MARICOPA LAWYER

OFFICIAL PUBLICATION OF THE MARICOPA COUNTY BAR ASSOCIATION

September 2026 VOLUME 45, NUMBER 9 maricopabar.org

WHERE THE LEGAL COMMUNITY CONNECTS

INSIDE

PRSRT STD
U.S. Postage
PAID
Phoenix, AZ
Permit No. 4786

Managing PTSD as a Disability in the Workplace

Jodi R. Bohr

The Americans with Disabilities Act ("ADA") requires employers to provide qualified individuals with a disability a reasonable accommodation. Post-Traumatic Stress Disorder ("PTSD") is a mental health condition that can significantly impact an individual's ability to function in various aspects of life, including the workplace. An individual with PTSD is likely considered disabled under the ADA, thereby requiring employers to engage in the interactive dialog to determine whether a there is a reasonable accommodation for an employee with PTSD, that allows the disabled employee to perform the essential functions of the job. Unfortunately, the symptoms of PTSD can vary widely from person to person, making managing PTSD in the workplace challenging. These challenges can be compounded by stigma and a lack of understanding from employers and colleagues. However, with the right strategies and support systems in place, individuals with PTSD can thrive in their professional environments. How can employers effectively engage in the interactive process to assist an employee in managing PTSD in the workplaces?

Understanding PTSD

PTSD can develop after experiencing or witnessing a traumatic event. Symptoms may include flashbacks, nightmares, severe anxiety, paranoia, and uncontrollable thoughts about the event. These symptoms can lead to difficulties in concentration, emotional regulation, and interpersonal relationships, all of which can affect job performance. Recognizing PTSD as a legitimate disability is crucial for fostering an inclusive workplace that accommodates the needs of affected employees.

Open Communication

Once an employer becomes aware that an employee suffers from PTSD and needs an accommodation, it must engage in an interactive dialogue with the employee to determine an appropriate, reasonable accommodation. Allow the employee to discuss his condition, preferably with human resources, as they should be trained to handle the situation. Since PTSD symptoms are largely individualized, allowing the employee to share information about his PTSD condition can help the employer understand the employee's needs and create a supportive environment. Approaching this conversation with a focus on how specific accommodations can enhance productivity and well-being is essential.

See **Managing PTSD** page 4

CourtWatch

Daniel P. Schaack

Stay in Your Lane: Arizona Supreme Court Clarifies Products-Liability Law

An appeal involving a plaintiff's claim that a car manufacturer should have updated one of its models with a modern safety feature led to the Arizona Supreme Court to update products-liability law in Arizona. *Maywald v. Toyota Motor Corp.*, No. CV-25-0009-PR (Ariz. July 7, 2026).

In late 2019, Shawn and Tanya Maywald were involved in in a crossover accident on State Route 77 in Navajo County. Emilio Tsosie had fallen asleep while driving a 2019 Toyota 4Runner, crossing the center line and crashing into the Maywald's vehicle. Shawn Maywald was seriously injured.

The Maywalds sued Toyota, asserting a products-liability claim based on the manufacturer's failure to install a lane-departure-warning system — "LDW" —on the 4Runner. As described in the court of appeals' opinion, "LDW is a technology that emits an audio, visual, or tactile alert when it detects a driver drifting from the intended lane of travel." Toyota did not offer LDW as either standard equipment or an option on the 2019 4Runner, although it had been available on other Toyota models since 2002. After a 2020 redesign, Toyota added LDW to the 4Runner.

The parties filed cross-motions for summary judgment on whether the 4Runner was defective or unreasonably dangerous. The superior court sided with Toyota and entered judgment in its favor. The court of appeals issued a memo decision reversing the judgment on a 2–1 vote. *Maywald v. Toyota Motor Corp.*, No.1 CA-CV 23-0723 (Ariz. App. Dec. 19, 2024). Toyota sought review from the supreme court.

Justice James P. Beene wrote that the supreme court had granted review to resolve two recurring issues: First, "whether a strict product liability claim requires establishing that the product is both defective and unreasonably dangerous." And second, "to clarify the proper application of the consumer expectation test and the risk/benefit analysis."

Beene gave a brief history of products-liability law in Arizona, noting that the supreme court had accepted the theory in 1968, adopting the Restatement formulation that "one who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability." In a 1976 opinion, it had clarified that the plaintiff "must prove both that the product was defective *and* that the defect rendered it unreasonably dangerous." It soon reinforced that principle, "holding a plaintiff must not only prove that the product which caused the injury 'was defective when it left the factory, but also that such defect made the product unreasonably dangerous and was also the proximate cause of the plaintiff's injury.'"

According to Beene, the "two-part test preserves the distinction between a defective product and one that merely causes injury." He explained that ignoring the unreasonable-danger element could lead the factfinder to "conclude that any injury-causing product is defective," which would "effectively convert product-liability law into absolute liability."

Beene noted that confusion later began creeping into the caselaw, and the supreme court was partially to blame. A 1985 opinion, *Dart*, had "blurred the distinction between those concepts by stating that 'the question of defective and unreasonably dangerous condition' could be resolved together under a risk/

See **CourtWatch** page 4

MARICOPA Lawyer
www.maricopabar.org

The Official Publication of the Maricopa County Bar Association

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

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. For more information, please visit www.maricopabar.org. The MCBA website is at www.maricopabar.org and pdf copies of past issues are available for viewing. Please send editorial submissions to Laurie Williams at lwilliams@maricopabar.org. Advertising rates and information are also available at maricopalawyer@maricopabar.org or (602) 257-4200.

GIVE US YOUR OPINION

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 3550 N. Central Ave., Suite 1101 Phoenix, AZ 85012
Phone: (602) 257-4200 Fax: (602) 257-0405
Email: maricopalawyer@maricopabar.org

MCBA BOARD MEMBER

Kent Berk

The Best Career Decision I Didn't Fully Appreciate at the Time

You never know what you'll discover by cleaning out old files. In my case, I recently stumbled across documents from more than thirty years ago.

One was my 1996 Maricopa County Bar Association membership renewal. The other was a 1997 Lawyer Referral Service renewal form showing that I joined the program on April 5, 1996.

Looking at those forms transported me back to a very different time. Just a few days earlier I officially opened my solo firm in a tiny executive office suite.

I was a young lawyer, only a few years out of law school. I didn't have a reputation or a book of business. I didn't have decades of experience or a network of colleagues to call when I had a difficult case, client or question.

But what I had was passion, ambition, a willingness to work hard, and a desire to help good people in difficult situations, while building something meaningful.

Like many new lawyers, I joined the MCBA because it seemed like a smart professional decision. I attended events and signed up for the Lawyer Referral Service. I volunteered and met people. A lot of people!

What I didn't realize at the time was that I wasn't simply joining an association. I was becoming part of and shaping a community.

Over the years, I have found that most opportunities in our profession rarely arrive in the way we expect or intend. They often do not come from a strategic plan or a website.

More often, they come from relationships or spontaneous conversations that happen when you engage with your professional community. They come from the lawyer you meet at a luncheon or the judge you sit beside at a program. The colleague who remembers your name years later. The attorney who calls because they heard you speak or read your article. The mentor who takes a few minutes to offer advice that changes the path of your career.

Those things happen when you show up. The MCBA gave me opportunities to show up.

And over thirty years later, many of my closest professional relationships, leadership opportunities, speaking engagements, referral sources, and friendships can be traced back to becoming involved in the MCBA.

In our post-COVID age where almost everything is online, there are fewer and fewer opportunities to show up and build relationships. Yet, relationships are more valuable than ever and engaging in a community is more important than ever.

In turn, the MCBA is most valuable when members show up and make it valuable. The programs you attend exist because members created them. The articles you read exist because members wrote them and the committees that advocate for our profession exist because members volunteered.

In other words, the MCBA is not a building. It is not a website. It is not a staff office. It is us and what we create and do together.

That brings me to my challenge for you. This membership renewal season, ask whether the MCBA is getting enough value from you, so that you get the most out of the MCBA.

Could you write an article for the *Maricopa Lawyer* or mentor a younger attorney? Could you join a committee? Could you attend a section meeting and share your experience?

See **The Best Career Decision** page 3

MCBA THANKS OUR 2026 VOLUNTEER LEADERS

2026 MCBA BOARD OF DIRECTORS

OFFICERS

Dwayne Burns
U-Haul International, Inc.
President
Term Ends 12/31/2026

Hon. Ronee Korbin Steiner
President-elect
Maricopa County Superior Court
Term Ends 12/31/2026

Rebecca Marquis
The Marquis Law Firm
Treasurer
Term Ends 12/31/2026

Hon. Nicholas Saccone
Maricopa County Superior Court
Secretary
Term Ends 12/31/2026

Kelsey Brophy
Law Offices of Collin T. Welch
Immediate Past President
Term Ends 12/31/2026

BOARD MEMBERS WITH TERMS ENDING IN 2026

J. Blake Mayes
Mayes Telles

LaShawn Jenkins
The Jenkins Firm

Hon. William Cawthon
Maricopa County Superior Court

Michael Goodman
Gust Rosenfeld

Hon. Elizabeth Bingert
Maricopa County Superior Court

Hon. Gregory Gnepper
Maricopa County Superior Court

BOARD MEMBERS WITH TERMS ENDING IN 2027:

Kelley Durham
K Durham Law

Jennifer Elias
Burg Simpson Eldredge Hersh & Jardine, PC

Ben Himmelstein
Himmelstein and Adkins

Kent Berk
Berk Law Group

Hon. Samin Adib
Maricopa County Superior Court

Hon. David Gass (Ret.)
Arizona Court of Appeals

2026 LEGAL PARAPROFESSIONAL DIVISION PRESIDENT

Staci Maret
Maret Law Group

2026 PARALEGAL DIVISION PRESIDENT

Anabel Quintana
Spencer Fane

2026 PUBLIC LAWYERS DIVISION PRESIDENT

Cary Lackey
Maricopa County Attorney's Office

2026 YOUNG LAWYERS DIVISION PRESIDENT

Savannah Wix
Fennemore

EX-OFFICIO BOARD MEMBERS:

Barbara Rodriguez Pashkowski
Gust Rosenfeld
ABA Delegate

Stacy Leeds, Dean
Sandra Day O'Connor College of Law
Arizona State University

Jason Kreag, Dean
James E. Rogers College of Law
University of Arizona

Jessica Cotter
The Law Firm of Jessica M. Cotter PLLC
President, West Maricopa Bar Association

Michael Kielsky
Arizona Health Care Cost Containment System (AHCCCS)
President, East Valley Bar Association

Liz Nguyen
Law Office of Mark Guinta
President, Arizona Asian American Bar Association

Chloe Woods
Ramos Law
President, Arizona Black Bar

Salvador Macias
President, Los Abogados Hispanic Bar Association

Lauren Talkington
President, Arizona Women Lawyers Association, Maricopa Chapter

Student (TBD)
ASU Sandra Day O'Connor College of Law

Student (TBD)
UofA James E. Rogers College of Law

SECTION CHAIRS

BANKRUPTCY LAW SECTION
To Be Determined

CONSTRUCTION LAW SECTION
To be Determined

CORPORATE LAW SECTION
To Be Determined

CRIMINAL LAW SECTION
Mikel Steinfeld, Chair
DM Cantor

EMPLOYMENT LAW SECTION
To Be Determined

ENVIRONMENTAL LAW SECTION
John Habib
Snell & Wilmer

ESTATE PLANNING & PROBATE LAW SECTION
Sarah Randolph
Blake & Pulsifer, PLC

FAMILY LAW SECTION
Nicholas Boca
DM Cantor

LITIGATION LAW SECTION
Lorraine Morey
Morey Law, PLLC

PERSONAL INJURY & NEGLIGENCE LAW SECTION
To Be Determined

REAL ESTATE LAW SECTION
To Be Determined

COMMITTEE CHAIRS

AWARDS COMMITTEE
Jennifer A. Cranston
Gallagher & Kennedy PA

BENCH-BAR COMMITTEE
Todd Julian
Burch & Cracchiolo PA

HALL OF FAME COMMITTEE
Hon. Jessica Sanchez
Maricopa County Superior Court

LRS COMMITTEE
Lauren Bostick
Colburn Hintze Maletta, PLLC

EQUITY DIVERSITY & INCLUSION COMMITTEE
Amanda Chua

MARICOPA LAWYER EDITORIAL BOARD
Aaron Nash
Arizona Supreme Court

The Best Career Decision

continued from page 2

Could you help create or present a program that you wish existed?

We have tremendous opportunities ahead. The Paralegal Conference returns this October after selling out the past two years. In November, we will gather for the Hall of Fame and Awards Dinner to celebrate lawyers and judges whose contributions have strengthened our profession and our community.

And right now, nominations are open for the MCBA Board of Directors. If you have ever thought, "the MCBA could ________," you should consider joining the Board and help make it happen.

Thirty years ago, I filled out a membership form without any idea where that decision would lead. I could not have imagined the friendships, opportunities, leadership roles, and professional growth that would follow.

Joining was one of the easiest decisions I made. Getting involved was one of the best. I hope you'll do both. ■

One Modifier, Two Meanings: A Contract Drafting Trap

Contract disputes often begin with language that seemed clear when the agreement was drafted. One recurring source of uncertainty is the ambiguous modifier: a word or phrase that leaves readers unsure what it modifies. Although grammar-checking software rarely flags these issues, they can affect how a court interprets a contract.

Consider this provision:

The Seller shall deliver the inspected equipment and replacement parts.

Does inspected modify only *equipment,* or does it also modify *replacement parts*? Because the modifier precedes a series of nouns, the provision supports more than one reasonable reading. If the parties intended only the equipment to be inspected, the sentence says too little. If they intended both items to be inspected, it still fails to say so clearly.

Because an important goal in contract drafting is to avoid ambiguity, when a modifier could apply to one noun or an entire series, revise the sentence so only one reading remains.

One approach is to repeat an article when the modifier applies only to the first noun:

The Seller shall deliver the inspected equipment and the replacement parts.

Another approach is to separate the obligations:

The Seller shall deliver the inspected equipment. The Seller shall also deliver the replacement parts.

If the modifier applies to every item in the series, restructure the provision so the relationship is unmistakable:

The Seller shall deliver the following inspected items: equipment and replacement parts.

The same issue appears throughout commercial agreements. For example, a requirement to provide *approved drawings and specifications* leaves readers wondering whether only the drawings require approval. Likewise, references to *licensed software and documentation, confidential customer lists and pricing information,* or *certified financial statements and reports* invite unnecessary questions about the modifier's scope.

These ambiguities are easy to avoid during drafting but much harder to resolve after a dispute arises. Rather than relying on punctuation or assuming readers will infer the meaning, draft so the modifier's scope is explicit. ■

Managing PTSD

continued from page 1

Establishing an Effective, Reasonable Accommodation

During the interactive dialogue an employee may request a particular accommodation. For example, an employee may request to bring an emotional support animal ("ESA") to work to calm the symptoms of his PTSD. (It is important to acknowledge that an ESA as an accommodation could be a topic for entire column of its own.) The employer is permitted to explore whether other accommodation, in lieu of an ESA, may allow the employee to manage PTSD systems. For example, some employees have found a look-a-like stuffed animal of the ESA that remains at home to be sufficient. Others may effectively calm symptoms by sitting in an office with dim lighting alone for 15 minutes. This is to say that an employee cannot require the use of an ESA if other reasonable accommodations are available.

Seeking Professional Help

For many individuals with PTSD, professional help is essential for managing symptoms effectively. If an employee assistance program is available, the employer should remind employees of this benefit, so the employees can gain access to counseling and mental health resources. This alone may be sufficient to alleviate the need for additional workplace accommodations.

Managing Performance and Conduct Issues

Employers should take care in managing performance and conduct issues that may be a result of the employee's PTSD. While employees with a disability are not insulated from discipline, disciplining an employee whose misconduct is a result of the PTSD condition is not without risks. If an employer believes that this path is necessary, they should consult with competent legal counsel to determine what, if any disciplinary measures are appropriate under the circumstances.

Conclusion

Managing PTSD as a disability in the workplace requires a collaborative effort between employees and employers. By fostering open communication, creating a supportive environment, and implementing reasonable accommodations, organizations can help individuals with PTSD feel supported. This may be all that is necessary to allow an employee with PTSD to ultimately thrive in his role, or at the very least minimize any other need for potential accommodation. ■

Jodi R. Bohr is a shareholder with Milligan Lawless, P.C., and a contributor to Arizona Employment Law Letter. She practices employment and labor law, with an emphasis on counseling employers on HR matters, litigation, and workplace investigations. She may be reached at jodi@milliganlawless.com or 602-792-3549

CourtWatch

continued from page 1

benefit analysis." Although in 1986 the court had clarified "that proof of a defect alone is insufficient to establish liability," the lesson evidently got lost in the shuffle: "In the years that followed, ... appellate decisions muddied that framework." And in reversing the judgment in this case, the court of appeals had relied on some of those decisions—*Dillon, Golonka,* and *Gomulka*—which, according to Beene, had "collapsed two distinct elements of a strict product liability claim, and in doing so, misstated the governing standard."

"By relying on *Dillon, Golonka,* and *Gomulka*," Beene wrote, "the court of appeals here erred in vacating the superior court's order granting Toyota's motion for summary judgment." He disapproved those cases "to the extent that" they "collapse defectiveness and unreasonable danger into a single concept." "Moreover," he added, "we disapprove any language in *Dart* that blurs the line between defective condition and unreasonable danger."

"The longstanding distinction between defectiveness and unreasonable danger is no mere syntactic accident," Been wrote, reiterating that it "prevents strict liability from transforming into absolute liability." He wrote that "the threshold requirement of defectiveness serves to curtail liability when a product that is fit for its purpose causes an injury simply because its normal use poses inherent risks," a tacit nod to the fact that automobiles are driven on the public roads. "Together, defectiveness and unreasonable danger substantiate strict product liability. The two concepts are neither optional nor are they one and the same."

Having disavowed the confusing Arizona caselaw, Beene took pains to "now delineate both the elements of a strict product liability claim and the relationship among them." He accordingly reaffirmed that such a claim requires a "showing that (1) the product was defective, (2) the defect rendered the product unreasonably dangerous, and (3) the defect proximately caused the plaintiff's injuries."

Beene also took the opportunity "to clarify the governing principles by defining the terms 'defective' or 'defective condition' and 'unreasonably dangerous,' and by explaining the procedural framework governing the relationship between those concepts."

He first distinguished between "defect" and "unreasonable danger." The former refers to a product that is "unsafe for normal handling and consumption." As to the latter, "a product is unreasonably dangerous when it is more dangerous than a consumer would expect or whose risks outweigh its benefits." And once a defect has been shown, the plaintiff "must also prove that the defect rendered the product unreasonably dangerous," Beene wrote. "Only when both elements are satisfied may strict product liability be imposed."

Two tests apply in determining whether a defect is unreasonably dangerous. Under one—the consumer expectation test—a product is unreasonably dangerous if it "failed to perform as safely as an ordinary consumer would expect when used in an intended or reasonable manner." The other—the risk/benefit analysis—examines whether "the benefits of a challenged design outweigh the risk of danger inherent in the design."

According to Beene, the consumer expectation test is appropriate in manufacturing-defect cases "because consumers develop safety expectations through experience with properly manufactured products of the same general design." But that test is not as useful in design-defect cases because consumers do not know how safe the product could be. Thus, when the consumer-expectation test is infeasible, "courts should instead employ the risk/benefit analysis to determine whether the defect renders the product unreasonably dangerous."

Having effectively rewritten the Arizona products-liability primer, Beene turned to the 2019 4Runner. He concluded that it was not defective.

Beene started with first principles. Establishing a product's defect requires showing that it "is unsafe for normal handling and consumption." In other words, a defect "is a condition or characteristic of the product not reasonably contemplated by the ordinary consumer that renders the product unsafe for its intended use," he wrote. And that effectively doomed the Maywalds' case.

"Consumers reasonably expect that vehicles are designed to allow them to drive within marked lanes," and "there is an expectation that safety devices will guard against injury by accidents." But, Beene added, "there is no expectation that a vehicle will prevent human error in careless driving." And "the fact that an alternate safety feature may be available does not in and of itself render a product defective and unreasonably dangerous."

Although LDW technology might enhance the vehicle's safety, it "does not eliminate the driver's fundamental responsibility to maintain control of the vehicle," Beene wrote. "An ordinary driver understands the obligation to stay awake and remain within the proper lane of travel, and appreciates the inherent danger of crossing into a lane occupied by oncoming traffic."

Thus, the 4Runner's lack of an LDW "did not render the vehicle unsafe for its intended and ordinary use." According to Beene, "the normal operation of a vehicle requires an attentive driver to steer and maintain control, and a driver asleep at the wheel is not engaging in normal use."

"Although an LDW system may aid a driver," Beene concluded, "it does not displace the obvious expectation that the driver remains responsible for steering and controlling the vehicle." It followed that the 4Runner was not defective, and the Maywalds' claim consequently failed.

Although the failure to prove a defect doomed the Maywalds' defect claim, Beene nevertheless addressed the unreasonably-dangerous element, deeming it "prudent to clear up confusion concerning the proper focus of the risk/benefit analysis." He disagreed with the court of appeals' handling of that issue. "Strict liability does not arise from weighing the risks and benefits of an alternative design, as the court effectively concluded here," he wrote. Accepting that proposition would mean that "manufacturers would essentially be required to incorporate every feasible safety feature or face potential liability." He called that "a result that could render many products prohibitively expensive."

The question was not "whether Toyota could have designed a safer 4Runner by adding LDW technology." Instead, it was "whether the risks inherent in the challenged design—the 4Runner as sold without LDW technology—outweighed its benefits." Beene concluded the court of appeals had misapplied the risk/benefit analysis because it had "framed the analysis around the comparative merits of a design incorporating LDW technology, rather than the risks and benefits of the challenged design itself."

Beene concluded by reaffirming "that Arizona's strict product liability doctrine requires proof that a product is both defective and unreasonably dangerous." He reiterated that "preserving those distinct inquiries ensures that strict liability remains confined to defective products and does not become a form of absolute liability."

Joining Beene in vacating the court of appeals decision and affirming the superior court's judgment in Toyota's favor were Chief Justice Ann A. Scott Timmer, Vice Chief Justice John R. Lopez IV, and Justices Clint Bolick, William G. Montgomery, Kathryn H. King, and Maria Elena Cruz. ■

EMPLOYMENT LAW SECTION

Lessons From 12 Years In-House: Bridging the Gap Between Business and Employment Law

Dawn Valdivia

When I made the decision to return to private practice after 12 years as in-house employment counsel at a Fortune 100 aerospace company, colleagues asked what I would do differently as outside counsel. The honest answer? Almost everything.

Not because other outside counsel are doing it wrong but spending more than a decade on the other side of the table fundamentally changed how I think about delivering legal services. For lawyers advising businesses on employment matters in a market like Phoenix, where rapid growth is creating constant workforce pressure, I want to share three lessons that reshaped my practice.

Calibrate Their Risk Tolerance

As a member of the executive leadership team, I learned quickly that the "right" legal answer is not always the most useful one if it arrives too late, ignores operational realities, or fails to help the business move forward responsibly. What executives need is counsel to frame advice in terms of business risk and operational impact. When a company is expanding headcount, restructuring a division, or navigating pay equity audits, leadership is making decisions at speed—often without the luxury of complete information.

The most valuable advice I could give was not a comprehensive memo cataloging every possible exposure. It was a clear-eyed assessment: here is the risk; here is the likely magnitude, and here are the two or three practical options that align with where the business is headed. Outside counsel who can calibrate their advice to a client's risk tolerance—rather than defaulting to the most conservative position—become indispensable. That means understanding the business goal first and the legal issue second.

Treat Your Client Like a Buyer

For 12 years, I was the person selecting, managing, and occasionally replacing outside counsel. That experience gave me an unvarnished view of what frustrates in-house teams: memos that bury the answer on page eight, surprise invoices that bear no relationship to the scope discussed, and slow response times when the business needed a decision in real time.

The firms that earned my trust and my budget did three things consistently. First, they were responsive—not perfect, but reliably quick to acknowledge an issue and set expectations. Second, they were predictable—I never opened an invoice and felt ambushed. And finally, they were proportionate—they matched the depth of their work to the significance of the problem. These are not soft skills. They are client service delivery choices that distinguish effective employment counsel from merely competent ones.

Own the Outcome, Not Just the Advice

Perhaps the deepest shift in my thinking came from having to live with the consequences of decisions. In-house counsel cannot hand off a recommendation and move on to the next matter. You see how a termination decision plays out six months later when an EEOC charge arrives. You see whether the manager training you selected actually reduced complaints. You course-correct when a compliance strategy that looked good on paper doesn't work operationally.

An ownership mentality now shapes how I advise clients. Whether employers are navigating immigration compliance during workforce expansion, managing employment considerations in corporate transactions, or building out internal investigation protocols, effective counsel considers the long arc of the decision—not just the immediate legal question, but how it will land in six months or a year. Effective employment counsel should be thinking about second-order effects. Clients don't want one-time fixes. They want a durable solution that doesn't create new problems.

The Phoenix market is experiencing the kind of growth that surfaces employment law issues at every turn—hiring at scale, organizational restructuring, evolving pay practices, and the people-side complexities of corporate transactions. For lawyers serving this market, and for the companies seeking counsel, the lesson I carry from 12 years in-house is straightforward: The best employment advice is advice the business can actually use. It is timely, proportionate, grounded in operational reality, and delivered by someone who understands what it means to own the result. ■

Dawn Valdivia is a partner in Stinson's Labor, Employment & Employee Benefits Practice Division in Phoenix.

When an Unsubstantiated Workplace Complaint Is Still Protected

Gina E. Carrillo

A common scenario: an employee reports an unsafe workplace condition, but the investigation finds no violation. Or an employee alleges discrimination, but the employer identifies a legitimate, nondiscriminatory explanation for the conduct at issue. The employer may assume that an unsubstantiated complaint cannot support a retaliation claim down the line. Under both Arizona and federal law, however, that is not necessarily the case.

State and federal employment laws protect employees who raise concerns based on a reasonable, good-faith belief, even when the underlying allegation cannot be substantiated. An employee does not necessarily lose statutory protection simply because an investigation reaches a different conclusion.

The Arizona Employment Protection Act (AEPA) prohibits terminating an employee in retaliation for disclosing, in a reasonable manner, information or a reasonable belief that the employer has violated, is violating, or will violate the Arizona Constitution or an Arizona statute. The disclosure must be made to the employer, a person the employee reasonably believes has authority to act, or an appropriate public body.

AEPA does not require the employee's belief to prove correct, only to have been reasonable. Accordingly, disproving the underlying allegation is not, by itself, a defense to an AEPA retaliation claim. AEPA's scope is narrower than that of several federal anti-retaliation statutes. It protects against retaliatory termination, while Title VII and the ADA reach a broader range of materially adverse actions. AEPA also does not create a claim based on the disclosure of a federal-law violation; any protection must arise under the applicable federal statute.

Causation is also a critical element of an AEPA claim. The employee must establish a causal connection between the protected disclosure and the termination. As a practical matter, the inquiry is whether the disclosure influenced the termination decision or whether the employer would have made the same decision, at the same time, regardless of the disclosure.

An employee who engages in protected activity still remains subject to legitimate non retaliatory performance and conduct expectations at work. The more difficult situations arise when an existing employment issue, such as performance or behavior, overlaps with a recent complaint.

For example, suppose a manager has informally addressed performance concerns for several months with an employee but has not documented them. The employee then makes a safety complaint, and two weeks later the employer terminates the employee based on those same performance concerns. The timing and lack of contemporaneous documentation may create a factual dispute over whether the complaint played a role in the decision.

Similar questions may arise when a complaint is followed closely by heightened scrutiny, a sudden negative evaluation, or discipline that differs from the treatment of comparable employees. These circumstances do not necessarily establish retaliation, but they may be relevant to whether the complaint affected the employer's decision.

Employers should also distinguish between misconduct and discomfort with the way an employee communicated a concern. Threats, harassment, material disruption, or insubordination may warrant an appropriate response. Subjective descriptions such as "negative," "difficult," or "not a team player," however, merit closer attention when they first appear after the employee raises a workplace concern.

When an employee who has recently made a complaint is also facing possible termination, counsel should consider:

- Who made the decision and whether that person was implicated in the complaint;
- Whether the supporting documentation predates the complaint;
- How similarly situated employees were treated; and
- Whether the employer would have acted at the same time absent the complaint.

The complaint investigation and any separate employment decision should be evaluated independently. An inability to substantiate an allegation does not, without more, suggest that the employee acted dishonestly. A conclusion that "the investigation did not confirm the allegation" is not the same as a finding that "the employee fabricated it."

Ultimately, whether the underlying complaint was correct is only one part of the analysis. The separate question is whether the employee reasonably raised a protected concern and, if so, whether that activity played a role in the employment decision. ■

This article discusses Arizona and federal retaliation principles generally and is not legal advice regarding any particular facts.

EMPLOYMENT LAW SECTION

Keeping Retirement Savings Safe: Qualified Retirement Plan Correction Programs


Otto Shill

Through qualified retirement plans, employers can set money aside in a plan for employees' retirement, receive a current tax deduction for the contribution, and employees can defer tax on retirement savings until they are withdrawn from the plan. Mistakes in drafting or operation of the plan can cause a loss of these benefits. This article summarizes the basic rules and options available to correct legal and operational failures in plan documentation and administration.

Since 1913, the Internal Revenue Code ("Code") has required taxpayers to include in their taxable income any accession to wealth. Money transferred to or for the benefit of an employee generally meant immediate taxation for the employee. The Employee Retirement Income Security Act of 1974 ("ERISA"), which supplemented both the Code and labor and employment statutes, introduced provisions that deferred employee income while giving employers deductions for contributions made to retirement plans. ERISA conditions these tax benefits on plans complying with sections 401 et seq. of the Code. ERISA also imposed fiduciary duties on employer/plan sponsors to make prudent decisions with respect to money set aside for employees and to properly manage and account for the money held by plans for the benefit of employees.

Early on, most qualified retirement plans were custom-drafted to satisfy the Code and fiduciary requirements described above. Employers and their counsel submitted each plan to the Internal Revenue Service ("Service") for review and approval, and each plan received an individual letter confirming its qualified status. Every change in the qualification requirements necessitated plan amendments and sometimes updated qualification letter requests. Because of the widespread adoption of qualified retirement plans, over time the Service adopted policies to make plan compliance and administration simpler.

Some of most important efficiency tools developed by the Service and the U.S. Department of Labor ("DOL") were the Service's Voluntary Correction Program ("VCP") and DOL's Voluntary Fiduciary Correction Program ("VFCP"). These programs replace formal negotiations, closing agreements, and expensive fines or loss of qualified status with several levels of self-effectuating correction, depending on the problem, and with payments to the plan that hold plans and plan participants harmless from the financial impact of the errors. The programs also allow employers to avoid expensive litigation with government agencies over qualification problems and fiduciary violations.

The Service's VCP program has three levels of correction. The simplest is self-correction, which an employer may use to correct problems that are isolated in occurrence and limited in their impact both as to the amount involved and of the participants affected. More difficult or long-lasting problems may require employers to file a formal VCP submission that is reviewed by and subject to comment by the Service. Issues addressed in these ways may include failing to timely update plan documents or inadvertently excluding participants from plan benefits, like an employer match. More egregious or repeated failures may still require a formal closing agreement with the Service, but such solutions are rarer than in past years.

The DOL enforces fiduciary compliance. Fiduciary breaches can result in legal claims by plan participants, the DOL, or both. The DOL developed the VFCP to minimize litigation over inadvertent fiduciary failures. Under VFCP, self-correction, which was first allowed in 2025, is available on a limited basis for late deposit of employee contributions that are corrected within 180 days and that involve no more than $1,000 in lost earnings, or certain inadvertent operational failures related to plan loans. Other violations can be addressed only through formal submissions. An example of a problem eligible for correction under VFCP includes an employer's untimely (more than a day or two after payroll payments) deposit of 401(k) deferral contributions.

With a correction under either program, an employer should (i) carefully identify and report all plan compliance failures to prevent an agency from raising them on audit, and (ii) determine whether a compliance failure resulted in a "prohibited transaction". Employers and others that engage in prohibited transactions can have fiduciary liability and be subject to an excise tax (15% of the amount involved if corrected before an audit, or of 100% if the Service audits the transaction). The Service and the DOL coordinate their efforts in examining and accepting corrections, so a comprehensive review of plan operations and documents is appropriate.

Qualified retirement plans are a critical and popular component of Americans' savings programs. The government properly expects employers to safeguard plans and their assets. Correction programs are a critical tool that the government offers employers to avoid expensive liability and penalties and to protect the retirement savings of their employees. ■

Otto S. Shill, III helps individuals, business owners and employers comply with and plan for laws and regulations related to federal and state taxation, employee benefits and executive compensation. Recognized as a Certified Tax Specialist by the State Bar of Arizona's Board of Legal Specialization, Otto assists clients with audits, investigations and regulatory disputes related to these areas and advises business owners on various transactions and long-term succession and estate planning. Contact Otto Shill for legal counsel in your tax law matter.

Maricopa County Justice Museum and Learning Center Update

In the last several issues, the Maricopa County Justice Museum has talked about its exhibit *Breaking Ground: The Remarkable Journeys of Arizona Women in Law* and highlighted one of Arizona's most formidable judicial pioneers: Lorna E. Lockwood. In this issue, we want to share exciting news on the upcoming launch of an extraordinarily new interactive exhibit: *Miranda v. Arizona and its Legacy Within the American Justice System*.

You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to an attorney during questioning. If you cannot afford an attorney, one will be appointed for you.

Many of us are familiar with this language and most can identify it as the Miranda Warning. But what does it actually mean and how did it come to be? The Justice Museum and Learning Center is proud to unveil a new exhibit featuring an immersive, annotated timeline tracing the story of *Miranda v. Arizona,* from the initial crime through the Supreme Court decision and beyond, revealing how a single case reshaped the American Justice System. The exhibit also includes a state-of-the-art touch table where visitors can navigate through the *Miranda* case timeline, meet the players involved in the case, listen to the oral argument before the Supreme Court, hear from *Miranda* scholars, and explore *Miranda*'s influence on Pop Culture and modern life.

If you haven't visited the Justice Museum recently, you are missing out. It's a wonderful (and cool!) place to explore the people, cases, and moments that shaped the law in Arizona and the Nation as a whole. Come see us soon! We are open **Monday through Friday from 8:00 am to 5:00 pm** and are located on the top floor of the **Old Courthouse** at **125 W. Washington Street in Downtown Phoenix.** ■


WE'RE
READY.
OMC has recovered billions in serious cases by preparing every case for trial from the start. When a case calls for more, we partner with referring attorneys to prepare it to the level serious cases require.
(602) 252-8888
omclawyers.com
OSteen
MacLeod
Combs


cloudIT
Technology. Elevated.
The Clear Choice for
Law Firm IT
Secure. Reliable. Responsive.
Enterprise-grade IT and cybersecurity so your firm can focus on what matters most—your clients.
cloudIT
LAW
CYBERSECURITY THAT PROTECTS
Multi-layered security, 24/7 monitoring, and threat response to keep your firm and client data safe.
RESPONSIVE IT SUPPORT
Local experts. Fast response times. Real people—when you need them.
RELIABLE & SECURE IT
Secure cloud solutions, data backup, and business continuity you can count on.
COMPLIANCE & PEACE OF MIND
We help you meet industry requirements so you can reduce risk and stay audit-ready.
DEDICATED LEGAL SUPPORT TEAM
Our team understands the unique needs of law firms and is here to support you.
MANAGED AI TO EMPOWER YOUR FIRM
Secure, practical AI solutions that automate workflows, surface insights, and eliminate busywork—so your team can do more of what matters.
CLIENT INTAKE AUTOMATION
Capture, qualify, and route new matters faster.
DOCUMENT SUMMARIZATION
Review faster. Extract key details. Save hours.
KNOWLEDGE SEARCH
Find answers across documents, matters, and email.
WORKFLOW AUTOMATION
Eliminate repetitive tasks and improve efficiency.
REPORTING & INSIGHTS
Real-time visibility to support better decisions.
Why Law Firms Choose cloudIT
PROVEN. LOCAL. TRUSTED.
A Phoenix-based team supporting law firms across Arizona.
CLIENT-FIRST APPROACH
Proactive communication, transparent pricing, and a partnership mindset.
SECURE. SCALABLE. STRATEGIC.
Technology that grows with your firm and supports your long-term success.
FOCUSED ON JUSTICE.
You practice law. We handle the IT.
TALK TO A LAW FIRM IT EXPERT
Schedule a free, no-commitment consultation.
(602) 875-5400
info@cloudit.co
cloudit.co
SCAN TO GET STARTED
Let's strengthen your firm with technology that works.
cloudit.co/contact

PROBONOPROFILES

Community Legal Services' Volunteer Lawyers Program

CLS/VLP Pro Bono Attorneys Fiercely Defend Tenants' Rights

By Diane Mihalsky, Retired
Pro Bono Attorney (2020)
Community Legal Services (CLS)/
Volunteer Lawyers Program (VLP)

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

Community Legal Services' (CLS)/Volunteer Lawyers Program's (VLP's) Tenants' Rights Attorneys provide vital, free legal assistance to qualifying renters. By navigating civil procedures and negotiating with landlords, these attorneys help vulnerable individuals address severe safety hazards and habitability issues like lack of air conditioning, mold, or plumbing emergencies. In addition, they help tenants request repairs, give proper notices, seek return of deposits, and retrieve belongings.

VLP Staff screen clients for eligibility, collect all documents, and schedule phone appointments for our volunteer attorneys, who offer up to a 30-minute phone consultation with each client. Attorneys choose a block of time to call clients from their chosen location and obtain more in-depth information and detailed facts from our clients; they flesh out the legal issues, review documents, and offer brief advice. Attorneys then send VLP Staff a brief memo with the relevant facts, legal analysis, and legal advice given to each client. Often attorneys choose to help clients further by making calls, negotiating, and/or writing letters on behalf of our clients. There is no minimum time commitment; CLS/VLP appreciates whatever time our pro bono attorneys have to give.

Roni Tropper, CLS/VLP Director, expounds, "We are so grateful to our Tenants' Rights attorneys who help our marginalized population, including many who are living in terrible conditions, being taken advantage of, and facing eviction and possibly losing their homes. If you have no experience in this practice area but want to help, we can provide training, recorded relevant CLE webinars, mentors, and shadowing opportunities with our experienced Landlord/Tenant attorneys."

We asked one of VLP's Tenants' Rights Heroes, Diane Mihalsky, about her experience and the benefits of providing pro bono service to clients in CLS/VLP's Landlord/Tenant Clinic. Diane, who was recently honored as one of Arizona's Top Pro Bono Attorneys, has selflessly served as a VLP Attorney for over 16 years. She is retired but licensed to provide pro bono service to VLP Clients through Rule 38 (d)(I) of the Arizona Supreme Court Rules.

Diane Mihalsky
VLP Pro Bono Attorney (2020)

I joined VLP's Pro Bono Team in July 2020, after I retired from being an Administrative Law Judge for the State of Arizona's Office of Administrative Hearings (OAH) for 23 years. I dealt with many self-represented litigants at OAH; while many did an admirable job representing themselves, others were challenged and could have benefitted from some counsel before the dispute ended up in a hearing. Although I really enjoyed my state service, my opportunities for performing pro bono legal work were limited by potential conflicts that could arise based on the many different kinds of cases that were referred to OAH by various state agencies.

The issues my clients face at VLP's Landlord/Tenant Clinic include return of security deposits under A.R.S. § 33-1321, construing various lease provisions under A.R.S. §§ 33-1314 and 1322, a landlord's obligation to maintain fit premises under A.R.S. § 33-1324, and challenging credit reports under the Arizona Residential Landlord Tenant Act or the Federal Fair Credit Reporting Act. When I started volunteering, I knew a little about the law governing landlords and tenants because, when I was at OAH, I heard cases referred by the Arizona Department of Housing brought by tenants living in trailer parks for their landlords' potential violations of the Arizona Mobile Home Parks Residential Landlord Tenant Act. I took every CLE course that CLS/VLP offered on the Arizona Residential Landlord Tenant Act, which governs most house and apartment rentals in Arizona, and debtors' rights. I volunteered for the Landlord/Tenant Clinic because when I retired, I lived in Midtown Phoenix and regularly saw many homeless people and homeless encampments, which made me think it would be nice to try to help people stay in more permanent and safer structures.

One of my favorite cases involved an 88-year old widow who lived in a very nice retirement home in Gilbert whose landlord was attempting to raise all the tenants' rents mid-lease for "unexpected expenses." My client also understood that rent increases would be limited to a certain percentage, which was unfortunately not reflected in the lease. My client had six adult children, used to work for a California state representative, and had a keen sense of social justice. Her adult children were all accomplished and involved in the dispute, but none were lawyers. She wanted to file a class action, but I explained CLS/VLP lacked the resources for such an undertaking. By the time I provided my first consultation, she had also filed a complaint to the Arizona Attorney General's Office, which was pending. I wrote a lengthy letter to the landlord's counsel stating that both the Arizona Residential Landlord Tenant Act and the common law of contracts prevent one party from changing a contract provision during the contract term. Counsel agreed and requested that my client (and her six children) agree to a confidentiality clause in the settlement agreement. I told counsel that there was a pending complaint to the Attorney General, but if Landlord agreed to limit rent increases for three years, my client and her six children would agree to confidentiality. Counsel agreed and prepared a settlement agreement. Landlord also subsequently rescinded the mid-lease rent increase for all the tenants, so my client got to feel like the heroine that she was, even though she couldn't tell anyone but her children about it.

A second case involved a lady whose landlord had attempted to withhold her $1,000 deposit for maintenance items that she had repeatedly requested that he fix. My client did not have access to the internet, both my client and the landlord were recent immigrants who did not speak English as their first language, and all communications were via phone texts, which took some time for me to decipher. Maria Fulgencio, CLS/VLP Paralegal who manages the Landlord/Tenant Clinic, provided a memorandum on calculation of damage for normal wear and tear. I provided this authority to Landlord, along with a summary of his communications with my client, and he reluctantly agreed to return the $1,000 security deposit, which was a lot of money to my client.

These two cases are unusual because most of my volunteer work involves only one or two consultations when I tell clients what they can do about problems with their landlords or rentals. Sometimes all I can do is be respectful and suggest ways in which the client move on from the dispute. I believe that almost all of my clients appreciate being able to talk to a professional who is trying to understand their problems. I get satisfaction from spending a few hours a week trying to help low-income clients, most of whom are grateful and doing the best they can. It is nice to be able to renew my bar membership for free in exchange for 25 hours of pro bono services per year. Finally, dabbling in law is probably a better way to keep my mind sharp in retirement rather than doing crossword puzzles or sudoku. ■

CLS/VLP Salutes the following CLS/VLP Tenants Rights Attorneys:

Dara Derryberry	Diane Mihalsky
David Engelman	Judy O'Neill
Bernard E. Gburek, III	Mike Parrish
John Gordon	Mallory Powers
Peggy LeMoine	Gordon Thompson
Meredith Lynch	Kevin Woldhagen
Kate Mancuso	

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

https://clsaz.org/volunteer-lawyers-program/

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

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

COLLECTIONS
Brian Deagle
Pro Bono Counsel

LANDLORD/TENANT
Bernard E. Gburek III
Stinson

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

ALLEN JONES & GILES CLINIC
Ryan Deutsch
Michael A. Jones
David B. Nelson
Zachary A. Phillips

ATTORNEY OF THE DAY
Andrew S. Jacob

CHILDREN'S LAW CENTER
Shawnna Riggers

CLAIMSHERO TENANTS' ADVICE CLINIC
Meredith Lynch Porta

DORSEY DEBT CLINIC
Nicole Brindejonc
Cynthia McGillicuddy
Alexis Olsen

EMPLOYMENT CLINIC
Shifa Alkhatib
Morgan Bigelow
Josh Black
Clara Bustamante
Gina Carillo
Haley Carr
Kimberly Eckert
Rich Harris
Chris Suffecool
Merle Turchik

FAMILY LAWYERS ASSISTANCE PROJECT
Karla Berber
Greg Davis
Ashley Donovan
Dorian Eden
The Honorable Jeanne Garcia
Stuart Gerrich
Robert Hahn
Kina Harding
Katherine Kraus
Elizabeth Langford
Susan McGinnis
Daniel Rodriguez
Debra Tanner

FEDERAL COURT ADVICE CLINIC
David Blumenthal
Timothy Eckstein
Janet Howe
Andrew Jacob
Benjamin Rundall

FINANCIAL DISTRESS CLINIC
Brian Deagle
David Engelman
Thomas Moring
Donald Powell

PROBATE LAWYERS ASSISTANCE PROJECT
Alexus Anderson
Marlene Appel
Kent Berk
Mark Bregman
Emily Burns
Scott Ferris
Kelly L. Kral
Tracy M. Marsh
Carla Miramontes
Ryan Talamante
Lisa Carlin – Paralegal
Allison Fleming Bleed – ASU Intern
Madeleine McEntyre – ASU Intern

SNELL & WILMER
Christopher M Fahrendorf II
Trent Lee Hoffman
Michael Bailey Hopkins
Rachael Marie Peters Pugel
Benjamin Reeves
Martyna Sawicka
Marc L. Schultz
Tyler James Wills

SNELL & WILMER SUMMER ASSOCIATES
Lucy Vanover
Matt Vlahos

STINSON TENANTS' RIGHTS CLINIC
Benard E. Gburek III
Mike Parrish

TENANTS' RIGHTS CLINIC
John Gordon
Diane Mihalsky
Judith O'Neill
Mallory Powers
Gordon Thompson
Kevin Woldhagen

VLP SITUATIONAL CLINIC
Robert F. Crawford
Edwin G. Ramos

YAVAPAI LAW DAY VOLUNTEERS
Amy Andres
Josh Butner
Eric Chester
Martin Coleman
Drew Diener
Russell Duerksen
Joel Fornara
Jeffrey Gautreaux
Glen Hammond
Scott Hergenroether
Christina Howden
Mark Kille
Staci Maret
Christina Meyers
Kristyne Olson
Monte Rich
Steve Schwartz
Charlie Seyffer
Michael Shaw
Brittney Walsh
Dave Wilson

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

Tami Johnson | Michael A. Jones | Sheng Qin

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

Q&A

LAWYER LIABILITY AND ETHICS

Supreme Court Clarifies Attorney Client Privilege For Third Parties

Joseph Brophy

In July, the Supreme Court of Arizona in *Gelvin v. Parker* issued an opinion reiterating the fundamental precepts governing whether and when attorney-client communications in the presence of a third party waives the privilege. In doing so, the *Gelvin* court overruled a prior decision of the Court of Appeals that created a significant exception to those rules.

In *Gelvin*, Husband and Wife divorced. During the divorce proceedings, issues arose surrounding family trusts established by Wife's parents. Wife and her attorneys entered into a "Consent to Communicate Without Waiver of Confidentiality" with Mother, pursuant to which Mother was authorized to communicate with Wife's attorneys "in any manner necessary" regarding matters related to the divorce.

The agreement specifically cited and relied on the decision of the Arizona Court of Appeals in *Accomazzo v. Kemp*, 234 Ariz. 169 (App. 2014). In *Accomazzo*, the parents of a wife were present during the drafting of a prenuptial agreement. The Court of Appeals held that the presence of a third-party did not waive the attorney-client privilege if "the third party's presence does not indicate a lack of intent to keep the communication confidential." *Accomazzo* further held that there is a presumption that when a client authorizes a parent to participate in conferences with her attorney regarding the client's personal matter, and the parent and client do not have adverse interests with respect to that matter, the client has a reasonable expectation that the conferences will be confidential.

The superior court in *Gelvin* ordered the production of written communications between Wife's attorneys and Mother because the presence of a third-party waives the privilege. The Court of Appeals accepted special action jurisdiction and reversed the superior court's order, holding that *Accomazzo* created a presumption of a privilege regarding communications between Wife's attorneys and Mother.

Notably, two members of the appellate panel, including the author, questioned *Accomazzo*'s soundness in a concurrence, but followed *Accomazzo* specifically noting that Husband had not requested that the decision be overturned and that it was unfair to penalize Wife's reliance on a controlling precedent. It is unusual to see an appellate court issue a ruling while at the same time drafting a detailed concurrence in which the court makes clear it does not agree with the law it is applying.

When the case was remanded to the superior court, the trial court judge raised an excellent question: "If communications between a lawyer and third party are privileged under the attorney-client privilege simply because the lawyer and client say so where do we go from here?"

The Supreme Court of Arizona took the opportunity to clarify the rules governing waiver of the attorney-client privilege in the presence of a third party. First, subject to limited exceptions (i.e., client agents or parents of a minor child), communications with or in the presence of a third party are only privileged if they are objectively necessary to effectuate the attorney-client communication. Second, parties cannot expand or create an attorney-client privilege based purely on their subjective desires, expectations or by agreement. Third, the burden of establishing the privilege remains where it always has – on the party asserting the privilege. The presumption established by *Accomazzo* (along with the rest of that decision) is now gone.

The *Gelvin* court's reasoning was not exotic and relied on well-established principles governing the attorney-client privilege. The court noted that privileges, by their nature, suppress the truth and must therefore be construed narrowly despite what it described as the "sacrosanct" nature of the attorney-client privilege. Extending the privilege to third parties inhibits the truth-seeking function without advancing the core purpose of the attorney-client privilege. Permitting the subjective expectations or intent of the attorney and client to determine whether the privilege applies to third parties would create an exception that would swallow the rule. Moreover, allowing for a presumption that communications with third parties were privileged would turn the exception into the rule.

Importantly, the *Gelvin* decision applies prospectively. The court found that because *Accomazzo* expanded the attorney-client privilege and both parties and the lower courts had good reason to rely on that precedent, any agreements or rulings made prior to July 17, 2026 are not affected. This included Wife's agreement regarding communications to which Wife, Mother and her attorneys were parties. So although Husband won the legal battle, he lost the war over whether he could discover those communications. Notably, Mother's communications with Wife's attorneys in which Wife played no part were also held to be not privileged.

For those of you who are utilizing an *Accomazzo* style arrangement, you should immediately reassess whether communications with that third party are objectively necessary to effectuate the attorney-client communications for which that third party is present. If the third party is not objectively necessary, as of July 17, 2026, that party should be excluded from any attorney-client communications to avoid waiver of the privilege. ■

CONTINUING LEGAL EDUCATION CLE MARICOPA COUNTY BAR ASSOCIATION

WAYS TO REGISTER

ONLINE

To register, go to www.maricopabar.org/events and select your CLE from the calendar. Follow the link to the registration page.

If you need assistance, please email: cle@maricopabar.org

PHONE

Call (602) 257-4200

PROGRAM LOCATION

In-person, Online or Hybrid will be listed for each program.

Self Study courses are online courses.

Interested in presenting a CLE? Email cle@maricopabar.org

ATTENDANCE POLICIES

ADVANCE REGISTRATION

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

CANCELLATIONS/REFUNDS

Refunds, less a $25 fee, will be issued only if the MCBA receives your cancellation, by emailing cle@maricopabar.org at least two business days prior to the program.

NO SHOWS

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

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.

TUESDAY ▪ SEPTEMBER 1
11:30 AM - 12:30 PM AZ

Following the Money during Divorce Cases: Hidden Income Analysis and Financial Planning Implications

ONLINE

This program will focus on strategies for attorneys in identifying and analyzing cash flow in divorce cases, with an emphasis on uncovering understated income. We will discuss practical approaches for attorneys in reviewing client financial documents, spending and debt patterns, and overlooked income sources to better understand a client's true financial position.

THURSDAY ▪ SEPTEMBER 10
12:00 PM - 1:00 PM AZ

Arizona Address Confidentiality Program and the Legal System

ONLINE

This program will provide an overview of the Arizona Address Confidentiality Program (ACP) facilitated by the Arizona Secretary of State's Office. Attendees will learn about the ACP processes including certification, address disclosures, and the penalty for releasing an ACP participant's address.

WEDNESDAY ▪ SEPTEMBER 16
12:30 PM - 1:30 PM AZ

MAJOR TRIALS IN JEWISH HISTORY
Part 1 — Public Persecution: Jews on Trial

ONLINE

Join the MCBA and Arizona Jewish Lawyers Association (AJLA) as we partner with the Anti-Defamation League (ADL) for the first in our three-part series examining major trials in Jewish history and the legal implications.

FRIDAY ▪ SEPTEMBER 25
12:00 PM - 1:00 PM AZ

Beyond Bankruptcy: Arizona's New Playbook for ABCs and Receiverships

ONLINE

Arizona recently modernized its insolvency landscape with the introduction of the Uniform Assignment for Benefit of Creditors Act (UABCA) effective September 12, 2026 and the adoption of the Uniform Commercial Real Estate Receivership Act (UCRERA) which has been effective since 2019— two powerful out-of-court alternatives to bankruptcy.

WEDNESDAY ▪ SEPTEMBER 30
12:00 PM - 1:00 PM AZ

Estate and Succession Planning for Solo Practitioners and Small Firms

ETHICS CREDIT ELIGIBLE

ONLINE

This seminar examines whether and how a law firm's ownership—whether a sole proprietor, LLC, PLLC membership interest or PC—may be transferred to a trust for estate planning and succession purposes under Arizona law.

WEDNESDAY ▪ OCTOBER 21
12:30 PM - 1:30 PM AZ

MAJOR TRIALS IN JEWISH HISTORY
Part 2 — The Response to Genocide

ONLINE

Join the MCBA and Arizona Jewish Lawyers Association (AJLA) as we partner with the Anti-Defamation League (ADL) for the second in our three-part series examining major trials in Jewish history and the legal implications.

WEDNESDAY ▪ NOVEMBER 18
12:30 PM - 1:30 PM AZ

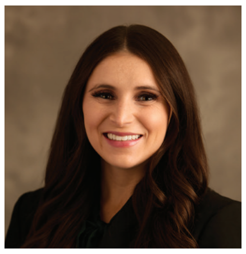
MAJOR TRIALS IN JEWISH HISTORY
Part 3 — Responding to Antisemitism

ONLINE

Join the MCBA and Arizona Jewish Lawyers Association (AJLA) as we partner with the Anti-Defamation League (ADL) for the final program in our three-part series examining major trials in Jewish history and the legal implications.

THE BULLETIN BOARD
News from the legal community

TIFFANY & BOSCO is pleased to welcome Marissa Sternberg as an associate attorney. Marissa will join Nora Jones and Vanessa Heim and their expanding team of professionals, with a practice focused on probate, trust administration, elder law, and trust and estate litigation. Her combined experience in both estate planning and post-death administration gives her a distinctive ability to guide clients through complex estate and trust matters, anticipating challenges before they arise and resolving disputes with clarity and confidence. Tiffany & Bosco is thrilled to have Marissa join this team and commends her dedication, thoughtful counsel, and unwavering commitment to client service.


Marissa Sternberg

MARTIN & BONNETT, PLLC is pleased to announce that Samantha Struve has joined the firm as an associate attorney, bringing valuable courtroom experience and a strong commitment to client advocacy.


Samantha Struve

Prior to joining Martin & Bonnett, Samantha served as a prosecutor in Seattle, where she gained extensive litigation and trial experience representing the public and advocating for justice. Her background as a prosecutor provides a solid foundation for representing clients with skill, preparation, and determination.

Samantha graduated from Seattle University School of Law and earned her Bachelor of Science degree from Arizona State University. She is admitted to practice law in both Arizona and Washington.

"We are excited to welcome Samantha to Martin & Bonnett," said partner, Daniel Bonnett. "Her litigation experience, sound judgment, and dedication to serving clients make her an outstanding addition to our team. We look forward to the knowledge and perspective she brings to the firm."

Samantha added, "I am honored to join Martin & Bonnett and look forward to working with such a talented team. I am excited to put my courtroom experience to work on behalf of the firm's clients and contribute to its tradition of excellence."

Martin & Bonnett continues to expand its team with experienced attorneys who share the firm's commitment to providing exceptional legal representation and outstanding client service.

SPENCER FANE LLP is pleased to welcome two associates to the firm's Litigation and Dispute Resolution Practice Group. Cricket Beeson joins the firm's Phoenix office and Christine Fox joins the Las Vegas office.

Working within the largest national practice group at Spencer Fane, Beeson and Fox will assist clients at all stages of litigation and dispute resolution. Both attorneys join the firm with diverse backgrounds in the arts and public and private legal sectors.

As former Dane County (Wisconsin) Assistant Corporation Counsel, Beeson gained her foundation in trial preparation and litigation by managing a wide range of municipal and civil matters for the county. In private practice, she develops creative, proactive solutions for complex problems.

"We look forward to welcoming Cricket, whose unique professional experience will contribute a new lens to our collaborative work in Phoenix and across our national litigation footprint," said David E. Funkhouser III, office managing partner for Spencer Fane in Phoenix.

Fox helps individuals and businesses navigate business disputes and matters related to employment law, business litigation, and corporate law. She also boasts experience in appellate venues, where she employs her high attention to detail to support in-depth case analyses and form thorough written and oral strategies. She formerly served as a deputy public defender for civil and criminal matters in the Washoe County (Nevada) Public Defender's Office.

"Christine's experience in trial and appellate settings brings well-rounded talent to our team," said Tom Edwards, office managing partner for Spencer Fane in Las Vegas. "We are excited to bring her on board."

Beeson completed her undergraduate studies at Fordham University before earning her master's from Sotheby's Institute of Art in London and, later, her Juris Doctor from the University of Wisconsin Law School. Before attending law school, she worked as a coordinator for the London Art Fair and The Mob Museum in Las Vegas.

After receiving her Bachelor of Fine Arts from the University of Colorado Boulder, Fox earned her Juris Doctor cum laude from Gonzaga University School of Law. While at CU Boulder, she worked as a professional figure skater with Disney on Ice and Rand Entertainment. She also represents Team USA through the U.S. Aerial Federation.

LawPay®

AN AFFINIPAY SOLUTION

+

Maricopa County Bar Association — Founded 1914

Member Benefit Provider

"I love LawPay! I'm not sure why I waited so long to get it set up.

– Law Firm in Ohio

Trusted by 50,000 law firms, LawPay is a simple, secure solution that allows you to easily accept credit and eCheck payments online, in person, or through your favorite practice management tools.

22% increase in cash flow with online payments

Vetted and approved by all 50 state bars, 70+ local and specialty bars, the ABA, and the ALA

62% of bills sent online are paid in 24 hours

YOUR FIRM LOGO HERE

Trust Payment
IOLTA Deposit

New Case Reference

**** **** **** 9995 | ***

TOTAL: $1,500.00

VISA · Mastercard · AMEX · eCheck · DISCOVER

POWERED BY LAWPAY

PAY ATTORNEY

Get started at
lawpay.com/mcba
866-730-4140

Data based on an average of firm accounts receivables increases using online billing solutions.

LawPay is a registered agent of Synovus Bank, Columbus, GA., Fifth Third Bank, N.A., Cincinnati, OH, and Wells Fargo Bank, N.A., Canadian Branch, Toronto, ON, Canada.