by fans blowing across a huge block of ice and by an evaporative device using cool, 55 degree water from the hotel’s deep well. Department stores like The Boston Store or Korrick’s New Yorker (department managers took semi-annual trips to New York to keep up on the latest fashions) attempted with varying degrees of lack of success to cool their stores using systems with water saturated coal and large fans.

Besides fans and cool drinks, the only other relief from the heat was the various bathing opportunities. From inglorious skinny dipping in the Town Ditch, to enjoying the inviting pools of Riverside Park and the exclusive Phoenix Country Club, swimming was a summertime imperative.

Even if the community’s legal luminaries could cool their sweating brow during the day, they still had to come to grips with the sweltering nights that would rob them of much needed sleep and eventually dull their keenly honed analytical skills. Efforts to maintain a reasonable sleeping schedule usually fell into three categories. Former Tucson attorney Ralph Bilby (one of first four graduates of University of Arizona’s law school and first to pass the bar) described comforting his

wife and first child by keeping a wet sheet in front of a fan. Variations on this “Pneumonia Method” (named for its frequent consequences) included wetting sheets, placing them on the sweltering mattress, then sleeping naked in the wet sheets directly in front of an electric fan.

A second method, the “Milkman’s Delight Method,” called for sleeping nude, or at least scantily clad, on porches—wherever a breeze might present itself. Morning newspaper delivery and milkmen positions became popular employment opportunities in the summer. This approach was used on the balconies of the finer hotels. In a variation, firemen at Central Station and Firehouses Numbers One and Two were permitted to cut holes in the roofs of their stations and sleep on the flat roofs. Each of the stations was fitted with sliding poles, so as to not hamper the men’s efficiency in attending night fires.

The “Campout Method,” involved bedrolls, mosquito netting and backyard conversations with neighbors through the oleander hedges.

If all else failed, it was only a six hour, scenic, if somewhat rough and steep, drive to Prescott via the old Black Canyon Highway. Not too much to ask for a decent night’s sleep.

**Heat wave**

In addition to the loss of their annual respite from the trials of the Superior Court, the local legal community mourned more seriously the loss of Judge Edward H. Kent, a noted local attorney and former chief justice of the Territorial Supreme Court. After

surviving 14 summers in Phoenix, Kent was a victim of a torrid heat wave that claimed hundreds of victims in the Midwest. Kent, attorney for the Santa Fe Railroad, died in the Blackstone Hotel in Chicago on July 30, 1916, of “hemorrhage superinduced by heat.”

Kent was mourned by the Maricopa County Bar Association at a special meeting on the occasion of his funeral. As a token of “our grief, our respect and our affection,” the MCBA drafted resolutions for the record of the Superior Court of Maricopa County and the Arizona Supreme Court, recognizing the judge’s contributions and character. The resolution noted that “[h]e was a man of fine and liberal education and was greatly learned in the law. He was dignified, courteous and considerate as a judge. His integrity was never questioned. He sought always to be impartial and that his judgment should be just. As a practitioner, his attitude toward the court was deferential and dignified, toward his opponents, courteous and affable, toward his clients, devoted and loyal.” High praise even in those simpler, more civil times.

Summer 1916 in Maricopa County—before the United States entered The Great War, before the Depression, before we became an “asphalt island,” before swamp coolers, and before air conditioning—was a time and place we have trouble visualizing, but with a little iced tea and a wet swimsuit, on a summer evening in the back yard behind our oleander hedges, we can just catch a glimpse before we step back into our air conditioned world. ■

**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.

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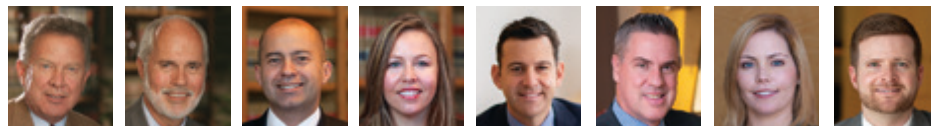
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NO SHOWS

If you registered and paid, but could not attend, you may request that the self-study program be sent to you after the program. Allow 3-5 days



**THURSDAY ■ SEPTEMBER 12  
5:30-7:30 PM**

**Speed Networking with  
the Criminal Law Judges**



Phoenix Country Club, 2901 N 7th St, Phoenix, AZ 85014

Please join us for the Annual Criminal Bench Speed Networking event on September 12, 2024, from 5:30–7:30 pm at the Phoenix Country Club. This event allows practitioners to meet with Judges in a casual yet organized setting and learn about their likes and dislikes on the bench, suggestions in practice, and even their favorite food! Socializing from 5:30–6 pm. Speed Networking begins promptly at 6 pm.

**JUDICIAL OFFICERS ATTENDING:**

- |                     |                       |                          |
|---------------------|-----------------------|--------------------------|
| Hon. Jennifer Green | Hon. Joseph Kreamer   | Hon. Annielaurie Van Wie |
| Hon. Stasy Avelar   | Hon. Todd Lang        | Hon. Kevin Wein          |
| Hon. Justin Beresky | Hon. Suzanne Marwil   | & more to come!          |
| Hon. Max Covil      | Hon. Suzanne Nicholls |                          |
| Hon. Geoffrey Fish  | Hon. Anne Phillips    |                          |
| Hon. Therese Gantz  | Hon. Aryeh Schwartz   |                          |

**FRIDAY ■ SEPTEMBER 13  
9-10:30 AM**

**Top Ten Do's and  
Don'ts in Civil Court**



MCBA, 3550 N. Central, Suite 1101, Phoenix, AZ

From proposed orders to voir dire. Learn one civil court Judge's Top 10 Do's and Don'ts.

PRESENTER: Hon. Frank Moskowitz

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.



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# How We Built a Robust Custom Private GPT Employee Knowledge Base and Training Program in About Two Weeks



**Kent S. Berk**

Berk Law Group, P.C.

Partner: "Here's a matter/issue, go figure it out." New Associate: "Uhm, okay." The Associate walks away wondering whether they should

have accepted the position. They then spend the next three days just trying to figure out how to find the electronic file and fumbling through the other of many steps necessary to process a matter.

That is an oversimplification and just a slight exaggeration (or maybe not) for some new hires. Firms are so busy, they are lucky to have a current handbook with detailed workflows, policies and procedures, let alone a robust employee knowledge base, training and testing platform. It's tough enough knowing all the rules and keeping up with changes in substantive law. Who has time to draft and keep current a robust employee procedures manual that delineates all the firm's key workflows? As of right now, everyone!

The difference between successful and highly successful law firms (or any business) is consistent policies and procedures, well engrained and seamlessly followed by all team members. Imagine a crisis-free law firm where everyone knows where the documents should be filed and they are there! There are no more interruptions to go ask a neighbor how to do this or that. Virtually every routine process is documented, diagrammed and tested. Team members can focus on real work and helping clients.

This is not a dream. It is attainable with a solid employee knowledge base, effective training and assessments.

With Chat GPT, you can now easily create or update your handbook, policies and procedures, workflows, roles and responsibilities, evaluation forms and everything else that should go into a robust procedure manual and employee training and support program. With GPT, you can then use that source material to take it to the next level.

## BLG Training Hub

Here's what we did in about two weeks, with the bulk of the training content in a weekend:

1. Created a custom GPT using Chat GPT 4.0+ (\$20/month at openai.com), the "BLG Knowledge Base."
2. There, we uploaded all of our procedure, training, handbook and evaluation materials to the GPT knowledge base. This included our employee procedure manual/handbook and related material, such as roles and responsibilities, employee evaluation criteria and anything else about how the firm runs. Thanks to GPT, we had current and complete material.

3. We gave it simple instructions about what we wanted to do: to use that knowledge base to allow employees to ask questions and get concise accurate responses about anything covered in the source material, create PowerPoint presentations, video outlines, diagrams, imagery and quiz questions, all based on our material.

4. We then accessed the active user interface to "Message BLG Knowledge Base" just like you would begin any other prompt.

With this process, in about a weekend, we created eleven modules, including topics for Ethics and Professional Responsibility, Client Relationships, Filing and Document Management and many others. This includes all the essential and routine workflows essential to running our firm.

### Here is a sample of how we created one module:

User >> create a .ppt of the firm's ethics and professionalism policy

GPT >> Based on the information provided in the uploaded files, here is an outline for a PowerPoint presentation on the firm's ethics and professionalism policy:

#### Slide 1: Title Slide

Title: Berk Law Group PC

Subtitle: Ethics and Professionalism Policy

Date: June 2024

#### Slide 2: Introduction

Mission Statement: Continue to build our reputation as the preeminent Arizona law firm specializing in probate trust, estate, and elder law litigation while maintaining a fun, challenging, rewarding, and crisis-free experience for our team members.

#### Slide 3: Core Values

Integrity: Upholding the highest ethical standards.

Dedication: Placing client needs first.

Excellence: Striving for top-notch legal expertise and client service.

Advancement: Commitment to professional growth and innovation.

Professionalism: Respect and civility in all dealings.

Teamwork and Collaboration: Promoting effective teamwork.

Accountability: Taking responsibility for actions and outcomes.

Community Engagement: Participating in pro bono work and charitable initiatives.

Diversity and Inclusion: Embracing and promoting an inclusive culture.

...

>> GPT: Would you like me to create the PowerPoint slides based on this outline?

>> User: yes

>> GPT: I have created the PowerPoint presentation on the firm's ethics and professionalism policy. You can download it using the link below: Berk Law Group Ethics and Professionalism Policy.pptx. [Note: This was a link to download the presentation, which was a plain vanilla theme with no colors or images. We

then used the PowerPoint Designer and SmartArt features to transform these plain vanilla presentations into colorful, engaging presentations with diagrams, catchy images and graphics. You can ask GPT to output a particular file type and it can likely do so.]

>> User: give me 10 quiz questions, single choice, multiple choice, matching, matrix sorting types

Sure, here are 10 quiz questions based on the firm's ethics and professionalism policy:

Which of the following is NOT one of Berk Law Group's core values?

- a) Integrity
- b) Dedication
- c) Innovation
- d) Professionalism

Answer: c) Innovation

Which of the following are considered core values of Berk Law Group? (Select all that apply)

- a) Integrity
- b) Transparency
- c) Excellence
- d) Teamwork and Collaboration

Answer: a) Integrity, c) Excellence, d) Teamwork and Collaboration

What tasks are paralegals responsible for? (Select all that apply)

- a) Case management
- b) Billing and accounting
- c) Legal research
- d) Document preparation

Answer: a) Case management, c) Legal research, d) Document preparation

...  
We then created a private password protected learning management system website for our employees to access the presentations, videos and quiz questions (a total of 160 so far) in a structured and trackable environment, with reporting. All in about two weeks. As with any output from AI, there were errors and it failed to follow instructions on occasion, so you must carefully read and revise what GPT generates even from your own material.

Full disclosure, when I say "we" created this training hub, I mean, my wife and me. She is a high school physics and biology teacher who happens to be taking advanced courses at ASU on adult learning design (no small coincidence we were discussing employee training), hoping to move into that field after this coming school year. She helped immensely. Anyone hiring?

As I experiment more with AI, the more I realize it can do. Much of what I've used it for, I would not have done without it. We simply could not afford to do so. We are a small firm. It would have taken weeks or longer to do what I just explained. It benefits everyone, employee morale, customer service and satisfaction. Our current and new employees were excited to complete the course and take the quizzes. Everyone wants to be on the same page and work in a crisis-free environment. I encourage you to experiment with AI. It is powerful and may help you do something for which you thought you would never have the time. Have fun exploring!

DISCLAIMER:

A human wrote this article. ■



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