

MARICOPA LAWYER

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OFFICIAL PUBLICATION OF THE



June 2026

VOLUME 45, NUMBER 6

maricopabar.org

WHERE THE LEGAL COMMUNITY CONNECTS

The Process of Eminent Domain in Seven Steps

By: Jennifer Cranston, Partner Gallagher & Kennedy



Maricopa County, along with the rest of Arizona, is experiencing a significant amount of residential and business growth. With growth comes the need for infrastructure upgrades and additions by state and local governments, as well as public service corporations – especially those entities charged with ensuring the safety of our transportation system and access to reliable power and water. In connection with these public projects, the responsible agencies may need to acquire property via eminent domain (also known as condemnation). Eminent domain is the power of the State – and those entities to whom the State delegates such power – to condemn private property for a public use, subject to payment of just compensation. While the substance of eminent

domain law and the right to compensation are based in our Federal and State constitutions, the process in Arizona is driven primarily by statute. As a result, the details and logistics of a condemnation case can be confusing for many. The following description is intended to provide a high-level overview of the process, but any party involved in a potential taking should consult with an experienced eminent domain attorney early in the process.

The condemnation process can be broken down into the following seven steps:

1. Pre-condemnation planning. The condemning authority first designs the scope and location of the project, which includes preparation of surveys and plans as well as identification of the specific property needed and ownership of the property. Some projects require acquisition of fee simple interests while others may only involve easements, which can be tem-

porary or permanent.

2. Pre-condemnation negotiation. According to statute, the acquiring agency must make an offer to the owner and provide an appraisal in support of the offer. This pre-filing offer often forms the basis for negotiation and settlement without the need for litigation.

3. Initiation of a condemnation lawsuit. If the offer is rejected and the parties cannot reach agreement, the next step is a lawsuit. The acquiring agency must name all parties with any compensable interest in the property rights being condemned. Thus, defendants in a condemnation lawsuit can include owners, tenants, easement holders, and lienholders.

4. Immediate possession. Some condemning bodies have the right to possess the property early in the lawsuit in exchange for deposit of

See EMINENT DOMAIN page 8



CourtWatch

Daniel P. Schaack

Judges Debate When Litigants May “Jump the Line” on Appeal

There’s more than one way to get the court of appeals to review your case when you think the trial court has erred. The standard, most common method, of course, is to appeal from the final judgment. But a litigant doesn’t necessarily have to wait until trial-court proceedings have terminated. In Arizona, under certain circumstances, the disappointed litigant can jump up to the appellate court by filing a petition for special action.

In most special-action opinions, the court’s discussion of its decision to accept jurisdiction takes up maybe a paragraph. But not so in *Nunez v. Valente*, No.1 CA-SA 25-0214 (Ariz. App. Apr. 24, 2026). In an otherwise mundane case exploring a rule of civil procedure, a judge wrote a 14-page dissenting opinion, chastising the majority for agreeing to hear the case. The majority spent another 6 pages rejecting his criticisms.

The controversy arose in a dispute over a personal relationship gone sour. Daniel Nunez and Irene O’Connor Valente owned a house together and planned to marry. But when they broke up, Nunez sued to partition the house. Valente responded

with a nine-count counterclaim asserting, among other things, breach of promise to marry and unjust enrichment. She sought to quiet title to the house, alleging that Nunez’s promise to marry her had tricked her into letting him live there.

During the discovery phase of the suit, Valente served a set of requests for admission on Nunez. She asked him to admit that he had pressured her into adding his name to the deed for the house; that he hadn’t financially contributed to the house; that he had cheated on her; that he had no intention of marrying her; and that he had broken his promise to marry her.

Nunez missed by several days his deadline to respond to the requests. Under Arizona Rule of Civil Procedure 36(a), the requests were deemed admitted by the failure to timely deny them. Valente asked the trial court to strike Nunez’s complaint as a sanction not only for his tardiness in responding to the requests for admission but also for his earlier failure to serve a disclosure statement. She asserted that these violations demonstrated Nunez had abandoned his claims.

Nunez responded by moving to withdraw his admissions. He argued that his slight tardiness had not caused Valente any prejudice, which, he asserted, was required by Rule 36(b), as interpreted in *DeLong v. Merrill*, 233 Ariz. 163 (App. 2013).



The court denied Valente’s motion to strike the Complaint, but it also denied Nunez’s motion to withdraw his admissions, ruling that Nunez had not shown good cause for the delay. It declined to address prejudice.

Thus began the appellate adventure. Nunez petitioned the court of appeals to review the trial court’s ruling. Judge Andrew M. Jacobs, writing for himself and Judge D. Steven Williams, accepted special-action jurisdiction. They held that the superior court had not considered the proper factors in ruling on Nunez’s motion to withdraw his admission. They vacated the ruling and instructed the trial judge to reconsider the motion applying the proper factors on remand.

Judge Michael S. Catlett dissented. But his disagreement was not on the merits, which he did not directly address. Instead, he took the majority to task for taking the case in the first place, intimating that doing so violated separation-of-powers principles. Noting constitutional and statutory limitations on the courts’ powers—including those listed in A.R.S. § 12-2001—he wrote that “unmoored, special action jurisdiction can upset the people’s choice about when we do and don’t have authority to act.”

See CourtWatch page 9

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The *Maricopa Lawyer* is published monthly on the first of each month and mailed to members of the Maricopa County Bar Association. Please send address changes to: membership@maricopabar.org. Editorial submissions and advertising rate requests may be sent to maricopalawyer@maricopabar.org. The editorials and other views expressed in the *Maricopa Lawyer* are not necessarily those of the Association, its officers or its members.

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Rebecca Marquis

Professionalism Starts with Community

Reputation matters. Relationships matter. Civility matters. In many ways, they matter now more than ever.

Law remains one of the few professions where trust and credibility still directly shape opportunity. Judges remember professionalism. Clients remember responsiveness and honesty. Opposing counsel remember who treated them with respect during difficult cases. Referrals often come not only from marketing, but from years of consistent reputation-building within the legal community.

Young attorneys sometimes assume success in law depends exclusively on technical skill, billable hours, or visibility. Those things matter, of course, but careers are often shaped just as much by relationships built quietly over time through conversations after hearings,

introductions at Bar events, and mentorship opportunities.

This legal community is much smaller than it appears. The lawyers we meet early in our careers may later become referral sources, opposing counsel, law partners, judges, mentors, or lifelong colleagues. The professionalism we demonstrate today often determines the opportunities available tomorrow. And professionalism is not built only in courtrooms, depositions, or client meetings. It is also built in the moments where lawyers simply show up for one another and for the profession itself. That is why membership in organizations like MCBA remains critically important to the health of the profession itself.

At a time when much of professional interaction occurs through email, remote

hearings, and digital communication, opportunities for lawyers to gather in person still carry enormous value. Relationships are easier to build when people can connect outside the pressure of litigation and deadlines.

Most attorneys can remember a moment early in their careers when a casual conversation led to a mentor, a referral, a job opportunity, or simply reassurance that they belonged in the profession. Those moments happen when lawyers take the time to be present and engaged in their legal community.

The MCBA has a wide variety of opportunities that are more than networking events. We host happy hours, Speed networking with Judicial Officers, mixers with other associations like the Arizona Fiduciary Association, the Arizona Society of CPAs, we also host the MCBA Hall of Fame and Awards dinner that recognizes the leaders in the Maricopa County legal world. All of these events are opportunities to strengthen the relationships that sustain this profession. New and emerging attorneys gain exposure to peers and role models. Experienced practitioners strengthen connections across the community. Judges and attorneys engage outside the adversarial environment of litigation. These interactions foster professionalism, civility, and mutual respect — qualities essential to both effective advocacy and public confidence

See **Professionalism** page 3

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Professionalism

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in the legal system.

Diversity initiatives also strengthen the profession economically and institutionally. Clients increasingly expect legal teams that reflect the communities they serve, and the profession benefits from broader perspectives and stronger professional networks.

Law can be an intensely demanding profession. The pressure to produce, compete, and constantly perform can leave attorneys feeling disconnected from the larger legal community. Networking events are sometimes dismissed as purely social functions, but the best professional gatherings accomplish something far more meaningful: they create relationships that sustain careers over decades. Events like the Summer Diversity Social are not just about networking. They are about investing in the future of the profession and the people within it.

In the end, some of the most valuable investments lawyers make are not measured in billable hours. They are measured in reputation, relationships, and community.

We hope to see you at some of the events that the MCBA offers, not just for networking but to connect with the people and relationships that continue to shape our profession. ■

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(Lack of) a Serial Comma is a Serious Issue

LEGAL WRITING

Tamara Herrera



Current legal news in Arizona highlights just how significant punctuation can become when language is open to multiple interpretations. Specifically, a statute covering occupational diseases for firefighters listed covered cancers as “lymphoma, leukemia or adenocarcinoma or mesothelioma of the respiratory tract.” Because the statute did not clearly separate “adenocarcinoma” from “mesothelioma of the respiratory tract,” insurers argued that only respiratory-tract adenocarcinoma was covered. State legislators recently introduced a corrective bill to rewrite the provision as a clearer itemized list, demonstrating how even minor punctuation choices can have significant legal and financial consequences.

Of all the punctuation marks, the comma is the most confusing because not every writer agrees on its proper use. Indeed, while some comma usage rules are mandatory, other comma usage rules are discretionary or vary depending on the type of writing in which they are used. The serial comma is a perfect example of this confusing usage. ■

Generally, the serial comma is the final comma before the conjunction “and” or “or” in a series of words. Most formal writing requires a serial comma, while informal writing, such as newspaper writing, does not require a serial comma. Even more confusing is the fact that some writers use the serial comma in some instances while omitting it in other instances (such as in a common phrase like “red, white and blue”). This inconsistent usage can lead to ambiguity.

Consider the following classic example:

I give my property to Leong, Jacobs, Taylor and Wright.

Without the serial comma, this sentence has two plausible meanings: (1) divide the property into three equal pots (one for Smith, one for Jones, and one for Taylor and Wright to share), or (2) divide the property into four equal pots (one for Smith, one for Jones, one for Taylor, and one for Wright). If a four-way division is the writer’s intent, then the correct (and unambiguous) way to punctuate the sentence is as follows:

I give my property to Leong, Jacobs, Taylor, and Wright.

To avoid a potentially costly debate over meaning, I propose a mandatory rule for legal writers: always use the serial comma in a list. And if you are not a fan of the serial comma, the back-up rule would be to use a vertical list or bullet points for clarity. ■



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YOUNG LAWYERS DIVISION

Savannah Wix

The Future of the MCBA Starts with Young Lawyers

The MCBA Young Lawyers Division is excited about all that 2026 has brought so far. We hosted a successful Race Judicata, raising more than \$5,000 for Fresh Start Women's Foundation, and we hope you will join us for the 2027 Race Judicata.

We have also hosted networking happy hours and, to help introduce law students to the MCBA and the YLD, sponsored two teams of students at the Maricopa County Bar Foundation's Tim Huff Pro Bono Golf Classic.

We are currently planning a "Bridge the Gap" CLE program designed to introduce new attorneys to the practical aspects of practicing law in our great state. Although June is just beginning, we are also starting to plan the 2027 Barristers Ball—an annual black tie charity gala.

As we look ahead, we would love to hear from

our members. What can the MCBA Young Lawyers Division do to better support you in your practice, job search, interview preparation, stress management, and professional development?

Young lawyers are the future of the MCBA, and the MCBA offers you the opportunity to help create the bar association you want. Do you want more in-person events? More CLEs on career development, AI topics, wellness, or lunches with leaders in the legal community?

Please send me your thoughts on how we can create the best Young Lawyers Division possible and help shape the future growth of the MCBA. The MCBA is "Where the Legal Community Connects," and we would love your help carrying on that tradition while making it relevant and meaningful to young lawyers and law students. ■



PARALEGAL DIVISION PRESIDENT

Anabel Quintana

A Season of Growth, Connection, and Community

As hard as it is to believe, June is already here — and 2026 is flying by! The MCBA Paralegal Division hopes you have exciting summer plans ahead and a chance to stay cool while enjoying everything Arizona has to offer.

While we may just be starting summer mode, fall will be here before we know it, so mark your calendars now for one of our favorite events of the year: the MCBA Paralegal Conference on October 23, 2026!

This year's conference theme is:

The Modern Paralegal: Skilled, Strategic, Essential

The conference will feature informative and engaging sessions covering litigation, family law, estate planning, criminal law, and ethics. Attendees will also have the opportunity to learn from respected leaders in the legal community, including Family Law Presiding Judge Hon. Amanda Parker.

Of course, the conference is not just about CLEs — it is also a fantastic opportunity to network with fellow legal professionals, connect with vendors offering innovative workplace solutions, and maybe even go home with one of the always-popular raffle prizes!

Supporting the growth of the paralegal profession continues to be a key mission of the MCBA Paralegal Division. To help encourage future legal professionals, the Division proudly offers two \$1,200 scholarships to paralegal

students each year. Scholarship information can be found on the Paralegal Division page of the MCBA website.

Community involvement is also an important part of what we do. Throughout the year, the Division participates in a variety of service projects, including volunteering at the Maricopa County Bar Foundation's Tim Huff Pro Bono Golf Classic. This fun and meaningful event supports the Volunteer Lawyers Program, and we are proud to share that the 2026 tournament raised more than \$35,000!

Each year, the conference also supports a selected charitable organization. The 2026 conference charity is Teen Lifeline, an incredible organization dedicated to preventing teen suicide in Arizona through crisis intervention, resiliency programs, and supportive community outreach for teens.

Additional information about supporting Teen Lifeline, along with conference registration details, will be shared soon.

We are looking forward to another outstanding conference and an exciting year ahead! In addition to the conference, the Paralegal Division is planning more CLE opportunities, happy hours, and networking events throughout the year.

We hope to see you at these upcoming events! ■

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A Note from the Acting Clerk of the Superior Court, Nancy Rodriguez

CLERK'S CORNER

Nancy Rodriguez
Chief Deputy Clerk of
the Superior Court



I am proud to share that our office continues to operate from a position of strength, stability, and forward momentum. During this period of transition, our mission remains unchanged: to deliver accessible, efficient, and transparent services to the public, the judiciary, and our justice partners across the state.

I am especially encouraged by the progress we continue to make through innovation. We are expanding digital access to court records, improving case processing systems, and identifying new ways to make our services more user-friendly. These efforts are not just about keeping up with technology—they are about meeting people where they are and ensuring that every resident can interact with their court system in a way that is convenient, clear, and accessible.

One of the greatest strengths of the

Clerk's Office is our team. I have the privilege of working alongside dedicated professionals who bring expertise, integrity, and a deep commitment to public service every day. Throughout this transition, our staff has demonstrated resilience and adaptability, stepping up to meet new challenges while maintaining the high level of service our community expects. Their collaboration and focus are what keep our operations running smoothly, and I am incredibly grateful for their hard work.

Maintaining public trust is at the core of everything we do. Our office is responsible for managing records and services that have a meaningful impact on people's lives. We take that responsibility seriously, and we are continuously refining our processes to ensure accuracy, security, and accessibility.

As I serve in this role, I am committed

to providing steady leadership until a new Clerk is appointed by Governor Hobbs. It is an honor to step into this position, and I see it as an opportunity to ensure continuity while supporting the long-term success of the office.

My focus is simple: keep the work moving forward without interruption while continuing to build on the strong foundation already in place. Whether through new initiatives, staff development, or enhanced community outreach, we are always looking for ways to improve and better serve the residents of Maricopa County.

I am confident in where we are today and optimistic about where we are headed. It is a privilege to serve in this capacity, and I remain committed to leading with transparency, collaboration, and a clear focus on excellence. ■



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Leslie Martinez

Legal Paraprofessionals Gain Hands-On Courtroom Experience at 2026 LP Trial College

On February 20, 2026, the Legal Paraprofessional Division and Family Law Section hosted another successful LP Trial College. The Trial College was hosted by Nicholas Boca, Esq. with DM Cantor; Dan Riley, Esq. with Riley Law Firm; Staci Maret, LP with Maret Law Group; Dionne Howell, LP with Riley Law Firm; and Leslie Martinez, LP with High Desert Family Law Group, LLP.

This all-day event took place at the Maricopa County Superior Court Northeast Facility.

The participants ranged from experienced Legal Paraprofessionals and newly licensed Legal Paraprofessionals to students who are in the process of completing their education or testing, or both testing requirements. Each participant was provided a trial packet for their assigned scenario approximately one week in advance of the event so they could prepare for the mock trial that took place in the afternoon.

The morning session was led by Nicholas Boca, Esq. and Dan Riely, Esq., who provided

an informative presentation on trial procedures, witness preparation, cross-examination, and they answered questions from participants on how to properly prepare and present their cases. The Trial College also had the honor and privilege of welcoming Nicole Fitzpatrick, LP who shared her knowledge of the Case Center digital evidence portal with the participants. Nicole provided a fantastic presentation on the ins and outs of Case Center that are not widely known to many practicing Legal Paraprofessionals.

After the morning classroom session, participants were provided lunch. Once lunch concluded, the participants were given approximately one hour to prepare their witnesses for the live mock trial and speak with the expert witnesses regarding their reports and recommendations.

The witnesses for the mock trial are made up of practicing attorneys from Maricopa County and psychologists who are well known in the Family Law community. Without these volunteers, the program would not be successful. We thank DeShon Pullen, Esq. with Deshon Laraye Pullen, PLLC; Giancarlo Sapelli, Esq. with Warner Angle Hallam Jackson & Formanek; Lisa Johnson Stone, Esq. with Lisa Stone Law, PLLC; Brandon Sanders, Esq. with The Sanders Law Firm; Jennifer Moshier, Esq. with Moshier Law; Stephanie Harper Easterling, Esq. with Harper Easterling, PLLC; Nicole Stoutner, Esq. with Sheldon & Stoutner Family Law; Carlos Jones, Ph.D.; and Kristyn Alcott, MS for volunteering their time to help make this program a success.

The attorneys volunteer as witnesses, portraying roles such as mother or father in the

mock scenarios. While this event is intended for teaching and learning, the witnesses make each courtroom exciting and engaging with their exaggerated emphasis on their opinions and side of the story. The psychologists also add a valuable component by helping prepare participants for expert witness examination.

The Honorable Rhonda Fisk graciously opened the doors to three courtrooms so participants can experience a live courtroom setting during their mock trials. The Honorable Paul Williams, The Honorable James Knapp, and The Honorable Cassie Woo volunteered their time to preside over the mock trials conducted in the afternoon.



The afternoon sessions provided the participants approximately one hour of trial time to present their case before their assigned judge, call witnesses, conduct cross-examinations, and practice objections while interacting with the judge as they would during a live trial.

This experience is designed to help participants understand how the courtroom works, how evidence is presented, and how to navigate the unexpected situations that may arise during proceedings before the Court.

At the end of each session, participants were able to engage in conversations with the judges, psychologists, and witnesses to ask questions about presenting information and areas where they can improve.

This annual event takes place each February. The LP Trial College looks forward to continuing to provide this experience to those who want to grow in their field of law and have the opportunity to be face-to-face with a judge in a courtroom setting. ■



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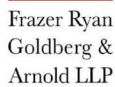
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A black and white photograph of the Statue of Lady Justice, the personification of the law. She is depicted as a woman wearing a blindfold, holding a pair of scales in her right hand and a sword in her left. The background is dark and moody.

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EMMINENT DOMAIN

continued from page 1

a reasonable estimate of just compensation. Once made, the Court signs an order of immediate possession, which gives the plaintiff the right to take possession of the property and start work on the project.

5. Disclosure and discovery. This step in a condemnation case is similar to other civil litigation. All parties are obligated by the procedural rules to disclose facts and evidence to the other parties and may engage in discovery, including depositions of expert witnesses. While motions for summary judgment are rare in eminent domain cases, motions to exclude expert testimony (Daubert motions) are becoming more common. Also, at some point during this stage of the case, the parties typically participate in mediation with a private mediator familiar with the unique aspects of condemnation matters.

6. Trial. After discovery is complete, the parties should be ready to present their evidence at a trial. Most condemnation cases are tried before a jury.

However, unlike a standard civil trial, the defendant bears the burden of proof on most issues and, therefore, presents its evidence first and has the opportunity to offer rebuttal evidence.

7. Final order of condemnation. At the end of the case, either the judge or a jury will have determined the amount of just compensation owed by the acquiring entity. Once the compensation is paid – and assuming no appeal – the judge signs a final order of condemnation, which is the document that officially transfers title to the plaintiff.

Eminent domain cases can be expensive and time consuming to litigate. After the project planning step (which can take years), a condemnation lawsuit may be resolved “quickly” – in 12 to 18 months – or carry on for three years or longer.

For this reason (as well as the fact that, in Arizona, attorneys’ fees generally are not recoverable), many condemnation cases settle prior to trial. If the parties reach agreement on compensation and other terms after the complaint is filed, they may either (1) stipulate to a judgment and obtain a final

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order of condemnation from the Court or (2) stipulate to a dismissal of the lawsuit and proceed with a private settlement agreement (and acquisition through escrow, if desired). ■

Jennifer Cranston is a shareholder at Gallagher & Kennedy in Phoenix. Her unique practice includes real estate litigation, insurance coverage, and

utility regulation. For the past 25 years, she has counseled private property owners and acquiring agencies in condemnation actions and valuation issues. She is the co-host of the twice-per-year Condemnation Summit, the only all-day educational and networking event of its kind for eminent domain practitioners across Arizona.



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CourtWatch

continued from page 1

Catlett noted that special actions are actually the modern incarnation of the common law's extraordinary writs: mandamus, prohibition, and certiorari. The Arizona Constitution authorizes the courts to issue these writs, but "that authority exists only when there is no plain, speedy, and adequate remedy by appeal," Catlett wrote. "When we dilute the writs' requirements, we disrespect limits the people placed on our authority," he added. And "when we ignore those limits, we disrespect the people's authority over our jurisdiction."

Catlett believed the majority did disregard the traditional limits on judicial power. Contrary to the majority's reading, the petition did not ask the court to interpret Rule 36, he asserted. Nunez "argues only that the superior court abused its discretion in *applying* Rule 36 to the facts here." And this presented not a legal issue but, at best, a mixed issue of fact and law. This was demonstrated by the fact that the majority vacated, rather than reversed, the superior court's decision. "We don't vacate a superior court's legal conclusion when we disagree with it—we reverse the superior court when it commits legal error."

"Recognizing that the actual dispute presented is mostly factual, the majority invents a legal question neither party asks us to resolve," Catlett continued. "I would require the parties to raise and brief an issue, rather than manufacturing it to shoe-horn special action jurisdiction."

He also suggested the majority erred on the merits. "The superior court found the evidence didn't show good cause. That finding is fact bound, so we owe it deference." He added that the record did not demonstrate that the lower court had ignored the factors it was required to consider in considering the Rule 36(b) question. "Which is more likely?" he asked. "The court brushed aside the factors in Rule 36(b), which the parties argued, and only considered good cause. Or the court considered the factors listed and argued but ultimately declined Nunez's motion by exercising discretion to consider other factors and by finding a lack of good cause."

Demonstrating "the futility of accepting jurisdiction over the factual issue here," he wrote, "all the superior court needs to do on remand is say it considered the two factors in Rule 36(b)," and again deny Nunez's "motion because he has not shown good cause for his late responses to Valente's discovery requests." That being so, Catlett believed, the court of appeals should have declined jurisdiction.

"I'm not timid about accepting jurisdiction—even when a petition raises mixed questions of law and (undisputed) fact," he wrote. "But what I won't do is accept jurisdiction when a petition requires us to assume the superior court ignored the law and asks us to reweigh evidence and ignore deference to set aside a trial court's discretionary discovery decision."

On top of all that, Catlett intoned, special action was not an appropriate remedy because "Nunez also has a plain, speedy, and adequate remedy by appeal, so we shouldn't let him 'jump the line.'" Catlett found it impossible to predict—at this stage of the proceedings—what effect the admissions would have in the litigation. He noted the trial judge had concluded that the admissions were "not case dispositive." And indeed, "if the court uses his admissions to doom his case," then "he has an appellate remedy—a direct appeal."

What about the fact that immediate appellate review gets the legal issue answered more quick-

ly? Efficient case management is a factor in favor of accepting jurisdiction listed in Special Action Rule 12(b)(7). Not enough, according to Catlett. "Every petitioner believes the trial court erred.... And when a petitioner is correct about that, it will always be speedier and more efficient to correct the error then and there." Nevertheless, "it can't be that special action jurisdiction lies whenever we think a trial court errs." Echoing the late Justice Potter Stewart, he wrote that "maybe the 'efficient management' factor is a 'we know it when we see it' situation, but that's unfair to litigants who deserve predictability about the prospect of us accepting jurisdiction." And in this case it is "unclear what downstream impact the superior court's decision will have, and it's clear that if things go awry for Nunez, he can appeal."

In response, Jacobs appreciated Catlett's voting not to accept jurisdiction. Because the decision is highly discretionary, "judges can reasonably differ over when to exercise that discretion," he wrote. "When to exercise it can be an art, despite efforts to nudge it closer to science, like the Arizona Supreme Court's recent revisions to the special action rules, creating a robust set of criteria we are to follow in exercising that discretion."

Nevertheless, he wasn't buying what Catlett was selling. He rejected the "suggestion that our choice to exercise jurisdiction over an incorrect interpretation of a court rule is beyond that broad discretion, and even violates the separation of powers in the Arizona Constitution."

He also rejected Catlett's theory that Nunez had not raised a legal error by arguing the superior court hadn't followed the applicable rule. "Refusing to consider prejudice and whether withdrawing an admission promotes the merits of the case—two things the plain text of Rule 36(b) requires—and substituting a judicially-crafted 'good cause' gloss in their place," he wrote, "reflects an incorrect interpretation of Arizona law." And "failing to apply both prongs of Rule 36(b) is an error of law, not an error of fact, as the dissent contends."

"Accepting the dissent's novel theory that misconstructions or misunderstandings of rules of law are not interpretive would undo much of our jurisprudence about when we accept jurisdiction," Jacobs wrote. He pointed to, and agreed with, a statement Catlett had written in a recent opinion, holding "that such an issue 'is purely legal ... likely to recur, and of statewide importance,' and thus supports the exercise of special action jurisdiction."

Jacobs also believed that the dissenting opinion was inconsistent. "While arguing there is no interpretation of Rule 36 to review," he wrote, "the dissent reinforces the need for the exercise of jurisdiction" by "embracing and reprising the superior court's misinterpretation of the rule" and "by suggesting that an extratextual, judicially-created 'good cause' gloss on Rule 36(b) gets the court out of having to consider prejudice and presentation of the merits." These are "the two things the plain text of Rule 36(b) expressly commands that courts consider in exercising their discretion," according to Jacobs.

He found it very clear that the Arizona Supreme Court intentionally left "good cause" out of that rule. "Our highest court drafted not one, not a whopping fifty-nine rules or subrules in the Arizona Rules of Civil Procedure where a showing of 'good cause' decides the issue." Conspicuously missing from that list was Rule 36(b). "When the Arizona Supreme Court employs good cause fifty-nine times in the Arizona Rules of Civil Procedure—but not here—we don't have a license to rewrite Rule 36(b) to include it." He found the



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dissent's silence on this point resounding.

Jacobs wrote that the dissent's charge that the majority was disregarding traditional limits on appellate jurisdiction "fails badly." He accused Catlett of simply ignoring the factor on which the majority relied in accepting jurisdiction—the trial court's legal error. He claimed to appreciate the dissent's insistence that not following the rule's plain text does not present either a legal or an interpretive issue. "But that's incorrect, for reasons we have already explained."

He also rejected the accusation that the majority had decided an issue that Nunez hadn't raised. Contrary to that accusation, he asserted, Nunez had argued that the trial court "misapplied the controlling legal standard under Rule 36(b)" and had "utterly fail[ed] to engage with either prong of this mandatory test" and that Valente had "concede[d] the trial court applied the wrong legal standard, which is a clear abuse of discretion."

"Our points exactly," Jacobs wrote. "While the dissent's vote against jurisdiction is a narrow and fair point of disagreement, Nunez raised legal error in these and other passages of his filings. We thus exercise our jurisdiction, as we commonly do, based on his claims of legal error."

Finally, Jacobs took issue with the dissent's failure to recognize that accepting jurisdiction promoted efficient case management here. The dissent, he wrote, "correctly points to the statutes creating the old writs as the genesis of our discretionary jurisdiction." But that dissent nevertheless "should recognize that whether a remedy is equally plain, speedy, or adequate in A.R.S. § 12-2001 imports some of the same efficiency considerations the dissent objects to in Rule 12(b)(7)."

He didn't stop there. The cited statute does, as the dissent noted, establish the lack of a plain, speedy, and adequate remedy by appeal as a factor allowing a special action. But in so doing, the statute provides that determination is "in the judgment of the court." Similar to the supreme court's special-action rules, "the legislature didn't give us bright lines," he wrote. "Instead, it forged a broad standard concerned in part with the speed of a litigant's remedy, urging us to exercise our judgment." And the majority had exercised that judgment in accepting jurisdiction.

"Our exercise of jurisdiction is consistent with the statutes authorizing the old writs and the rules the Arizona Supreme Court enacted to guide us in exercising that discretionary jurisdiction," Jacobs concluded. ■

REAL ESTATE SECTION

Shifting into Neutral: A Better Way to Resolve Jointly-Owned Real Property Disputes

By Beth Jo Zeitzer, Esq.



The best laid plans of mice and men often go awry; so can jointly owning real property, whether through co-investment, marriage, cohabitation, beneficiary deeds, wills, or trusts. The unique and complex nature of real estate assets, including revenue production, leasing, reporting, valuation, management, repair, maintenance and disposition, frequently leads to litigation, many times in business or personal divorces, estate administration and contested estate matters. Neither the legal expense nor the extended time frame of such actions are likely to serve the best interests of the estate or the parties to it.

Many property owners may desire to deploy more expedited, cost-effective, transparent and equitable solutions. One solution, where litigation is pending, is a court-appointed Real Estate Special Commissioner. A Real Estate Special Commissioner can often be the most cost-effective route to achieving resolution, as well the highest and best value for the estate. The use of court-ordered Real Estate Special Commissioners was initially adopted in Family Law, with a standard form court order, but it has been so successful in realizing equitable, transparent and highest/

best sales, that many attorneys are utilizing these appointments in probate/contested estate, and civil/partition matters. Anytime there is a joint property interest that needs to be divided/sold, with disbursement of proceeds to the parties, a Real Estate Special Commissioner can be a useful tool. The Real Estate Special Commissioner's Order provides for a transparent and neutral valuation, marketing, sales, and disbursement process, and it also enables the Real Estate Special Commissioner to motion the court if one or more parties are not cooperating or where some form of judicial intervention is needed.

Another alternative, where the parties are in dispute, whether litigation is pending or not, is a Neutral Broker. The Neutral Broker typically moves through the valuation, marketing, sales, and disbursement process in the same way as a Real Estate Special Commissioner, but where there is a lack of party cooperation, the Neutral Broker does not have the ability to petition the court and doesn't have a formal court order to rely upon, outlining the valuation, marketing, and sale process.

Joint ownership disputes can arise from a dizzying array of scenarios, but they can be loosely grouped into three categories:

- **Family Law.** As noted above, this is the origin of court-ordered sales, with Rule 89A in the

Family Law Rules. Most often these are divorce cases that require the sale of community property; in addition to residential, Real Estate Special Commissioners who are experts in Commercial Real Estate, and Land Assets can be named as Real Estate Special Commissioners (or Neutral Brokers).

- **Civil/Partition Actions.** These are typically civil matters that arise out of a joint investment/"business divorce" or cohabitation.

- **Contested Estates/Probate matters.** One of the most common scenarios in this category is where a decedent's death results in multiple beneficiaries holding joint interest in real property, either residential or commercial.

- **Mediation.** The parties to contested matters may enter into a mediation, and the solution may be a **Real Estate Special Commissioner.**

Step by Step: The Real Estate Special Commissioner's Role

When parties can't agree, a Real Estate Special Commissioner brings objectivity—whether in the disposition of a family home or an income-producing commercial property.

In addition to navigating the court system, as needed, and executing on court orders, the Real Estate Special Commissioner has a specific goal: obtaining the highest and best returns for the estate within the time period specified and upon

the terms set forth in the court order. With a court order in place, the Special Commissioner generally proceeds through the following steps:

1. valuing the property and providing a report to the parties (e.g., broker price opinion/broker opinion of value or comparative market analysis);

2. developing a customized marketing strategy, aimed at achieving maximum value and reaching high-probability buyers;

3. driving contract negotiations to achieve highest/best terms and to ensure enforceability/closing;

4. assisting with recommendations regarding improvements to the property to make it market-ready;

5. handling all aspects of closing, disbursement, and reporting to the parties, on an objective and transparent basis, while being accountable to the court.

Shared Goals for Better Outcomes

Neutral third parties such as Real Estate Special Commissioners and Neutral Brokers reduce legal fees, providing accountability, and move transactions forward by ensuring transparency and adherence to specific processes in the valuation, management, marketing, sale and distribution of proceeds, with transparent communications.

Attorneys (and their clients) often find Real Estate Special Commissioners or Neutral Brokers to be appealing options because they enable them to be more thoughtful with their spend of legal fees or clients, while ensuring an objective, transparent process to secure highest/best pricing within the clients' timelines through a broker who guides them through an orderly process. The costs associated with utilizing a Special Commissioner or Neutral Broker are typical pricing in the market for other brokers/agents, and paid on a success fee/commission basis.

If the shared goal of joint property owners is a fair process, which focuses on transparency and meaningful valuation, management, marketing and sale, the appointment of a Real Estate Special Commissioner can be one of the most valuable tools in an attorney's toolbox. ■

Beth Jo Zeitzer, Esq., is the owner and designated broker of R.O.I. Properties, a full-service real estate brokerage firm focused on the valuation, marketing and sale of commercial and residential properties, and land assets. She serves as Special Real Estate Commissioner, Court-Appointed Receiver, and Bankruptcy Trustee, in numerous real estate matters. Beth Jo is an attorney by training, and former Corporate Counsel and Director of Commercial Properties for Del Webb Corporation. She can be reached at 602-319-1326 or bjz@roiproperties.com.



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REAL ESTATE SECTION

Evolving Tax Lien Foreclosure Landscape: Implications for Arizona Investors

By Stuart Rodgers



In Arizona and several other states, investors frequently purchase real property tax liens from county treasurers, often with the goal of eventually foreclosing on the underlying real estate. In 2023, the U.S. Supreme Court issued a ruling that appeared poised to reshape the landscape of investors' ability to pursue tax lien foreclosures in multiple jurisdictions, including Arizona. Additionally, the Court has recently heard oral argument in a second tax lien case, in which an appellant seeks to invalidate a tax lien foreclosure as a violation of the Fifth Amendment's Takings Clause. This article explores statutory changes in Arizona and recent decisions that may affect an investor's rights to foreclose on underlying real property.

In *Tyler v. Hennepin County*, the Court held that Minnesota's statutory mechanism, which allowed a county holding a tax lien to foreclose on the underlying real property for the balance of taxes owed, violated the Fifth Amendment. The Court reasoned that the value of the foreclosed property significantly exceeded the amount owed in unpaid taxes. In *Tyler*, the property taxes owed were approximately \$15,000, while the property was sold for \$40,000, leaving the county with a net surplus of roughly \$25,000. The Court agreed with the homeowner that the county's retention of the excess value constituted an excessive fine.

In response, Arizona amended its statutes pertaining to tax foreclosures; among those changes is a requirement that delinquent property owners receive a notice containing the following language:

If you believe that your property has value beyond the tax burden on the property and you do not want to lose any interest or equity in the property, you must request an excess proceeds sale pursuant to section 42-18204, Arizona Revised Statutes.

A.R.S. § 42-18202.

Under the revised statute, if the value of the underlying property exceeds the amounts owed under the tax lien by at least \$2,500, the homeowner has the statutory right to elect an "excess proceeds sale." This process involves publication of notice and a public auction as set forth in Title 42, Chapter 18, Article 6 of the Arizona Revised Statutes. If the property is sold at public auction, the homeowner retains any amounts in excess of taxes, interest, costs, fees, and related expenses. Failure to make this election is construed as a waiver or consent to the tax lien foreclosure,

subject only to the right of redemption.

In practice, few homeowners have made such elections since the statutory change, and it has not significantly impacted tax lien investors thus far. This is likely because property owners who fail to pay their taxes and fail to redeem them are often deceased or otherwise unreachable. Additionally, most foreclosed properties are undeveloped or geographically isolated, with limited improvements. Urban and suburban properties are typically financed and thus are encumbered by lender liens, and lenders are generally diligent in paying property taxes to protect their collateral.

Further complicating the landscape, the U.S. Supreme Court recently heard oral argument on February 25, 2026, in *Pung v. Isabella County*. The petitioner argued, in relevant part, that the value of the subject property should be determined based on "fair market value" rather than the "auction value," which is often lower because public auctions are conducted on an AS-IS, WHERE-IS, cash-only basis.

Should the Court hold that homeowners are entitled to receive excess proceeds based on fair market value, counties may face increased difficulty in selling tax lien certificates, as this would shift additional risk onto investors. However, unless a substantial number of homeowners begin to exercise their right to request an excess proceeds sale, the impact in Arizona is likely to remain limited.

Tax lien investors must set realistic expectations. While the tax lien investment arena carries inherent risks and is subject to evolving legal interpretations, diligent investors with appropriate expectations and the support of experienced attorneys, realtors, and other professionals, can continue to achieve profitable outcomes.

This article should not be considered or construed as legal advice on any fact or circumstance. You should consult your own attorney regarding your own personal situation or any legal question you may have. ■

Stuart B. Rodgers is the managing partner at the firm of Nach, Rodgers, Hilkert & Santilli, located in Phoenix, Arizona (602-258-6000)/Stuart.Rodgers@NRHSLaw.Com. He practices in the areas of bankruptcy law, civil litigation, tax lien foreclosure and creditors' rights and is a Certified Bankruptcy Specialist / Creditors' Rights Specialist.



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REAL ESTATE SECTION

Partition actions: How to resolve joint ownership disputes

By: Christopher J. Charles, Esq.



What happens when joint property owners disagree on whether to sell their property? This could involve friends, business partners, or unmarried couples. Hopefully the

joint owners have a written agreement such as a partnership agreement, operating agreement for their limited liability company, or a tenants in common agreement. But what if the joint owners neglected to negotiate a written agreement before they acquired the property together? If one party wants to sell and the other doesn't, an awkward impasse arises.

Fortunately, the law provides a solution to solve such an impasse: a partition action. That is a legal mechanism used to resolve disputes when two or more people jointly own real estate. The most common scenario is when one of the joint owners no longer wishes to own the property, but the owners cannot agree on how to reach that goal.

Types of Partition Actions

Two different types of partition actions are possible under Arizona law. One or both options may be available to the joint property owners,

depending on the circumstances.

Partition in Kind

A partition action allows a joint owner to obtain a court order to divide the property, which allows them to sell their portion of the property. This type of partition may be helpful in the case of an undeveloped parcel of land that the court can divide into two or more separate parcels. The owner who wishes to sell their parcel is free to do so once the court has divided the parcels. A partition in kind is extremely rare, but a possibility if the property is undeveloped.

Partition by Sale

More commonly, individuals will pursue a partition by sale. In this type of partition action, the owner's real estate attorney can seek a court order to sell the entire property and equitably divide the proceeds between the owners. For instance, a partition by sale may be the only possible solution if the property consists of a single parcel with a single-family home on it. In that situation, there may be no other way to equitably divide the property between the owners for a sale of only one owner's share of the property.

Filing to Compel Partition

Under A.R.S. § 12-1211, any real estate owner can file a partition action in the superior court in the county in which the real estate is located. In the

owner's petition for partition, the owner's real estate attorney must include the following information:

- A description of the real estate, including its location, and its approximate value as determined by a REALTOR® or appraiser
- Name all owners of the property and their residences
- Provide an accounting to identify the share or interest of each owner.

Selling the Real Estate

In most cases, the only realistic option is partition by sale. As a result, when the joint owner files to compel the partition of real estate, if the owners cannot agree on how to sell the real estate, the court will appoint one or more "commissioners" to sell the real estate. The commissioners typically are Arizona real estate brokers or similar professionals who regularly handle these types of transactions. The court usually will pay the commissioners a reasonable sales fee for handling the sale of the property.

There are generally no defenses that ultimately block a partition action from resulting in a property sale unless the property owners can agree on an alternative solution. As a result, partition actions often result in a forced sale of the property and the distribution of the sale proceeds according to the percentage of ownership interests that each owner has in the real estate. The only exception might be if one or more of the other owners can agree to buy out the ownership interest of the owner who has filed the partition action.

Distributing the Proceeds of the Sale

Generally, owners will receive proceeds of the

sale divided according to their respective interests in the property. However, owners should keep in mind that in dividing the physical property or the proceeds of the property's sale, the judge can consider factors that might affect the interest that each owner has in the property. For instance, suppose that one of two joint owners paid most or all of the mortgage payments during the period of joint ownership, or one owner paid to make substantial improvements to the property. In those situations, the owner who contributed to the property financially may have a greater degree of ownership than the other owner or owners. ■

Christopher J. Charles is the founder and Managing Partner of Provident Law®. He is the author of Arizona Real Property Law and Practice published by LexisNexis. Mr. Charles is a State Bar Certified Real Estate Specialist and a former "Broker Hotline Attorney" for the Arizona Association of REALTORS® (the "AAR"). He holds the AV® Preeminent Rating by the Martindale-Hubbell Peer Review Ratings system, which connotes the highest possible rating in both legal ability and ethical standards. He serves as an Arbitrator and Mediator for the AAR regarding real estate disputes; and he served on the State Bar of Arizona's Civil Jury Instructions Committee, where he helped draft the Agency Instructions and the Residential Landlord/Tenant Eviction Jury Instructions. Christopher regularly teaches continuing education classes at the Arizona School of Real Estate and Business, and he can be reached at chris@ProvidentLawyers.com or at 480-388-3343.



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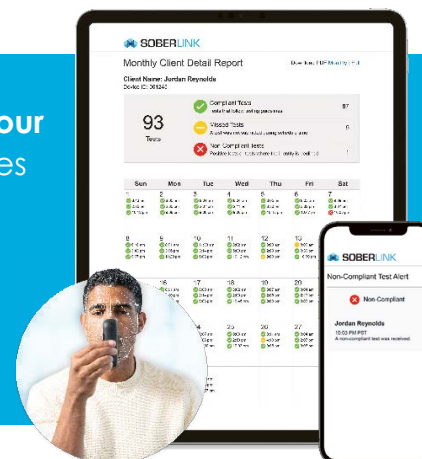
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REAL ESTATE SECTION

The Human Consequences of Partition: Why Arizona Law Needs Reform

By: Scott H. Zwillinger, Peter Silverman and Koral Zaarur



In theory, Arizona's partition statutes, A.R.S. §§ 12-1211 to 12-1225, are a mechanism to efficiently resolve disputes between co-owners of real property that promotes fairness and preserves equity. In practice, however, the black and white statutory mechanism ties the court's hands and leaves it little flexibility to fashion remedies that consider the human component of property ownership, the parties' plans before disputes arise, and the effects of sale on the parties. Instead, courts

are almost always left with no choice but to appoint a real estate commissioner and sell the property. Because partition actions almost exclusively involve residences, what appears to be a straightforward remedy often leads to harms not intended by the statute: instability, displacement, and financial hardship.

One matter we volunteered our time for recently illustrates the human cost of the existing framework. An elderly gentleman, in declining health, shared equal ownership of a home with his two siblings for nearly sixteen years. The siblings used the home at varying times, with each sibling having a bedroom. Given the family relationship, no agreement was ever reached as to what to do with the home upon the death of each sibling. Finding himself the last survivor, the gentleman assumed he could reside in

the home until his death as his means and options were quite limited. However, upon the death of his last sibling, her heirs filed a partition action and sought proceeds from the sale of the home.

At first, the parties attempted to negotiate a buy-out, but being retired and of limited means, the gentleman was unable to obtain a loan to purchase his sister's share of the property. The heirs quickly moved forward and sought the sale of the home and a contest over division of the equity. A.R.S. § 12-1218(A). For our client, the home was far more than an asset. The home was the center of his daily life, located in a community he loved, and where he hoped to remain for the remainder of his life. That was now lost. Yet, the statutory scheme provided him no defense to the heir's demand for a sale and tied the court's hands no matter the equities. The gentleman was thus forced to acquiesce, sell many of his belongings and leave his home and community, despite having no prior planning, no other assets, no employment, and no assured alternative housing.

Tragically, cases like this are no longer anomalies. As non-marital domestic relationships, caregiving arrangements, and shared homeownership become more and more common, Arizona's partition statutes affect more individuals who lack any bargaining power or institutional protection no matter how severe the statutes' effect. Unlike commercial real estate, where owners form LLCs, execute operating agreements and prepare for the potential of disputes, most residential co-owners do not reach agreement on contingency plans. They are also not subject to the protections and rules available in divorce proceedings. Instead, those of little means who never plan for the possibilities are left to navigate the partition's strict statutory requirements that were not designed with these realities in mind.

Given this, Arizona's partition laws require meaningful reform that considers the changing landscape of shared ownership and the profound human consequences the sale of a home can impose. Currently, there is significant tension between Arizona's partition statutes and the equitable principles they purport to serve. In *McCready v. McCready*, the Court of Appeals reaffirmed that the "fundamental objective" of partition is to divide the property fairly and equitably, so that no co-owner receives an unfair advantage. 168 Ariz. 1, 3 (App. 1991). Yet, when applied, the current statutory framework falls short of that objective.

In the absence of an agreement between the parties governing the disposition of real property, courts are limited to applying the statutory framework, selling the home and dividing proceeds based on legal ownership interest. *Id.* at 4. This approach is rigid and overlooks the realities of co-ownership. The real estate commissioner appointed in a partition action must divide the property in a manner that is equal and just, and distribute proceeds of the sale according to the co-owners' "respective interests." A.R.S. §§ 12-1218, 12-1219. The current laws provide little guidance regarding unequal contributions, occupancy arrangements, caregiving responsibilities, improvements to the property, or the emotional significance of the home. The current laws also fail to even consider the effect of the sale on the individuals. Instead, they focus on legal interest, which can produce profoundly unequal and inequitable outcomes.

Another recent matter demonstrates the inequities that arise under the current partition system. A woman purchased a property from a foreclosure sale in an uninhabitable condition. She spent years renovating it through her own labor and financial investment so that she and her children

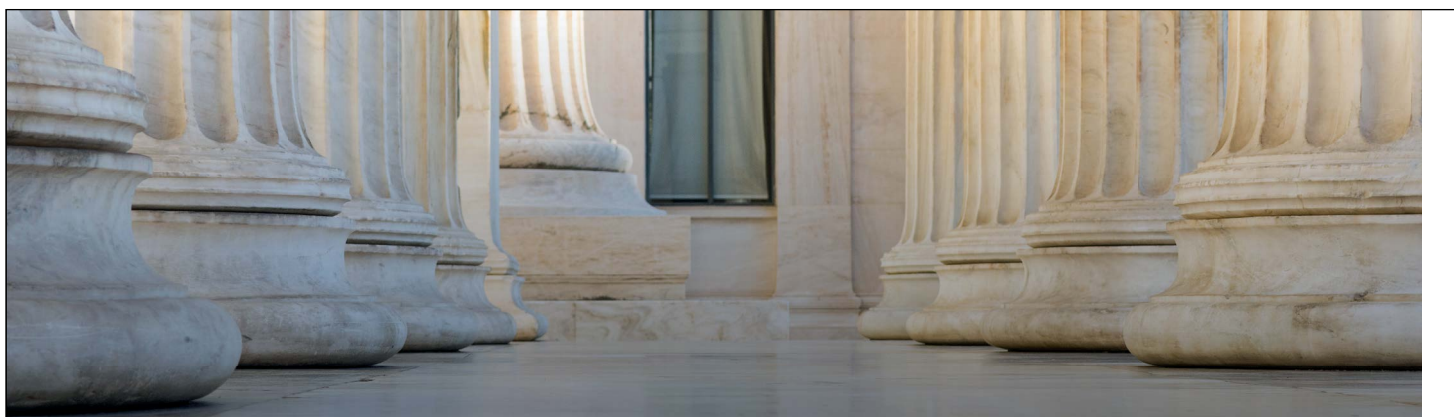
could call it a home. After entering a long-term domestic relationship, she added her partner to title. When the relationship ended, her partner filed for partition. Legally, he held a fifty percent ownership interest, despite contributing nothing to the home's acquisition, renovation, or appreciation. For the woman, the property represented much more than an asset; it was a product of years of labor, where she raised her children, and the home she intended for them to inherit. For her former partner, the property functioned primarily as a financial asset. A forced sale would displace her and her children, while granting the partner half of the equity generated by her efforts and investment despite his modest investment.

In circumstances like these, partition can become a mechanism for malice rather than equity. A co-owner can use the threat of forced sales to extract money, compel eviction, or force the other party to secure alternative housing under entirely different market conditions. The process rewards the party who made minimal contributions, while imposing devastating consequences on the one most connected to and invested in the property. This result is inconsistent with partition's stated objectives of fairness and equitable division and should be changed.

Fortunately, Arizona already has a statutory model that demonstrates how partition law can protect vulnerable homeowners: the Uniform Partition of Heirs Property Act (UPHPA). The UPHPA includes a buyout mechanism whereby the non-initiating party is provided the opportunity to buy out the party who filed for partition. Similar protections should be adopted in residential partition actions involving non-marital co-ownership to allow the court to direct the buyout of one party by the other. This would allow the initiating co-owner to receive the value of their ownership interest, while avoiding unnecessary displacement and preserving non-financial interests in the home and community.

Meaningful reform should also provide courts with clearer standards for evaluating contributions to the property. These could include the property's acquisition, consideration exchanged for being added to title, mortgage payments, pre-joint tenancy equity, renovations, maintenance, labor, practical use of the home, community ties, and effect of the sale on the parties. Courts should have discretion to consider the broader context of the co-ownership arrangement, the parties' intent, and the human impact of forced sale, and fashion appropriate remedies. Additionally, statutes should authorize attorneys' fee awards in cases involving bad faith, malicious conduct, or unreasonable refusal to cooperate, thereby discouraging abusive litigation tactics.

Given the state of the economy and the ever-rising costs of homes, these reforms are desperately needed and would better position Arizona's partition laws to align with the equitable principles they were intended to advance. They would help preserve homeownership, reduce predatory and coercive partition actions, encourage negotiated resolution, and conserve judicial resources by discouraging unnecessary litigation. Concurrently, they would continue protecting the initiating co-owner's right to receive fair market value for their interest in the property by maintaining forced sales if a buyout resolution is not reached.



Spencer Fane is proud to support Maricopa County Bar Association's 2026 Diversity Summer Social. We believe strong connections are built through service, collaboration, and shared purpose. Every day, we work to overcome challenges and inspire progress.

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INSIDE THE MEDIATION ROOM

INSIGHTS AND TALES FROM MY CAREER AS A MEDIATOR

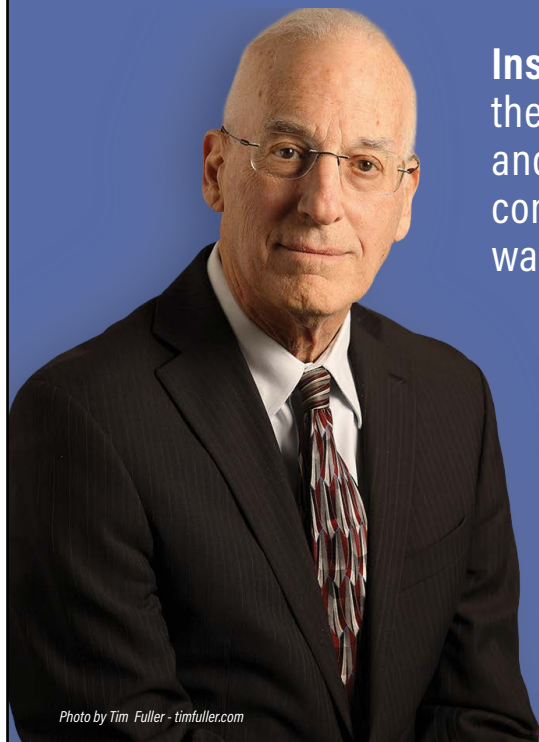
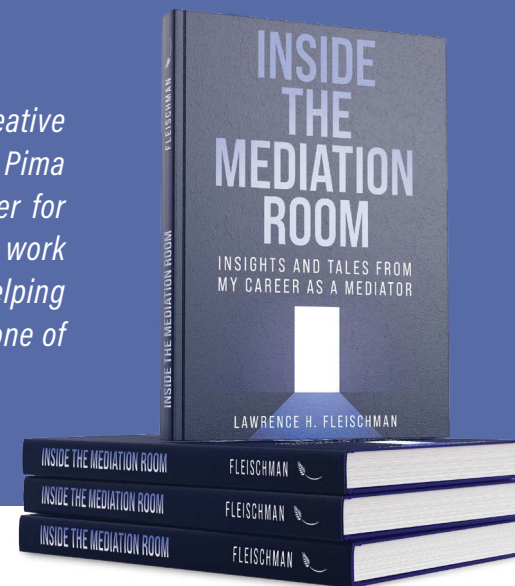


Photo by Tim Fuller - timfuller.com

Inside the Mediation Room offers true stories of the disputes people find themselves in and the unconventional ways they are resolved. By turns humorous and heartbreaking, these behind-the-scenes accounts reveal what happens when conflict turns personal — and how empathy and creativity can shape outcomes in ways a courtroom never could.

Judge Lawrence H. Fleischman (ret.) has provided creative alternatives to litigation in Tucson for over forty years. A former Pima County Superior Court judge, he founded Arizona's first Center for Dispute Resolution, saving litigants and taxpayers millions. His work includes resolving complex, high-profile matters, including helping to negotiate Andre Agassi's Nike endorsement deal in 1995 — one of the many stories shared in Inside the Mediation Room.



ISBN 979-8-88747-339-0

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By Keith Swisher, CLS/VLP Volunteer
Legal Ethics Professor

Introduction by Konnie K. Young
CLS/VLP Pro Bono Attorney Coordinator

Keith Swisher began his pro bono journey with Community Legal Services' (CLS) Volunteer Lawyers Program (VLP) in 2008. Participating in VLP's Attorney of the Day Clinic, he provided brief advice consultations to VLP clients addressing several different case types, including collections, contracts/warranties, homeownership/real property, mortgage foreclosure, torts and more. Keith now serves as a legal ethics professor and Director of the Bachelor's in Law and Master of Legal Studies Programs at the University of Arizona James E. Rogers College of Law. Keith also serves as ethics counsel and expert witness for law firms and judges. He is a member of the Arizona Steering Committee on Artificial Intelligence and the Courts and previously clerked for the Ninth Circuit (Canby, J.) and practiced at Osborn Maledon in Phoenix. (All institutional affiliations are for identification purposes only.)

We greatly appreciate Keith's pro bono service and his willingness to share his expertise by writing this article. We also look forward to the Ethics CLE webinar that Keith will present on June 3, 2026, from noon to 1:00 pm. Please join us for Keith's CLE webinar: Your Changing Ethical Obligations: A Four-Year Tour (in 60 Minutes). All are welcome to attend via Zoom; please register at the following link: us02web.zoom.us/join/register/ruB9Rn-L2Ql-8Sn2OKFvP8w.

Roni Tropper, Director of CLS' Volunteer Lawyers Program states:

Our Ethics Rules clearly encourage pro bono service for all attorneys. ABA Rule 6.1 states that lawyers should aspire to provide at least 50 hours of pro bono legal services a year. Although just an aspirational goal, pro bono service is a strong professional expectation, grounded in the legal profession's commitment to access to justice for all Arizonans. In addition, our volunteer attorneys frequently report that their pro bono service has been one of the most fulfilling accomplishments of their legal career. Thank YOU for sharing this commitment.

Over the last four years, Arizona's legal ethics landscape has shifted in several significant ways. Whether your practice involves private clients, government matters, or pro bono representation through CLS/VLP, these updates impact your practice. Below is a brief (but not exhaustive) tour of recent ethical changes.

Disclose the Insurance Gap. Effective January 1, 2024, Arizona amended Ethical Rule (ER) 1.4 to require communication with clients about malpractice insurance. Although Arizona still does not require lawyers to carry professional liability insurance, lawyers in private practice who do not carry insurance now must affirmatively tell their clients. Annual disclosure to the State Bar is no longer sufficient. For pro bono lawyers, the practical step is straightforward: confirm whether coverage exists through a firm, employer, clinic, or pro bono program and disclose accordingly.

When Your Client Is the Government. Effective January 1, 2025, Arizona adopted a package of amendments addressing government lawyer ethics. The changes make clear that government lawyers are subject to the same Ethical Rules, Oath, and Creed of Professionalism as every other Arizona lawyer. Furthermore, ER 1.4 now requires government law-

PROBONO PROFILES

Community Legal Services' Volunteer Lawyers Program

A Four-Year Tour Through Arizona's Changing Ethical Landscape

yers to provide written confirmation of the scope of representation and to explain that the government official or representative is usually not the lawyer's individual client. The core lesson extends beyond government practice: state who the client is and is not to avoid misunderstandings and potential liability.

Petitioning Over Counsel's Head. Also effective January 1, 2025, Arizona amended ER 4.2 (the no-contact rule) to recognize a narrow path for direct communications with represented government officials about resolving disputes. The lawyer must have a good faith and objectively reasonable belief that the communication is a legitimate exercise of the client's right to petition the government. The contact generally must be limited to high-level officials with ultimate policy authority, and government counsel must receive required notice. This is a limited exception, not a license to bypass counsel altogether.

Inquire Before You Sign On. Effective January 1, 2026, ER 1.16 now requires lawyers to "inquire into and assess the facts and circumstances" of each representation to determine whether they may properly accept or continue the representation. The new rule attempts to prevent lawyers from unwittingly assisting money laundering, terrorist financing, and other crimes and frauds. A lawyer must withdraw if a client or prospective client seeks to use, or persists in using, the lawyer's services to commit or further a crime or fraud after the lawyer has discussed the permissible limits of the representation. The official comments identify risk factors, such as beneficial ownership, unfamiliar clients, high-risk jurisdictions, and trust-account activity.

Real or Fake: AI-Generated or Altered Evidence. New language in ER 3.3 Comment 8, also effective January 1, 2026, addresses evidence that may have been materially altered or generated with intent to deceive. If a lawyer reasonably believes that evidence has been materially altered or generated with intent to deceive a court, the lawyer must conduct a reasonable inquiry before submitting it. The scope of inquiry depends on factors such as the evidence's probative value, the importance of the issue, the source of the evidence, and the availability of methods to assess authenticity. The rule applies to all evidence, but deepfakes and generative AI are the driving concern.

AI Does Not Rewrite the Ethical Rules. In November 2024, the Arizona Steering Committee on Artificial Intelligence and the Courts published ethical best practices for lawyers and judges. The central message is that existing ethical duties apply to generative AI usage: competence, confidentiality, communication, candor, supervision, reasonable fees, and avoidance of bias. For example, lawyers should not enter confidential client information into AI tools without adequate safeguards. Firms should adopt AI policies, train personnel, and supervise both lawyers and nonlawyers. Firms also should not bill inflated time when AI substantially reduces the actual time spent. Importantly, lawyers must independently verify AI-generated citations, legal reasoning, and factual assertions before relying on them or submitting them to a court or agency. Thus, a fancy AI tool, including a paid or law-specific one, does not relieve a lawyer of professional responsibility.

Tech Competence Takes the Bench. Effective January 1, 2026, Arizona added technology language to the official comment to the judicial competence rule (Arizona Code of Judicial Conduct R. 2.5). Judicial competence now includes knowledge of the benefits and risks associated with technology relevant to judicial service. As with lawyers, this

reinforces a broader professional trend: technology competence is no longer optional (see ER 1.1 cmt. 6).

Reading Between the Lines. Ethics Opinion EO-20-0008 (2022) addresses metadata and hidden email tracking. Lawyers who send electronic documents must scrub confidential metadata before transmitting documents to non-privileged recipients, while receiving lawyers may use standard software to review metadata unless they know or reasonably should know it was inadvertently sent. Metadata containing obviously confidential or privileged information should generally be treated as inadvertent (requiring you to notify the sending lawyer, ER 4.4(b)). This opinion also prohibits the use of hidden email trackers—such as pixels, web beacons, and invisible GIFs—without prior informed consent.

The Social Network. Arizona ethics guidance also addressed online reviews and communications with a client's friends and family. Opinion EO-19-0010 (2022) addresses negative online reviews and, unlike the corresponding ABA opinion, permits a limited public response within ER 1.6's confidentiality constraints. EO-20-0010 (2025), updating an earlier State Bar ethics opinion, addresses communications with a client's family and friends. Even with client consent, the lawyer's primary duty remains to the client and to competent representation. Consent may permit communication, but it does not require lawyers to answer every third-party request for information. ■

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 kkyoung@clsaz.org

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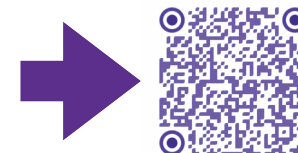


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Volunteer Lawyers Program Thanks Attorneys

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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Shealyn Robinson
Gus Schneider
Polsinelli PC

DISABILITY

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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 THANKS THESE VOLUNTEERS WHO PROVIDED OTHER LEGAL ASSISTANCE DURING THE MONTH

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Q&A

LAWYER LIABILITY AND ETHICS



The Ethics of Using AI to Record Client Conversations



Joseph Brophy

A federal court in New York recently made waves when it ruled that a client's chats with artificial intelligence (AI) were not protected by the attorney-client or work product privileges, even if the information the client provided to AI came from the client's attorney. In the same vein, the New York City Bar Association recently released Formal Opinion 2025-6, titled "Ethical Issues Affecting Use of AI to Record, Transcribe, and Summarize Conversations with Clients." The Opinion addresses two distinct scenarios: (1) when an attorney uses an AI platform to record and summarize client calls or meetings; and (2) when the client uses an AI platform to record meetings with their attorney.

There are several AI applications that attorneys can use to transcribe conversations with a client, such as Otter, Fireflies and Descript. These applications replace old-fashioned attorney note taking. Using AI transcriptions theoretically ensures an accurate record of what was said and solves the problem of having to later decipher the written notes of a lawyer who writes like a third grader. When an attorney uses these applications, several ethical rules are implicated.

ER 8.4 (dishonesty) requires that the client knows and consents to the conversation being recorded. This is because most clients presume their privileged conversations with their attorney will not be recorded and clients are generally inclined to choose their words more carefully, or change what they say entirely, if they know they are being recorded. Moreover, although AI is new, recording technology is not. The overwhelming weight of authority regarding the audio recording of attorney-client communications by a lawyer provides that the fact of the recording must be disclosed to the client.

ER 1.1 (competency) requires a lawyer to ensure that the transcription of the conversation is accurate. Of particular concern are conversations where an attorney offers informal advice in the moment that may need to be changed based on further research. Significant concerns arise if inaccurate advice (even if unintentional) from the attorney is memorialized without being reviewed and corrected if necessary. AI tools may also create advice on their own, which similarly must be reviewed for accuracy before relying on it. By now lawyers should be aware of the perils of blind or uninformed reliance on AI-generated legal advice, arguments or authority.

Client confidentiality is also an ever-pres-

ent concern with AI. Many AI tools are not clear whether they retain information input into their system. Some applications are quite clear that they reserve the right to disclose any information provided by a user to third parties. Disclosing otherwise confidential information or privileged client communications to a third-party for a transcription or summary may inadvertently violate confidentiality or waive the privilege. In fact, this was a critical point raised by the New York federal court in the *Heppner* decision mentioned above. The privacy policy of the AI used by the client in *Heppner* (Claude) was clear that it reserved the right to disclose information to third parties. That fact was critical to the court's finding that no privilege applied or was waived.

An attorney must be aware of the data-retention and privacy policy of any communicative tool they use, including Zoom or Microsoft Teams. Any AI application not made specifically for lawyers (such as those offered by Westlaw or Lexis) should be presumed to retain any information provided to it and the right to provide that information to third parties.

Regarding a client's use of AI, lawyers do not control what their clients do or to whom (or what) they provide information. Few clients appreciate the risks associated with AI in the context of a legal representation. To that end, the Opinion offers several points of guidance to attorneys.

First, the expectations regarding AI use should be relayed at the outset of the representation. This can be in the form of a letter to the client communicating the firm's policies regarding AI, or such information can be included in the engagement agreement. Second, attorneys should include provisions in engagement agreements providing that any recordings, transcripts, or summaries prepared by AI tools selected or used by the client will not be deemed dispositive or binding as against the attorney unless they are promptly provided to the attorney so that they can conduct independent reviews of the accuracy of these materials. This prevents the attorney from being held to a statement that was inaccurately recorded or misstated by the client's AI. Finally, attorneys should inform their clients about the dangers of AI use and the potential waiver of confidentiality and privilege in doing so.

There are few, if any, ethical opinions discussing lawyers' use of AI recording or note taking applications. If you are among those who utilize those tools in your practice, the New York City Bar Association's Formal Opinion 2025-6 is required reading unless and until Arizona issues its own guidance. ■

VLP THANKS THE FOLLOWING INDIVIDUALS WHO RECENTLY HELPED OR ENCOURAGED COLLEAGUES TO VOLUNTEER WITH VLP

John Bender

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THURSDAY ■ JUNE 11
5:00 PM - 7:00 PM AZ

Decanted & Up to Date – Ongoing Legal Issues Facing the Wine Industry

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WEDNESDAY ■ JUNE 17
12:00 PM - 1:30 PM AZ

AI: Added Influence and Ethical Considerations for Attorneys and Legal Paraprofessionals

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This program provides attorneys and legal paraprofessionals with a brief history of AI's origins and development, followed by a discussion about pros and cons of its influence on the justice system.

THURSDAY ■ JUNE 18
12:00 PM - 1:00 PM AZ

Ethical Considerations in Estate, Probate, and Trust Matters

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ONLINE

This program provides attorneys with practical legal guidance to assist both transactional and litigation trust and estate practitioners.

TUESDAY ■ JUNE 23
12:00 PM - 1:30 PM AZ

Post-Traumatic Growth: Developing Personal Wellness and Professional Resilience for the Legal Profession

ETHICS CREDIT ELIGIBLE

IN-PERSON OR ONLINE

This program will introduce the concept of Post Traumatic Growth, how it is defined, and how it is achieved to practice law in the most ethical and productive manner.

FRIDAY, JUNE 5
12:00 PM-1:30 PM AZ

AI in Law Firms: How to Use It Without Violating Ethical Duties

ETHICS CREDIT ELIGIBLE

ONLINE

This program provides attorneys with practical guidance on the responsible use of artificial intelligence tools in law firm practice.

WEDNESDAY ■ JUNE 10
12:00 PM - 1:00 PM AZ

Digital Diligence: Ethical Obligations in AI-Assisted Research and Writing

ETHICS CREDIT ELIGIBLE

ONLINE

As the legal landscape shifts under the influence of generative technology, maintaining professional competence requires more than just a passing familiarity with new tools.

THURSDAY ■ JUNE 11
12:00 PM - 1:00 PM AZ

Ethics Matters in Mediation

ETHICS CREDIT ELIGIBLE

ONLINE

On October 15, 2025, the ABA issued Formal Opinion 518, entitled "A Lawyer's Duties to Avoid Misleading Communications When Acting as a Third-Party Neutral Mediator."

THURSDAY ■ JUNE 25
12:00 PM - 1:30 PM AZ

The Essentials of Music Copyright Law

ONLINE

This course covers the basics of music copyright law, including what is a copyright and how to get one. We will discuss the two copyrights in every recorded song, and how music publishing and production fit into each.

THE BULLETIN BOARD

News from the legal community

TABARES RECOGNIZED AS RISING LEADER AT NATIONAL ABA CONFERENCE

Celeste del Carmen Tabares has been awarded the prestigious “20/20 Partners Rising Young Leaders Award,” presented at the American Bar Association Business Law Section Spring Meeting, which was held April 16–18, 2026, in Atlanta.

The award honors standout early-career attorneys in the business bankruptcy field who demonstrate exceptional leadership, professional excellence, and a commitment to service. Tabares was selected for her high-caliber

legal work, growing leadership within the profession, and meaningful contributions to the communities she serves.

A member of Engelman

Berger’s Creditor’s Rights, Bankruptcy, and Litigation groups, Tabares launched her legal career on the front lines of the COVID-19 crisis, advocating for vulnerable tenants through the Tenants Eviction Assistance Project in Phoenix. A Flagstaff native and fluent Spanish speaker, she continues to bring both skill and purpose to her work, using the law as a tool for impact. She is admitted to practice in Arizona, Salt River Pima-Maricopa Indian Community Court, Colorado River Indian Tribal Court and the Supreme Court of the Navajo Nation.

The ABA Business Law Section Spring Meeting draws more than 3,000 legal professionals from around the world, including managing partners, in-house counsel, judges, and government officials. The event features more than 50 continuing legal education programs focused on emerging trends and key issues shaping the future of business law.



Celeste del Carmen Tabares

MEMBER SPOTLIGHT

Lowen C. Jones, Esq.

Marble Law, PC, Managing Attorney for Arizona, and the Law Office of Lowen Charles Jones, P.L.L.C.



HOW LONG HAVE YOU BEEN A MEMBER OF THE MCBA?

I have been a member since 2019, when I was admitted to the State Bar of Arizona.

HAVE YOU EVER BEEN INVOLVED WITH ANY SECTIONS OR DIVISIONS?

I am an active member of the MCBA Family Law Section. Outside of MCBA, I am also a longtime member of the Arizona Black Bar, where I previously served as Treasurer.

HOW LONG HAVE YOU BEEN PRACTICING IN YOUR FIELD?

I was first admitted to practice in 2015 in Missouri, and I have focused on Arizona family law and in-house counsel work since 2019.

WHAT WAS YOUR FIRST AREA OF PRACTICE?

My first area of practice was administrative law.

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

I see a real opportunity for the MCBA to continue bringing attorneys together around two important topics: responsible use of AI and access to justice.

AI is already changing the way lawyers work, and I think attorneys are looking for practical, thoughtful guidance on how to use these tools responsibly while protecting clients and maintaining professional standards. At the same time, access to justice remains one of the most important issues in Arizona, especially in family law, where many people walk into court without representation because they cannot afford an attorney.

I appreciate that MCBA creates space for attorneys to have these conversations, learn from each other, and think about how the profession can keep evolving while still staying grounded in service. Personally, I am trying to contribute through my continued FLAP work, building resources to help self-represented litigants better understand Arizona family court, and developing a nonprofit model that would help fund pro bono and low bono representation while still compensating attorneys for their work.

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

The legal community is facing a period of real change, and I think that creates both challenges and opportunities. The business model of law is changing through subscription services,

alternative business structures, limited scope representation, and legal platforms. Those changes can make legal help more accessible, but they also require attorneys and bar organizations to stay engaged in how legal services are delivered.

AI is another major issue. Attorneys are already using these tools, and the profession has to continue developing practical guidance around competence, confidentiality, supervision, and client protection.

For me, all of this connects back to access to justice. In family law, especially, there are still too many people who need help but cannot afford full representation. I think Arizona has an opportunity to be thoughtful and innovative in how we address that gap, while still protecting the integrity of the profession and the people we serve.

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

Probably a stand up comedian or a therapist. Both require listening carefully, reading the room, and helping people work through something difficult. That is a big part of family law too, although the punchlines are usually less planned.

IF YOU COULD BE ANY FICTIONAL CHARACTER, WHO WOULD IT BE AND WHY?

Mike Ross from Suits. He had a mind I'd happily borrow for a week, photographic recall of every case and statute he'd ever read, paired with the kind of quick wit that lets you land the right line at the right moment. What made him compelling, though, wasn't the talent. It was the loyalty. He showed up for the people in his corner even when the smart move was to walk away. That mix of sharpness and steadiness is the kind of lawyer I try to be.

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

I was once hired by the government to participate in emergency preparedness simulations, including exercises involving serious threats and disease outbreak response. The strangest part was that, a few years before Covid, I participated in a setup that looked eerily similar to how testing and treatment later unfolded during the pandemic. Watching parts of that process happen in real life shortly after was surreal, a reminder that those simulations were more prescient than I appreciated at the time.

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