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WHERE THE LEGAL COMMUNITY CONNECTS

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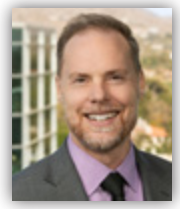
CRIMINAL LAW SECTION

The Overlap of Criminal Exposure in Various Areas of Legal Practice



Josh Fisher

By Josh Fisher

Criminal exposure can arise in a variety of seemingly unrelated practice areas, and recognizing the potential risks and proactively involving a criminal attorney can better help protect your client.

The risk that a client may face criminal liability can arise in nearly every area of legal practice—even those traditionally viewed as civil or regulatory. Lawyers practicing in fields such as family law, corporate law, estate planning, employment law, and general civil litigation must be vigilant for signs that their clients' actions may cross into criminal territory. Awareness of potential criminal liability is essential not only to protect the client but also to fulfill your ethical obligations.

Overlap in Family Law Matters

In family law, potential criminal exposure can lurk in contentious matters such as custody disputes, domestic violence allegations, and financial misrepresentations. Domestic abuse—physical, emotional, or financial—can lead to criminal charges such as assault, stalking, or harassment. When such allegations surface during divorce or custody proceedings, attorneys must tread carefully, balancing civil remedies with the potential for parallel criminal investigations.

Financial misconduct is another key area of concern in domestic disputes. Spouses may attempt to hide assets during divorce proceedings, leading to accusations of fraud, perjury, or contempt of court. These actions can trigger not only civil penalties but also potential criminal charges. Family law attorneys must advise clients on the risks of misrepresenting financial disclosures or violating court orders.

Additionally, issues like child abduction in custody cases can carry severe criminal consequences under state and federal laws.

Overlap in Corporate Matters

Corporate lawyers routinely navigate regulatory landscapes that can carry potential criminal penalties. Traditional white-collar crimes such as fraud, embezzlement, securities violations, and extortion can often be

See **The Overlap of Criminal Exposure** page 15

CourtWatch

Daniel P. Schaack

Turns Out, an Arsonist Can't Be His Own Potential Victim

The scene: The Arizona Capitol, as the legislature hammers out a bill defining different levels of the crime of arson:

Senator One: Clearly, when an arsonist burns a building that has people in it, that's the worst, so we should make arson of an occupied structure the most serious.

Senator Two: Agreed. But what if the only person in the building is the arsonist himself?

Senator One: Well, he's not innocent, but he is putting himself in danger and creating implications for both public safety and public resources. First responders have to act more urgently when someone's in a burning car, even if it's the jerk who started the fire.

Senator Two: Agreed. So how should we define occupied structure to include the arsonist?

Senator One: We should use the broadest possible definition. Since both the people we're trying to protect and the arsonist are human beings, let's use that phrase to describe the occupants.

Senator Two: Agreed. Could it be any clearer?

Along with a host of other serious crimes, Edwardo Serrato III was convicted of arson of an occupied structure when he burned the pickup truck owned by a woman he had murdered. On a winter night in 2007, Kingman firefighters encountered a burning pickup truck; it smelled of gasoline, and a melted gas can was on the passenger seat. The truck belonged to a woman who lived nearby. Polices officers went to her house and found her on the floor, alive but unresponsive, a large pool of blood around her head. The kitchen's gas stove was turned on, the house smelled of gas, and the kitchen table had burn marks. The woman's jewelry, coins, cash, and gun were all missing. She died the next day.

Serrato lived across the street. On the night of the attack, his sister saw him enter the woman's house. And that night a police officer saw a fire burning behind Serrato's house. An investigator later found in his backyard a burn barrel containing burned jewelry and a burned jewelry box.

Along with first-degree murder, Serrato was charged with first-degree burglary, arson of an occupied structure (the truck), attempted arson of an occupied structure (the house), and theft of a means of transportation. The jury acquitted him of first-degree murder but found him guilty of second-degree murder and all the other charges. He was sentenced to over a century in prison, including 35 years for the arson of an occupied structure.

Serrato appealed, and a panel of Division One of the Arizona Court of Appeals affirmed in all respects. It published an opinion discussing the charge of arson of an occupied structure. *State v. Serrato*, 557 P.3d 975 (Ariz. App. 2024).

The court noted that under the pertinent statute, A.R.S. § 13-1704(A), "a person commits arson of an occupied structure by knowingly and unlawfully damaging an occupied structure

See **Turns Out, an Arsonist** page 12

MARICOPA Lawyer
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The mission of the MCBA is to serve its members, the legal profession, the judicial system and the public.

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The *Maricopa Lawyer* welcomes letters to the editors or opinion pieces for publication. Letters and opinion pieces should be typed and preferably submitted electronically. Opinion pieces are limited to 1,500 words and letters to 700 words, and the editors reserve the right to reject submissions or condense for clarity, style and space considerations. Letters must be signed to verify authorship, but names will be withheld upon request. Authors of opinion pieces will have their names published. Letters and opinion pieces should be mailed to: MCBA editor, Maricopa County Bar Association
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Community Footprint: Make Your Mark with the MCBA

The Maricopa County Bar Association (MCBA) is a voluntary, member-driven organization that creates opportunities for legal professionals to connect, learn, and lead. One of the most meaningful ways to engage is by building your **community footprint**—your personal impact and presence within the legal community.

But what is a community footprint?

It's the legacy you build through service, connection, and leadership. It reflects where you've been as a practitioner and where you're headed. These footprints pave the way for others and strengthen the foundation of our legal community for years to come.

With so many options for involvement, it can feel overwhelming—but your engagement matters. It matters to your professional growth, and it matters to the community we serve. If you're a member but haven't yet been active, now is the perfect time to start. Visit maricopabar.org and check out our upcoming events. Taking that first step—registering—can lead to meaningful connections and lasting impact.

Why does your community footprint matter?

Consider this: You're applying for a new position. Active involvement in organizations like the MCBA demonstrates that you go beyond the minimum. It shows commitment, leadership, and a desire to give back—traits that resonate with employers and colleagues alike.

Being a member is a great start, but being **engaged** is where the real impact begins. Ask yourself:

- Are you involved in a committee?
- Have you attended any of our signature events like the *Barrister's Ball* (Sept. 27, 2025), the *Paralegal Conference* (Oct. 24, 2025), or the *AFA/MCBA Mixer* (Oct. 23, 2025)?
- Have you signed up for one of our many CLEs? Consider:
  "Surprise! You're an Arbitrator" – A Two-Part CLE Series (Aug. 20, 2025, 12:00–1:00 p.m.)
  International CLE Abroad: Journey to Scotland (Oct. 6, 2025)

The MCBA offers more than just CLEs and networking. You can:

- **Present a CLE:** Share your expertise on a new law or collaborate with fellow members.
- **Serve on a Board or Committee:** Shape the future of the association, build relationships with peers and judges, and contribute to lasting initiatives.
- **Start a New Section:** If you see a gap, help fill it. Your leadership could be the beginning of something impactful.

We believe the MCBA should be an organization that works *for* our members and *with* our community. And we need engaged members like you to make that vision a reality.

Be an active part of the MCBA—and see what we can accomplish together, for your career and the community. ■

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ETIQUETTE TIPS

Courtroom Drama: A Field Guide to Intergenerational Etiquette in Today's Legal Workplace

Hon. Elizabeth Bingert

It's August, which means someone is standing in a Target aisle arguing over the difference between "sky blue" and "cerulean" folders, while muttering that in their day, school supplies consisted of a pencil and a grim sense of duty.

Back-to-school season sparks memories of our own formative years: the stained hand-me-down on picture day, or the math question we answered with total confidence and zero accuracy. These awkward, humbling lessons were excellent preparation for the modern legal workplace.

Today, four generations work shoulder to shoulder: Baby Boomers, Generation X, Millennials, and Gen Z. Most often we work together well, but sometimes our interactions have all the grace of a discovery dispute gone off the rails. The key isn't avoidance; it's embracing our differences and using them to benefit the workplace and the profession.

Baby Boomers: Formality as a Love Language

Boomers were raised in a legal culture that prized order, decorum, and the weight of a well-pressed suit. They don't just appreciate structure—they expect it: scheduled meetings, formal salutations, and pleadings printed on 25% cotton bond paper. They value institutional memory and are often eager to share theirs—preferably in story form. If you want a productive relationship, respect their protocols and give them space to prepare.

At the same time, Boomers might consider that when someone responds "Got it," it isn't flippant—it's just efficient. A younger colleague using e-signatures isn't cutting corners; they're cutting paper. And just because someone does things differently doesn't mean they're doing them poorly. Good work shows up in more than one format.

Generation X: The Keepers of Functioning Chaos

Gen Xers are the duct tape holding your office together. They came up during a time when mentorship meant being handed a file and told "good luck." As a result, they're efficient, independent, and allergic to anything that smells like performative collaboration. They want you to say what needs saying and move on.

If you're working with a Gen Xer, be concise, do your share, and please don't CC them unless you have a legal or moral obligation. If you're a Gen Xer managing others, remember: silence is not clarity. A little direct communication can prevent a lot of confusion. Your independence is admirable, but don't let it look like abandonment.

Millennials: Collaborative, Exhausted, Still Trying

Millennials entered the profession during economic chaos and have been balancing idealism and burnout ever since. They crave structure, hate micromanagement, and will reorganize your shared drive just because it was driving them nuts. They're deeply collaborative and tend to ask "why" not to challenge you, but to make things better.

If you're working with a Millennial, expect questions, respond with clarity, and don't mistake their thoroughness for indecision. If you are a Millennial, know that sometimes a simple "yes" or "no" is enough. You don't have to explain everything—just deliver.

Gen Z: Fast, Focused, and Unbothered

Gen Z has a knack for efficiency and a healthy skepticism for processes that feel like rituals without reason. They'll draft a clean motion while walking their dog and then wonder why we're still printing like it's 1997. Titles don't impress them; results do. They work fast, communicate briefly, and don't like playing telephone with unclear expectations.

If you want good work, give them a clear ask and a good reason. In return, Gen Z should recognize that "lol" doesn't belong in a professional email and that just because a process seems outdated doesn't mean it lacks value. Learn the rules before you rewrite them—and if you're unsure, err on the side of formality.

Avoiding the Lazy Shortcut

Perhaps one of the most common faux pas we commit is in casual conversation with each other. For a profession that cross-examines over comma placement, we're surprisingly sloppy when it comes to talking about age.

"Oh, he's good with tech—for someone born before color TV."

"She's barely out of law school—why is she handling oral argument?"

"We love having older attorneys around. They're so calm. Like golden retrievers."

"I've been practicing longer than you've been alive. You're probably too young to appreciate [insert common professional hurdle]."

People say these with a smile—probably well-intentioned. But here's the thing: whether it's meant as a compliment or a joke, ageist language is still just bias in a nicer suit. And in the legal workplace, it's the fastest way to undercut someone's credibility and erode relationships without even realizing it.

Ageist language is lazy. It avoids asking about someone's actual experience, work style, or ability. So, here's the rule: talk about what people *do*, not how long they've been doing it. If they're brilliant, say that. If they're slow to adopt e-filing but excellent with clients, lead with the excellence. And if you absolutely must comment on someone's age, try waiting until the retirement party. At least then there's cake. ■

How to Avoid the Hidden Risk of Tense Shifts

I know of one sure way to catch a legal reader's attention: change the verb tense in the middle of a paragraph in a way that draws the reader's attention, causing them to stop reading. The following example typifies a disruptive verb tense shift:

> The court held that the youth maliciously set fire to the structure. The youth stacked boxes against the structure and states, "I hope it burns." His companion says the same thing.

To avoid this *tense* situation, a legal writer should remember that the verb tense in the first sentence of a paragraph generally sets the tone for the rest. Consistent verb tense keeps the reader oriented and supports clarity. Two foundational rules help ensure proper verb tense in legal writing:

1. Use present tense when stating a general legal rule from an authority.

This includes statutes, regulations, or case law holdings that are applicable.

Example: A suspect **does not confess** voluntarily if the police **engage** in unfair questioning.

Using the present tense signals that the rule or proposition is still valid.

2. Use past tense when discussing facts of a case, the court's reasoning, or prior events involving a client.

Historical facts happened in the past and should be treated that way. Historical facts include procedural history, factual background, and quotations from witnesses or parties in past cases.

Example: The court held that the youth maliciously set fire to the structure. The youth stacked boxes against the structure and stated, "I hope it burns." His companion said the same thing.

This corrected version uses the past tense throughout to reflect that all events occurred in the past—avoiding the jarring shift in time and tone. If these sentences were to follow a present-tense legal rule, I would either (1) start a new paragraph to avoid shifting tense or (2) use a transitional signal to the reader that I am shifting to case facts (Ex. In *Doe v. Youth*, the court held. . .).

In short, a shift in verb tense is rarely neutral in legal writing—it typically signals a change in time or legal significance. When a tense shift is unintended, it can weaken the writing, which invites the wrong kind of attention. ■

YOUNG LAWYERS DIVISION PRESIDENT

Logan Matura

The Power of Peer Networking: Building Your Legal Village

Young lawyers are often focused on building legal knowledge, developing practice skills, and impressing partners or supervisors. While this is all, of course, very important, one of the most overlooked and undervalued tools for professional growth is peer networking.

Connecting with other early-career attorneys can be one of the most impactful investments made throughout a legal career. These aren't just casual friendships or happy hour acquaintances (though those are great too); peers can become referral sources, co-counsel, sounding boards, and lifelong colleagues who understand your journey better than anyone else.

There's a unique kind of support that only comes from someone who's walking the same path. Fellow young attorneys know what it's like to bill hours late into the night, to fumble through a difficult client call, or to second-guess your own instincts in court. These shared experiences create space for genuine connection and trust—a critical foundation in a profession built on relationships.

In practical terms, peer networking leads to real opportunities. Maybe a law school classmate refers you a case. Maybe a friend from a bar event shares a job opening before it's posted. Maybe someone you met on a legal committee agrees to co-author an article or speak on a panel together, boosting your visibility in the legal community. These aren't hypotheticals—they happen every day when young lawyers take the time to invest in each other.

So how can young lawyers build their legal village? They can start by showing up: attending events hosted by the MCBA Young Lawyers Division or other practice area sections, saying yes to coffee invites or CLE events, and even just following up with a quick "nice to meet you" email after meeting another attorney. The legal world is smaller than it seems, and consistency counts.

Finally, young lawyers should never overlook the power of giving—share resources, celebrate the wins of peers, and offer encouragement or introductions when you can. Relationships in law aren't just about what you can get—they're about building a community where everyone rises together.

In a field often defined by hierarchy and pressure, your peers are your village. They'll laugh with you, vent with you, and grow with you. Invest in them, and you'll be amazed how far that support will take you. ■

Protecting Against Deed Fraud: Lessons from the Dominguez Case and Proactive Measures for Arizona Legal Professionals

Kent S. Berk
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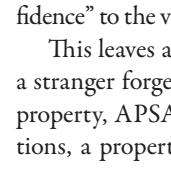

In April 2025, the Arizona Supreme Court issued a landmark decision in Estate of Magdalena Rios De Dominguez v. Renee Kay Dominguez, No. CV-24-0102-PR. The Court ruled that a facially valid, yet allegedly forged deed, could still trigger the five-year statute of limitation under A.R.S. § 12-524 to quiet title. While the case is not over, the decision raises critical questions about protections for Arizona's vulnerable property owners.

Case Background

The dispute centers on a vacant lot in Maricopa County. Magdalena claimed that a 2003 deed transferring the property to her daughter-in-law, Renee, and Renee's late husband, was forged. Nevertheless, the deed appeared valid on its face, and Renee had paid property taxes and asserted ownership for over five years.

The Arizona Supreme Court assumed for the sake of argument that the deed was forged. Yet it held that because the deed was facially valid and Renee had acted as the owner and paid taxes for over five years, the statute of limitation barred Magdalena's claim. The case was remanded to consider other equitable issues, including the potential tolling of the statute of limitation.

The Risk to Vulnerable Adults

The Court acknowledged a troubling reality: this ruling may increase the risk of exploitation, particularly for elderly or impaired individuals who may not be aware that their property has been fraudulently transferred.

In 1996, the Arizona legislature enacted the Adult Protective Services Act (APSA), A.R.S. § 46-451 et. seq., to shield vulnerable adults from abuse, neglect and financial exploitation. This would include deed fraud if the elements of the statute are met. However, APSA only applies if the wrongdoer is in a "position of trust and confidence" to the vulnerable adult.

This leaves a potential gap in protection. If a stranger forges a deed and pays taxes on the property, APSA may not apply. In such situations, a property owner may lose their rights without any recourse if they do not discover the fraud and file a quiet title action within the five-year statutory window.

Protecting Vulnerable Adults from Deed Fraud

So, for fiduciaries or those representing fiduciaries, it's crucial to adopt proactive measures to protect those we serve. Early fraud detection systems are vital. Here are some key tips:

- Use the County Title Alert systems to get notified of any document recorded under monitored names. Currently, all fifteen Arizona County recorders offer title alert services. For a list and links to every Arizona County title alert system, go to: https://berklawgroup.com/blog/arizona-county-title-alert-services-protect-against-deed-fraud/ You can register for alerts for yourself or anyone else. So, if you want to monitor for changes in title of property in a client's or family member's name, just register their names with your email address and then you should receive notice of any changes in title to their property.
- Pay property taxes promptly to prevent tax liens and property loss.
- Keep addresses current with the County Assessor and Treasurer to receive important notices.
- Obtain a title report to ensure the correct title holder and address any title defects early.

Do We Need Legislative Reform?

The Dominguez decision invites reflection. Should the law presume that anyone forging a deed is, by that act alone, in a position of trust and confidence to the victim? Perhaps. Should Arizona amend A.R.S. § 12-524 to prevent fraud from starting the clock on the statute of limitations?

Without reform, the law may inadvertently favor fraudsters who act quickly and quietly. Vulnerable adults—who may already face physical, mental, or financial impairments—could be left without a remedy.

Conclusion

Every year, countless people lose their property for failing to pay property taxes—some due to cognitive decline or other impairments, not deliberate abandonment. With the added risk of forged deeds, Arizona must decide: How will we step up to protect those who cannot protect themselves? ■

LEGAL PARAPROFESSIONAL DIVISION DIRECTOR

Candace Thude

The Scopes and Benefits of Legal Paraprofessionals

Hosted by the Legal Service Innovations Unit, Certification & Licensing Division Administrative Office of the Courts

Arizona is experiencing a transformative shift in how legal services are delivered. One that acknowledges the access to justice challenges while embracing a regulated, innovative solution: Legal Paraprofessionals (LPs). Authorized by the Arizona Supreme Court and licensed through the Certification and Licensing Division, LPs are trained professionals equipped to provide legal advice, appear in court, negotiate on behalf of clients, and develop case strategy within designated practice areas.

The June 2025 presentation, The Scopes and Benefits of Legal Paraprofessionals, hosted by the Legal Service Innovations Unit, Certification & Licensing Division, Administrative Office of the Courts, showcased the impact LPs are already having and what lies ahead for the profession. Alongside Mark McCall and Nitasha Miller, I had the privilege of discussing our shared commitment to expanding access to justice while maintaining the ethical and professional standards the public expects.

One of the key points emphasized during our presentation was the distinction between Legal Paraprofessionals (LPs) and Certified Legal Document Preparers (CLDPs), particularly in the context of Rule 31(b) of the Arizona Supreme Court Rules. This rule defines the "practice of law" to include activities such as giving legal advice, preparing pleadings, representing clients in court, and negotiating legal rights. Functions of which LPs are specifically licensed to perform. During the presentation, we underscored that LPs operate within a clearly defined scope that qualifies as the authorized practice of law. The LP licensing framework ensures that clients are not only protected by regulation and ethical oversight, but also empowered with professional and accessible legal services. This recognition under Rule 31(b) reinforces the LP's legitimacy as a vital and lawful participant in Arizona's legal system.

Arizona ranks 49th nationally in access to legal representation, and 86% of low-income individuals receive little or no legal help and thus, LPs fill a much needed gap between legal aid and private practice. Legal Paraprofessionals serve as a supportive extension of the legal profession. LPs are addressing gaps in access to representation and reinforcing the justice system in areas where attorneys may be unavailable or where pro bono and legal aid resources are stretched thin. LPs also help bridge the gap for individuals who are no longer able to afford traditional attorney representation and are seeking a more cost effective, yet qualified legal alternative.

In fact, according to the Assessing Arizona's Legal Paraprofessional 2024 Program Survey, 69% of LPs work and function in law firms, and 29% of LP clients are referred directly from attorneys. LPs frequently manage early case stages, providing clients with affordable representation until trial becomes likely, at which point matters may be transitioned to attorneys. This collaborative legal ecosystem benefits everyone: clients, attorneys, courts, and the broader justice system.

Becoming a Legal Paraprofessional is no shortcut. Candidates must either meet strict education and coursework requirements or qualify through substantial law-related experience in legal practice. All LPs must pass a core exam and a subject-matter exam and are held to the same ethical and disciplinary standards as attorneys. Additionally, LPs are required to complete 15 hours of continuing legal education annually.

The licensure process for LPs has fostered trust among both the judiciary and the public. In a recent survey, 88% of judges reported that LPs possess appropriate knowledge of courtroom procedures, and 90% observed that LPs demonstrate proper courtroom decorum.

The numbers speak volumes. In cases involving LPs, 59% resolve faster than those with self-represented litigants. Approximately 70% of cases settle without the need for protracted litigation, and 48% of LP clients would have otherwise navigated the system alone. Client satisfaction remains consistently high wherein approximately 94% of surveyed clients were pleased with their LP's performance and fees. Judges note that LPs are often indistinguishable from attorneys in courtroom conduct, and attorneys have expressed a preference for litigating against LPs over self-represented parties.

The LP program continues to develop and evolve. In 2025, new qualifications for probate and QDRO matters are expected, along with improved testing options and a milestone 100th LP license on the horizon. As programs expand at institutions like ASU and the University of Arizona, the state is laying the groundwork to train the next generation of LPs.

The goal is simple but powerful: ensure that no Arizonan is left behind in their pursuit of justice, regardless of income, location, or background. LPs are making that possible by bridging the gap with professionalism, compassion, and competence. ■

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The Maricopa County Bar Association is pleased to endorse its 100% Club members of the MCBA. These firms have made a commitment to the bar association and its work on behalf of the local legal profession and the public by assuring membership to all of their attorneys. To join, contact Laurie Williams at lwilliams@maricopabar.org

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CRIMINAL LAW SECTION

Prosecutorial Workload: The Hidden Crisis in Criminal Justice

By Kristine Hamann, Antonia Merzon, and **Elaine Borakove**

The growing volume of work in prosecutor offices is a pressing issue that demands attention. Across the nation, prosecutor offices are grappling with high caseloads, limited resources, and increasing demands from stakeholders and the community.

The New Roles of the Modern Prosecutor

In addition to traditional responsibilities, modern prosecutors are embracing new roles and initiatives to address the evolving needs of their communities. These roles include problem solver, innovator, community partner, crime prevention strategist, service and treatment facilitator, and conviction and sentence reviewer. See PCE's Nat'l Best Prac. Comm., *The New Roles of the Modern Prosecutor* (May 2023). By expanding their focus beyond traditional functions, prosecutors are playing a more proactive role in addressing systemic issues, promoting equity, and enhancing public safety.

The new approaches result in more work for the prosecutor's office. Rather than merely being reactive to police arrests, a modern prosecutor is a problem-solver who looks not only to prove that a crime occurred but also to craft solutions to the root causes of crime. Both proving crime and seeking broader solutions that can reduce crime have become more complex and labor-intensive over time.

The Expanding Workload of Prosecutors

Prosecutor workloads are also negatively impacted by the swiftly increasing complexity and depth of the typical criminal investigation. Every significant criminal investigation includes some combination of cell phone records, body-worn camera footage, social media searches, jail calls, computer analysis, surveillance videos, license plate readers, and forensic evidence (e.g., ballistics, DNA, and fingerprints). Much of this evidence did not exist two decades ago, and in the last decade, the volume of this evidence has grown dramatically. There is also an important realization of the trauma suffered by victims and witnesses that must be addressed.

Modern prosecutors have many duties not directly tied to a case and thus not part of any caseload or workload analysis. See PCE's Nat'l Best Prac. Comm., *Prosecutorial Work Not Included in Caseload Counts* (Nov. 2023) [hereinafter Prosecutorial Work Not Included]. The office's resources are stretched further by their participation in the worthy goal of preventing crime through community partnerships, treatment and diversion programs, and education initiatives. Funding for these evolving and critical components of a modern prosecutor's responsibilities is inadequate and sometimes nonexistent.

Increasing legislative and judicial mandates have escalated the procedural demands on a prosecutor. Some statutory initiatives and court decisions have created unfunded mandates that put additional pressure on a prosecutor's office.

As a result, many offices find themselves understaffed and overburdened, compromising the quality of justice delivered and the well-being of staff members.

The Importance of Studying Prosecutor Workload

As the American Bar Association (ABA) has recognized, prosecutor overwork can negatively impact the entire criminal justice system. The ABA's Criminal Justice Standards state:

The prosecutor should not carry a workload that, by reason of its excessive size or complexity, interferes with providing quality representation, endangers the interests of justice in fairness, accuracy, or the timely disposition of charges, or has a significant potential to lead to the breach of professional obligations.

Crim. Just. Standards for Prosecution Function Standard 3-1.8(a) (Am. Bar Ass'n, 4th ed. 2017).

When prosecutors have excessive workloads, they have insufficient time to devote to each case they are assigned. This problem can lead to breakdowns in the justice process, such as the failure to convict guilty defendants, the failure to investigate claims of innocence, inadequate attention paid to victims, incomplete assessments of criminal activity, plea-bargained cases with inappropriate dispositions, and weak cases that are not dismissed promptly. Constitutional obligations, such as the disclosure of Brady material, also may be hampered. In short, excessive prosecutor workloads harm victims, defendants, and the public at large. See Adam M. Gershowitz & Laura R. Killinger, *The State (Never) Rests: How Excessive Prosecutorial Caseloads Harm Criminal Defendants*, 105 Nw. U. L. Rev. 261 (2011).

Some groups have expressed concern that developing workload standards for prosecutors will lead to greater levels of incarceration. However, research has shown that improving prosecutor workloads can help the entire criminal justice system, depending on the office's policies. While there might be stronger prosecution of certain defendants, a manageable workload also allows prosecutors to better identify cases that should be dismissed and defendants eligible for diversion programs or treatment. See J.W. Bourgeois et al., An Examination of Prosecutorial Staff, Budgets, Caseloads and the Need for Change, Ctr. for Just. Rsch., Tex. S. Univ. (2019); Howard Henderson, Clarification to *"An Examination of Prosecutorial Staff, Budgets, Caseloads and the Need for Change: In Search for a Standard"*, Ctr. for Just. Rsch., Tex. S. Univ. (2019).

Prosecutor and Public Defender Caseloads

For years, prosecutors and public defenders have faced excessive caseloads that have only become more challenging since the COVID-19 pandemic. Case filings around the country continue to rise, and many courts face significant backlogs, resulting in case processing delays. Coupled with recruitment and retention challenges, an increase in time-consuming advances in digital and scientific evidence, and budgetary constraints, there is a growing demand for caseload standards.

The recent release of public defense caseload standards has reignited a desire for similar standards for prosecutors. See Nicholas M. Pace et al., *National Public Defense Workload Study* (RAND 2023). Unlike the new public defense standards, prior efforts to develop national prosecutor caseload standards found several critical variables that deem such standards to be unreliable and invalid. Specifically, these variables include the following:

- **Variation nationally in charge classifications**—for example, what may be a Class 3 felony in one state may be a misdemeanor in another—making attempts to create charge categories unreliable;
- **Law enforcement policies** that change regularly and can vary widely from department to department, within a jurisdiction, and across jurisdictions;
- **Significant resource differences** across prosecutors' offices in terms of availability of support staff such as investigators, victim/witness advocates, and other nonattorney staff who provide substantial support to attorneys for case processing;
- **Different organizational models** and policies among prosecutors' offices; and
- **Differences in the number of courts served.**

See Elaine Nugent et al., Am. Prosecutors Rsch. Inst., *How Many Cases Should a Prosecutor Handle?* (2002). Yet, as states begin adopting the public defense standards, it is necessary to similarly study standards for prosecutors to ensure that they have the resources to properly evaluate and prosecute cases, while also fulfilling their expanded roles in crime prevention and community outreach.

What Is Measured Matters: Studying Prosecutor Caseloads and Workloads

Although national-level guidance for prosecutors is difficult to achieve, states, localities, and individual prosecutor offices can develop their own workload standards. Establishing these standards involves assessing how much work prosecutors are required to handle, and then analyzing whether this caseload and the workload are excessive given their procedural, legal, and ethical duties.

Prosecutorial work is often described in terms of *caseload*—meaning the volume of cases a prosecutor's office files or disposes of annually. However, the work of a prosecutor's office includes numerous responsibilities beyond casework. Administrative and supervisory duties, coordination with law enforcement, multidisciplinary task forces, community outreach, and legal training are just a few of these other tasks. See *Prosecutorial Work Not Included, supra*.

This broader scope of activities can be described as the office's *workload*—the volume of cases plus any non-case-related tasks. Both metrics are important.

Methods of Study

Several methods can be used to determine prosecutor caseloads and workloads. The most *basic calculation* is to simply divide the number of cases in an office by the number of attorneys or the number of available attorney hours. A *weighted calculation* adds more information to this process by also looking at the level of attorney effort and processing time for different types of cases. These calculations can be helpful, but they are based on limited details and only describe an office's status quo, with no insight into future workload or the time that should ideally be devoted to a case.

The most accurate and comprehensive caseload and workload calculations are accomplished using a combined *time study* and *sufficiency study*. This approach is the method of analysis preferred by researchers in the field today, as it better identifies current resource gaps and future needs.

Time Study

A time study tracks the time that attorneys and support staff spend on the different types of activity that constitute the work of a prosecutor's office. Activity categories are created, such as case preparation, filing of cases, pretrial motion practice, victim and witness outreach, subpoena issuance, court appearances, and trial. For a period of time, but ideally at least a month, employees—or a representative portion of them—record the time they spend each day on these activities.

Time studies also track the complexity factors of cases. For example, a simple theft case may be very straightforward and take relatively little of the office's time. On the other hand, a case with multiple defendants, multiple victims, significant violence, statutory complexity, competency issues, or insanity defenses may require far more time to shepherd to disposition. Also, within the same category of cases, some can be completed quickly, while others are complex.

At the conclusion of the time study, the collected data can be analyzed to provide an array of insights into the prosecutors' workload, including:

- **Disposition Time:** The average amount of time spent to bring a case from intake to disposition.
- **Step-by-Step Analysis:** The time spent and the number of dispositions achieved during each step of the prosecutorial process.
- **Variations by Case:** How these time and disposition measurements vary for different types of cases.
- **Complexity Factors:** How different complexity factors affect the amount of time spent on a case, and at what point cases with those factors reach disposition.
- **Non–Case Work:** The time spent on non-case responsibilities.
- **Time Spent by Staff on Tasks:** How prosecutors and support staff are spending their time in a given day, week, month, or year in terms of casework and non-case-related tasks.
- **Hours Worked:** Numbers of hours worked, calculated by staff member, job title, unit, and the office as a whole.

This information can be used to better understand the average caseload and workload within the office or locality, and how those metrics translate into the attention and effort available for the range of cases being handled.

See **Prosecutorial Workload** page 10

CRIMINAL LAW SECTION

The Debt That Won't Die:
What Every Arizona Attorney Needs to Know About Criminal Restitution

By Howard A. Snader
Board-Certified
Criminal Law Specialist

Arizona's criminal restitution laws pack a punch—and not just for criminal defense attorneys. Family lawyers, probate counsel, personal injury attorneys, and civil litigators must be mindful that once a criminal court enters a restitution order, it becomes a judgment with long-term and far-reaching consequences. Restitution law in Arizona is not just a footnote in sentencing—it's a juggernaut of victim compensation with implications that ripple far beyond the courtroom. Six Points Arizona Attorneys Should Understand

1. Restitution Is Mandatory—Not Discretionary

Under A.R.S. § 13-603(C) and A.R.S. § 13-804, Arizona courts must order a defendant to pay restitution for any economic loss a victim incurs due to a criminal offense. Judges have no discretion to waive or reduce it. If a loss is causally tied to the offense, the court must order it.

Once a restitution order is mandated, it cannot be negotiated away or compromised like a civil debt. It's required and imposed by law.

2. Restitution Orders Have Judgment Status

Per A.R.S. § 13-805, once entered, a criminal restitution order becomes a civil judgment by operation of law, it is enforceable just like any civil judgment—without the need to renew or pursue additional litigation.

For civil attorneys: if you're pursuing a personal injury judgment or a probate estate owes funds due to a criminal action, check whether a criminal restitution order has already been filed. That order has priority and creditors can collect it for decades—*with interest accruing at 10% annually.*

3. Expansive Definition of "Victim" and "Economic Loss"

Arizona takes a broad view of who qualifies as a "victim." It includes not just the direct target of a crime but any person or entity suffering a financial loss as a result of the offense. This may include, but is not limited to the following:

Insurance companies
Employers (in fraud or embezzlement)
Family members paying funeral or medical expenses
State or government agencies

Losses may include medical expenses, property damage, lost income, funeral costs, counseling, and sometimes even attorneys' fees.

But not all losses qualify: punitive damages, pain and suffering, and speculative damages are generally excluded.

4. Future Lost Wages and the New "Thompson" Rule

In *State v. Thompson*, 258 Ariz. 39 (2024), the Arizona Supreme Court authorized restitution for future lost wages in homicide cases, allowing courts to impose restitution based on projected lifetime income for deceased victims.

The Court ruled that "reasonable economic projections"—like future earnings of a decendent—must be included if supported by evidence.

Civil attorneys can expect restitution figures that rival or exceed wrongful death verdicts, with none of the procedural safeguards.

5. Victims Have Veto Power—and Procedural Muscle

Under the Victims' Bill of Rights (Arizona Constitution, Art. II, § 2.1) and A.R.S. § 13-4410, victims have the right to be heard, present evidence, and object to any restitution agreements. Even if both defense and prosecution agree to a reduced restitution figure, the victim's objection can derail it.

For non-criminal practitioners: if your client is a victim in a related civil matter, consider intervening in the criminal case to assert restitution rights early.

6. Restitution Survives... Almost Everything

Restitution is not dischargeable in bankruptcy. It survives probation. It survives prison. And unlike typical fines, it's enforceable for life—until paid in full.

Although it may be possible, the reality is that once the court enters a criminal restitution order, a defendant can rarely negotiate it down. Courts rarely revisit it unless it was clearly erroneous. Even in death, a defendant's estate remains liable.

Practice Pointers Across Disciplines:

Family Law: If restitution is owed to or from a party, it can affect child support, asset division, or spousal maintenance arguments.

Probate: Heirs or estates can inherit criminal restitution obligations—or rights.

Personal Injury: A criminal restitution order can act as a lien or serve as an admission of liability.

Business Law: Fraud convictions against former employees often yield restitution orders—recoverable by the employer.

Final Thought

Restitution is not just a matter of criminal sentencing—it's a civil judgment hidden in a black robe. For non-criminal lawyers, understanding the implications of these orders is essential to protect (or defend) your clients' financial interests.

If your practice intersects with criminal law in any way, now is the time to get familiar with the legal iron fist that is Arizona's restitution statute. ■

The What, Where, and When of Sealing

Nick Saccone
Commissioner of the Superior Court
Maricopa County

In September of 2024, the statute that allows petitioners to seal convictions, dismissed cases, and arrests was updated. This article is going to explore some of the ins and outs of ARS § 13-911, which is Arizona's sealing statute. This article is not exhaustive, but it will explore some of the preliminary aspects of Arizona's Sealing Statute.

What offenses are eligible to be sealed? Currently, a person can request the following types of offenses are sealed: (1) convictions for criminal offenses, (2) charges that were filed and later resulted in a dismissal or not guilty verdict, and (3) records of arrests, out of which charges were never filed. Certain types of convictions and cases are not eligible to be sealed. These are listed in subsection (O), but they include dangerous offenses, dangerous crimes against children, serious offenses or violent or aggravated felonies, certain offenses involving deadly weapon or dangerous instrument or knowing infliction of serious physical injury, sex trafficking, and some offenses included in chapters 14 or 35.1 of title 13. So long as the petition is not seeking to seal one of these types of offenses, the conviction, case, or arrest is eligible to be sealed.

Where should the petition be filed? The where to file a petition to seal is almost as important as the contents of the petition. Filing a petition in the wrong court can unnecessarily delay the sealing process for the petitioner. And for the question of "where," the court in ARS § 13-911(C) means which court handled the case. The sealing statute in subsection (C) describes the appropriate court for the petition. Petitions to seal must be filed in (1) the court, in which the petitioner was convicted, (2) the court where the criminal citation, complaint, information, or indictment was filed, and later dismissed or resulted in a not guilty plea, (3) the court where the petitioner had an initial appearance on an arrest, but the charges were never filed, or (4) the superior court in the county where a person was arrested but never had an initial appearance. When a petition is filed in the wrong court, that court will dismiss the petition and indicate that it was filed in the wrong court.

When should the petition be filed? For a petition to seal to be filed, it cannot be filed too early for the sealing of convictions. Filing a petition to seal before the time limits have run can lead to unnecessary delays to the sealing process. First, for a petition to be considered, all of the fines, fees, and restitution ordered by the court must be paid off. If any financial terms are still owed, the petition could be dismissed. Second, the petitioner must have completed all terms and conditions of the sentence. Generally this means any obligations or requirements imposed at sentencing, such as community service, treatment programs, etc.. Third, the waiting period described in subsection (E) must have passed. This time period begins running "after the person completes all of the nonmonetary terms and conditions of the person's sentence ordered by the court, and the following period of time has passed since the person completed the nonmonetary conditions of probation or sentence and was discharged by the court." These periods are ten years for class 2 & 3 felony offenses, five years for class 4, 5, and 6 felony offenses, three years for class 1 misdemeanors, and two years for class 2 & 3 misdemeanors. For the sealing of dismissed, not guilty, and not filed charges, these waiting periods do not apply. The easiest way to determine when the probation term or sentence was completed is to obtain and attach to the petition the certificate of discharge from the Department of Corrections, or the Order of Discharge from probation. Those documents usually include information about the completed or not-completed terms of the sentence. If you think the petitioner may owe any financial terms, you should contact the court that handled the case for more information or documentation. If the case was in the Superior Court in Maricopa County, the request should go to the Maricopa County Clerk of Superior Court's Criminal Financial Obligations Section.

While this article has only scratched the surface of ARS § 13-911, I hope this has explained the What, Where, and When of Arizona's Sealing Statute. If you want a complete understanding of Arizona's sealing statute, you should read through the entire statute. For more information on Sealing and the "fillable" PDF forms, please visit the Maricopa County Law Library website: https://superiorcourt.maricopa.gov/llrc/criminal-court-forms/ ■

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PRO BONO PROFILES

CLS VLP Attorney Judith O'Neill Receives Pro Bono Service Award at AZ Bar Convention

By Konnie K. Young, Attorney
Community Legal Services VLP Pro Bono Attorney Coordinator

Judith O'Neill
Retired
VLP Pro Bono Attorney
1996 – Present

On June 24th, 2025, Judith O'Neill received the William E. Morris Pro Bono Services Award at this year's State Bar Convention. Community Legal Services (CLS) Volunteer Lawyers Program (VLP) staff could not be more proud of Judy, who is so deserving of this award for serving so many litigants in dire need of legal assistance but without the means to pay attorneys. Judy goes beyond giving brief advice to these clients who would not have access to justice but for VLP attorneys like Judy.

Judy joined CLS' VLP Pro Bono Attorney Team almost 30 years ago, and she continues to provide invaluable weekly pro bono assistance in our Landlord Tenant Clinic to help clients facing very challenging housing issues. She has helped so many clients who were facing eviction or living in uninhabitable living conditions and has also assisted clients with debt issues and others in our Attorney of the Day Clinic.

Judy recalls,

Pat Gerrich (former VLP Director) was the guest speaker at one of my Inn of Court dinners back in the 90s. She spoke about Volunteer Lawyers, and it sounded useful and interesting. I knew no civil law and thought VLP would be a good way to help others.

So Judy joined the CLS VLP Pro Bono Attorney Team in 1996 and has not stopped her relentless quest to serve the underserved and make a positive difference in their lives. Judy states, "Before VLP, I had never done any civil work, nor had I ever provided any type of civil advice." But CLS staff and other pro bono attorneys provided Judy with all the training, mentoring, and experience she needed to assist clients who are always so grateful to have Judy on their side. Judy remembers:

Just recently I helped a tenant who was the victim of domestic violence. She moved out of her apartment and did not pay rent for that month. The landlord billed her for the unpaid rent and the bill was sent to collections. I was able to have the collection company cancel the debt since she was a DV victim.

Judy continues, "The biggest benefit to me is the fact I have clients and can help them to handle their legal problems; as a prosecutor I had victims but no clients." She explains,

There are so many people who have legal problems that impact their lives, and they do not have the income to hire an attorney. VLP can help them. While it is a good thing to help any client, helping people who cannot afford attorneys and whose lives are being devastated by legal problems is worth the time and effort.

Judy has recruited other attorneys and judges to provide pro bono services to underserved clients, and she encourages all to join CLS' VLP Pro Bono Attorney Team:

Helping any client is worthwhile. But helping people who cannot afford an attorney can give you much joy (as well as sadness) and make your life more fulfilling. As a VLP Attorney, you not only help people with legal issues, but you can also widen your understanding of the problems many people face.

Please help us help our clients—join our Community Legal Services VLP Pro Bono Team today!

Contact:
Roni Tropper, CLS VLP Director at rtropper@clsaz.org
Konnie K. Young, CLS VLP Pro Bono Attorney Coordinator, at kyoung@clsaz.org

CLS' Volunteer Lawyers Program is possible thanks to the partnership with the MCBA.

Prosecutorial Workload

Criminal Law, continued from page 6

From there, offices can evaluate whether this time, attention, and effort are sufficient to provide quality representation.

Sufficiency Study

Once a time study is completed, then a sufficiency study can be undertaken. A sufficiency study is a survey that asks attorneys and staff members if the amount of time they spend on different activities is sufficient to do them competently. Do they have enough time to adequately conduct each step of their cases, as well as their other responsibilities? Too little? What would be a sufficient amount of time for each type of work they must do?

The survey also asks why the current time available is appropriate or insufficient. For example, is it simply the number of cases or other tasks being assigned that is impacting sufficiency? Or are there other factors, such as technology challenges or attorneys doing nonlegal work, costing time?

The survey results about sufficient time are then compared to the time study's results about the average time actually spent per task, and the variance between them can be calculated. This analysis provides crucial data about:

- **Slowing Factors:** Factors that are negatively affecting the time to disposition for different case types.
- **Case Weight:** How much effort is needed versus the actual time expended for various kinds of cases.
- **Ratios of Complex Cases:** Ratios of complex to noncomplex cases in the office and in a typical prosecutor caseload.
- **Workload Measure:** The level of individual and staff effort on case-related and non-case-related activity.
- **Reasonable Volume of Work:** How many cases and non-case tasks an attorney or support staff member can reasonably handle.
- **Ratio of Lawyers to Support:** How the ratio of lawyers to support staff impacts time spent on case and non-case work.
- **Resource Projections:** Resource projections for meeting the office's overall workload so that individual employees do not carry excessive workloads.

Conclusion

The pressing issue of excessive workloads in prosecutor offices cannot be overstated. As the criminal justice system evolves, so too do the responsibilities and demands placed upon prosecutors. The growing complexity of cases, increased use of technology, and expanding roles in crime prevention and community engagement highlight the need for adequate resources and thoughtful workload management. Creating standards for prosecutor caseloads and workloads to ensure justice is served efficiently and equitably is sorely needed. Ultimately, tackling this hidden crisis requires collaboration among policymakers, researchers, and the community to align resources with responsibilities, ensuring prosecutors can fulfill their vital role in safeguarding public safety and upholding justice. ■

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

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Zawtocki Law Offices

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

ALLEN JONES & GILES CLINIC
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David B. Nelson
Zachary Phillips

ATTORNEY OF THE DAY
Nancy Anger
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Fred Breedlove | Colleen Contreras | Diane Drain
Andreah Gomez | Gabriel Hartsell | Merri Tiseth

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 is a joint venture of Community Legal Services and the Maricopa County Bar Association

Q&A

LAWYER LIABILITY AND ETHICS

Addressing Advance Fee Disputes

David Majchrzak

Lawyers work hard for their money. Really hard. And they often take steps to ensure they will be compensated for that work. The typical model is that the lawyer provides legal services and, in exchange, the client provides payment. Often, to secure the payment, lawyers request and clients provide advance fees, which are then placed into the lawyer's trust account until earned.

Yet sometimes there is a twist. Once the legal services are provided, for the first time, the client disputes the amount of fees being charged. This may be either because of the results of the lawyer's services, or in spite of them. Regardless of the rationale, that circumstance triggers some issues for lawyers to address.

In such instances, a lawyer's obligations start with properly handling the funds that the client has already paid. Following termination of the attorney-client relationship, lawyers must promptly distribute any part of a fee paid in advance that has not been earned. It is a relatively simple concept to adhere to when there is no dispute regarding what has been earned, and what is unearned. In such cases, lawyers move the fees into their operating accounts when they are earned and then refund to the clients any unearned amounts.

But when there is a dispute regarding how much is earned, the lawyers do not have a definitive answer regarding how much to refund. In those cases, lawyers should refund any amounts over which there is no controversy, distribute any undisputed fees, and hold the disputed sums in the client trust account until the dispute is resolved. Comment [3] to Rule 1.15 reminds lawyers that they cannot use this circumstance as leverage for negotiations with the client. Among other things, the lawyer should suggest means for prompt resolution of the dispute, such as arbitration.

As lawyers move diligently to resolve the matter, there are several things to keep in mind. First, it makes sense to analyze the ability to prevail on a fee dispute. Doing so may lead to a conclusion that there really should not be a dispute at all, or that, consistent with a client's request, the lawyer should refund an additional portion of the advance.

This exercise may involve more than applying the engagement agreement's terms to the services provided. Although often serving as great evidence of what has been earned, an engagement agreement does not necessarily establish that fact. Enforcement of the contract's provisions may be limited to the extent that they were fairly negotiated and do not seek payment of unconscionable fees.

Of note, such an analysis applies unilaterally. Whereas a client's promises to a lawyer are generally reviewed for conscionability, lawyers will not likely receive relief from terms that weigh heavily in the clients' favor. Rather, they will typically be limited to what they bargained for, without any "bonuses" beyond that.

As part of this process, after reviewing the contract, lawyers should assess their bills, time sheets, and other correspondence they have provided to their clients. These items will be reviewed critically when determining conscionability. Many lawyers who bill on flat fee or contingency matters elect against keeping time records. But, whereas time records may not be required, they often provide useful evidence in fee disputes where conscionability is an issue. Relevant factors include the skill required to address the novelty and difficulty of questions involved, time limitations imposed on the lawyer, and the time and labor required. Detailed contemporaneous records on tasks performed throughout the representation are helpful in assessing these.

Of course, while time spent is not the only factor considered to determine the reasonableness of the fee, it is one of the most important. Where there are few or no time records, lawyers should look for alternative ways, such as filings, transcripts, drafts, or other documents that reflect the amount of work put into the matter. To the extent that the fees seem out of line with the work employed, the other factors in Rule 1.5(4) should be evaluated to determine whether the client should receive more of a refund.

Sometimes, lawyers first learn about a problem with the attorney-client relationship for the first time as it is ending. This often arises in the form of a fee dispute. There are a number of different forums to resolve such issues. But it is important for lawyers to handle the situation adroitly so that they may avoid any unnecessary complications that may arise out of the dispute. Two ways of doing so this is to make sure they handle any advance fees properly and to take steps to resolve the matter promptly. ■

Turns Out, An Arsonist

CourtWatch, continued from page 1

by knowingly causing a fire or explosion." Another statute, § 13-1701(2), defines "occupied structure" as "any structure in which one or more human beings either is or is likely to be present or so near as to be in equivalent danger at the time the fire or explosion occurs." There was no evidence the victim was in the truck when the fire started, and Serrato apparently was the only one there. So did Serrato commit arson of an occupied structure?

The court of appeals held that he did, finding the statutory definition unambiguous. Its language, including the phrase "one or more human beings," the panel wrote, "encompasses all human beings—including the defendant." "Had the legislature intended to exclude the defendant's presence," the court noted, "it could have done so." Because Serrato is a human being, his "presence alone is sufficient to sustain a conviction for arson of an occupied structure."

On Serrato's petition the supreme court unanimously disagreed, in an opinion by Vice Chief Justice John R. Lopez IV. He noted that the court of appeals had found the definitional statute's plain language, "one or more human beings," dispositive because it "encompasses all human beings — including the defendant."

Lopez criticized that conclusion, accusing the court of appeals of having "conflated textualism with literalism." He noted the legislature had not defined "human being" in the arson statutes. "We do not interpret a statute's plain text hyper literally to determine whether it is unambiguous," he wrote. Reading the statute in context with other statutes, he found its meaning unambiguously excludes the arsonist.

The salient point was a subtle difference in the statutory language referring to the arsonist, on the one hand, and the building's occupants, on the other. The operative statute, § 13-1704, targets "a person" who commits the crime—Serrato, in this case. By contrast, the definitional statute, § 13-1701(2), refers to "human beings" as the potential victims. This difference—using "person" to refer to the arsonist, contrasted with the using "human being" in the definition of "occupied structure"—Lopez wrote, indicates that "the legislature did not intend for the arsonist to be the 'human being' referenced in § 13-1701(2)." It follows that "§ 13-1704 presumes a structure occupied by others, not merely the actor setting it ablaze."

Lopez pointed out that under § 13-1701(2), dwelling houses are considered occupied structures, "whether occupied, unoccupied or vacant." He found this meaningful: "Because the arsonist is almost always present, if the arsonist's presence alone was enough to satisfy the statute, the term 'vacant' would be insignificant," he wrote. "The inclusion of 'vacant,'" he added, "confirms that the statute anticipates scenarios where no one—arsonist or victim—is present." The court of appeals' reading, he concluded, "would render the term 'vacant' mere surplusage." Lopez concluded that the court of appeals' interpretation did not only broaden § 13-1704. Instead, it "effectively displaces § 13-1703"—which creates the less serious crime: arson of a (nonoccupied) structure—"as a viable, independent offense concerning arson of structures."

The fact that the arsonist isn't always there when the fire actually starts didn't alter this conclusion. "Even if a remote arsonist is not physically present or near enough to be in equivalent danger," Lopez wrote, "a court could deem the arsonist 'likely to be present' at the time of ignition because setting a remote incendiary device may result in a premature ignition." Hence, "as for arson to structures, § 13-1703 would conceivably only apply to remote arsonists—those who start a fire while at a safe distance from the structure."

To Lopez, "this outcome is at odds with the legislature's tiered approach, which assigns greater penalties to arson offenses that create heightened risks to innocent human life." He didn't cite any statute requiring the human occupants to be innocent but instead referred to § 13-101(4), which establishes a policy "to differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties for each." (One might wonder which crime is committed when the arsonist starts a fire while his non-innocent accomplice is still inside, burglarizing the structure. But that's evidently a question for another day.)

"The legislature could not have intended to enact a provision with no operative effect," Lopez wrote. Presuming that "the legislature did not intend to do a 'futile thing' by including a provision that largely serves no purpose regarding arson of structures," he therefore found "the meaning of 'occupied structure in §§ 13-1701(2) and -1704 is unambiguous when read *in pari materia* with § 13-1703."

"Although an arsonist is a human being as that term is commonly defined and understood," Lopez concluded, "the arsonist does not fall within the meaning of 'one or more human beings' in § 13-1701(2)." With the concurrence of Chief Justice Ann A. Scott Timmer, Justices Clint Bolick, James P. Beene, William G. Montgomery, and Kathryn H. King, and retired Justice Rebecca White Berch (who sat for the recused Justice Maria Elena Cruz), he vacated the court of appeals' opinion, vacated the conviction for arson of an occupied structure, and remanded to the superior court to figure out what to do next. *State v. Serrato*, 568 P.3d 756 (Ariz. May 14, 2025).

The victory will evidently be cold comfort for Serrato, at least in the short run. Even if his conviction for the more serious arson is wiped out instead of being reduced to the lesser crime, the removal of 35 years from his sentence would still leave him in prison well into the next century.

—

So, our hypothetical senators incorrectly assumed it was obvious a human arsonist would be counted among the human beings who might occupy the structure he was setting ablaze. The supreme court has determined the legislature instead unambiguously differentiated between "persons" and "human beings" in the arson statutes.

But did the legislature really draw such a hard line between those terms? Let's look at the definitions the legislature provided for interpreting Title 13, the criminal code—including, of course, the arson statutes. In § 13-105(30), we find this: "'Person' means a human being ...." As the ellipsis indicates, other entities also qualify, but the provision seems to say that a person is a human being and a human being is a person. Given the evident interchangeability of these terms, did the legislature really differentiate—unambiguously—between the "person" who lights the fire and the "human being" whose life and safety might be threatened by it?

Food for thought. ■

THE BULLETIN BOARD

News from the legal community

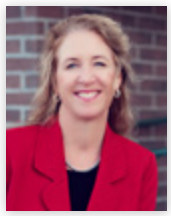
The *Maricopa Lawyer* invites members to send news of moves, promotions, honors and special events to post in this space. Photos are welcome. Send your news to maricopalawyer@maricopabar.org.

CONGRATULATIONS TO JUDGE MARGARET DOWNIE

Judge Downie was presented with the Judge of the Year Award at the Court Judicial Conference.

Recently retired Judge Margaret Downie has had a distinguished legal and judicial career spanning over two decades. She began as a judge on the Superior Court in Maricopa County in 1997, where she served in various roles, including Civil Presiding Judge and Associate Presiding Judge, earning honors as judge of the year and the Distinguished Service Award. In 2008, she was appointed to the Arizona Court of Appeals, Division One, where she led community outreach efforts and received the Career Achievement Award from the Arizona Women Lawyers Association.

AMERICAN HEALTH LAW ASSOCIATION



Kristen Rosati

The American Health Law Association (AHLA) recently awarded Coppersmith Brockelman partner and former AHLA president Kristen Rosati with its highest distinction — the David J. Greenburg Founders Award — during the organization's annual meeting. The David J. Greenburg Founders Award honors individuals who exemplify the values of AHLA's founder — a deep commitment to health law, sustained service to the association, and exceptional qualities of leadership.

TAFT

Taft, an Am Law 100 firm, is pleased to announce the addition of six lawyers, four partners and two associates, to its Phoenix office. The group joins Taft from Stinson, an Am Law 200 firm, and brings a wealth of experience in employment law, complex litigation, and construction disputes. With five of the six new lawyers focused on labor and employment matters.

This strategic expansion significantly enhances Taft's footprint in the Mountain West and Southwest and reinforces the firm's strength in key sectors including employment, labor, construction, and commercial litigation.

Partners joining the firm:

- **Lonnie Williams, Jr.**, is a nationally recognized trial lawyer and former office managing partner. He represents major companies in employment discrimination lawsuits and intellectual property matters.

- **Carrie Francis** is a trial lawyer with extensive experience navigating the technological and legislative changes impacting how companies do business, enabling her to defend management clients in employment and commercial disputes across a broad range of industries.

- **Jim Holland** is a highly regarded construction litigation attorney who advises developers, contractors, purchasers, insurers, municipalities, investors, and property owners in complex disputes involving real estate, insurance, lender liability, and intra-company management.

- **Sharon Ng** uses her strong litigation background in her employment practice to provide hands-on counsel to human resource professionals and business executives while effectively defending employers in workplace disputes, agency charges and litigation.

Associates joining the firm:

- **Ashley Cheff** advises employers on a wide range of issues including discrimination, harassment, retaliation, wage and hour disputes, employment contract disputes, and wrongful discharge claims.

- **Tim Lauxman** assists clients with their complex commercial and employment litigation needs. He focuses his practice on contractual disputes, including lending agreements, property sales, and insurance. ■

MEMBER SPOTLIGHT

Hon. Daniel P. Collins

U.S. Bankruptcy Court, D. Ariz.

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

Have you ever been involved with any sections or divisions?
I have spoken at MCBA seminars but never participated in MCBA leadership.

HOW LONG HAVE YOU BEEN PRACTICING IN YOUR FIELD?

30 years in private practice and 12 years on the bankruptcy bench.

WHAT WAS YOUR FIRST AREA OF PRACTICE?

Bankruptcy and civil litigation.

WHAT DO YOU SEE AS THE FOCUS FOR THE MCBA THIS YEAR?

I'm not sure what it actually is but it would be nice if "Civil Discourse" was the primary focus this year. People need to dialogue and not just with people who see things the same way they do.

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

Establishing new court norms post-Covid. Are we going to fully use our courtrooms? Should we insist lawyers return to the courthouse? If so, for what sort or proceedings? For economic or party convenience reasons, what sort of cases/proceedings should never again be live and in person? Does it make sense to conduct court proceedings by phone? (I think not or at least hardly ever).

IF YOU HADN'T BEEN A JUDGE, WHAT ELSE WOULD YOU BE?

I would have continued practicing commercial law with my former firm, now known as May, Potenza, Baran & Gillespie.

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

Sir Henry Flashman. George MacDonald Fraser wrote a series of Flashman books set during the Victorian Era. Sir Henry is the lead character. He is a fictious military officer who finds himself at every English and American military disaster over the span of about 70 years. The stories are both historically interesting and hilarious. Spoiler alert: Sir Henry is a cad.

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

Medical orderly/aid for a paralyzed law school classmate. My wife is a physician, but I learned from my experience that I am not cut out for such work. Another one was not strange, but some find it funny. I was a hasher at 3 different sororities at University of Arizona when I was in undergraduate. The jobs did not pay but hashers do get to eat as much as they are able to consume. One of the Chi Omega sorority girls I served is now Chief Justice Ann Scott Timmer. One more tidbit: A few years back I received a letter from the Administrative Offices of the Federal Courts congratulating me on my appointment to the 9th Circuit Court of Appeals. It turns out the letter should have been sent to Daniel PAUL Collins. I am DPatrickC. That was the most prestigious job I never had. ■

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

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Surprise! You're an Arbitrator

A TWO-PART CLE SERIES

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WEDNESDAY ■ **AUGUST 20** ■ 12-1 PM

SESSION 2
WEDNESDAY ■ **SEPTEMBER 17** ■ 12-1 PM

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You've just been appointed as an arbitrator—now what? This two-part CLE series provides a practical and accessible overview of the mandatory arbitration program and what attorneys need to know when stepping into this important role.

Session 1 will cover the fundamentals of the mandatory arbitration process, with a focus on the applicable rules and procedures.

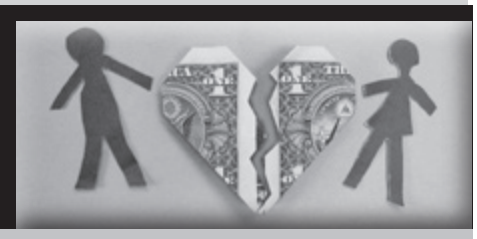
Session 2 will offer practical tips, real-world insights, and guidance to help attorneys succeed in their role as arbitrators.

PRESENTERS: **Andrew Turk,** Rose Law Group (Presenting in both sessions)
Hon. Christopher Whitten, Superior Court of Maricopa County (Joining for Session 2)

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.

THURSDAY ■ SEPTEMBER 11
12-1 PM

What is a CDFA?



ONLINE

Join us for an insightful session exploring the critical role a Certified Divorce Financial Analyst® (CDFA®) plays in the divorce process. A CDFA brings financial clarity and structure to an often emotionally and economically challenging time. With their expertise, CDFAs provide organized financial data and valuable insight to help parties fully understand the long-term impact of settlement decisions.
In this session, you'll learn how CDFAs support both clients and legal counsel during negotiations, contributing to more informed, equitable outcomes. Real-world sample reports will be presented to illustrate how this financial perspective can be used in practice.
PRESENTER: **Renee A. Hanson, CFP®, CDFA®**

TUESDAY ■ SEPTEMBER 17
12-1 PM

Practice Tips on Property Settlement Agreements for Legal Paraprofessionals

ONLINE

Understanding property settlement agreements in Family Law and the Court's jurisdiction. Discussing the Court of Appeals decision in *Rojas v. Rojas* and the connection to property settlement agreements.
PRESENTER: **Greg Davis,** Warner Angle Hallman Jackson & Formanek

Upcoming Events

TUESDAY • AUGUST 5, 2025
12–1 PM • ONLINE • FREE

WHAT'S ON YOUR DESK?

An Interactive Roundtable for Estate, Probate, and Trust Attorneys"

Join fellow professionals for an engaging and informal roundtable discussion about the unusual, unexpected, and thought-provoking matters that land on our desks. This event offers a collaborative space for trust and estate planners, fiduciary administrators, and litigators to share unique client situations, complex challenges, and creative solutions.

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MIXER

Arizona Fiduciary Society / MCBA Estate Planning, Probate & Trust Section

The Overlap of Criminal Exposure

continued from page 1

rooted in the conduct of corporations or their executives.

A corporate attorney advising on compliance, mergers and acquisitions, or securities must remain vigilant for red flags that may indicate criminal conduct. For example, failure to disclose material information in financial statements or to regulatory bodies such as the SEC can constitute securities fraud. Similarly, improper payments to foreign officials may run afoul of the Foreign Corrupt Practices Act (FCPA), exposing both the client and even potentially the attorney to liability. Internal investigations, often initiated in response to whistleblower complaints, can uncover conduct that must be reported or addressed to mitigate criminal exposure.

Counsel must understand when to engage criminal defense lawyers or report misconduct to avoid complicity.

Overlap in Estate Planning Matters

Although estate planning is generally viewed as a non-adversarial area of law, criminal exposure for clients can still arise. Common issues include elder abuse, forgery, and tax evasion. Estate planners may unknowingly become involved in schemes to conceal assets, defraud the government, or exploit vulnerable individuals. Undue influence or coercion over elderly clients can result in criminal investigations, particularly if wills or trust documents are suspected to have been manipulated.

Lawyers must take care to document capacity assessments and ensure that instruments reflect the client's true intent. In addition, estate planning often involves significant tax considerations, and overly aggressive tax avoidance schemes may cross the line into criminal tax fraud or evasion.

Overlap in Employment Law Matters

Employment law can potentially involve criminal exposure in matters such as workplace harassment, discrimination, retaliation, wage theft, and immigration. In recent years, there has been heightened scrutiny on workplace misconduct, particularly in the context of the #MeToo movement. Sexual harassment, when severe or involving coercion, can lead to criminal charges such as assault or sexual battery. Employers—and, by extension, their legal counsel—must ensure robust compliance and investigation procedures are in place.

Misclassification of employees as independent contractors, failure to pay overtime, or maintaining unsafe work environments can also attract regulatory attention that may transition into criminal actions. Similarly, business structures must be cautious of relationships that may implicate STARK violations—known colloquially as the Physician Self-Referral law—or the AKS (Anti-kickback Statute). Legal practitioners must be prepared to address both the civil and potential criminal consequences of such conduct.

To the point, while criminal exposure is often thought of only in the context of criminal law, it can spring up in many areas of civil practice. Attorneys must possess a working knowledge of criminal statutes and procedures relevant to their practice area, as well as maintain a keen awareness of when to involve an experienced criminal defense attorney to help manage risk or to assist in reporting misconduct. Failure to recognize or address criminal exposure can not only harm the client but also place the attorney at risk of ethical violations or criminal liability.

ABOUT THE AUTHOR

Josh Fisher is a criminal defense attorney at Gallagher & Kennedy. He has tried over two hundred cases before juries in state, federal, and military court, including animal cruelty, DUI and vehicular crimes, fraud, homicide and second-degree murder, theft, white collar crimes, sex crimes, and various other criminal defense matters.

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