articles • case law • resources • events • appellate highlights • announcements

Jones, Skelton & Hochuli

# Reporter

FALL 2018 ISSUE




CELEBRATING 35 YEARS 1983-2018

# TABLE OF CONTENTS
## FALL 2018

## articles



## cases of note



## resources



## announcements



**PARKING MAP AND DIRECTIONS TO JSH**
PAGE 45

# MESSAGE FROM THE EDITOR

EDITOR: Lori Voepel EMAIL: lvoepel@jshfirm.com BIO: jshfirm.com/lvoepel

## Welcome to the Fall 2018 edition of The JSH Reporter.

In this issue, we are pleased to share several resources with you, including appellate highlights from the past six months, seven attorney-authored articles, six case summaries, and firm news and events. Be sure to review the Case Tier Chart on page 11, which provides a simplified, quick reference to the July 2018 amendments to the Arizona Rules of Civil Procedure affecting all civil cases. Our next issue, to be published in Spring 2019, will provide an in-depth analysis of how these changes will affect civil cases throughout the state.

Since our last issue of The JSH Reporter in Spring 2018, JSH has grown to 88 lawyers with the addition of an Of Counsel attorney, three lateral associates and three recent law school graduates. You can read more about them on pages 15-17.

We continue to celebrate the firm's 35th Anniversary with a 7-page feature on our women lawyers at pages 30-36. Read pages 26-27 for an interview and walk down memory lane with JSH's two longest-term employees – one who has been with JSH since 1984 and one who began working with one of our founding partners in 1979.

We hope you enjoy this issue of The JSH Reporter. The Reporter is published as an educational and informational resource, and we want to hear from you! Share your feedback and ideas for future content with me at lvoepel@jshfirm.com or with our editorial team at marketing@jshfirm.com.

Lori Voepel
Partner and *JSH Reporter* Editor

*During Lori's 25 years of practice, she has handled approximately 300 state and federal appeals in virtually every area of law. She also provides appellate guidance to trial attorneys in all stages of litigation, from the pleading through post-trial stages. Contact Lori at 602.263.7312 or lvoepel@jshfirm.com.*

## magazine **contacts**

Published by Jones, Skelton & Hochuli, PLC
40 North Central Avenue, Suite 2700 | Phoenix, Arizona 85004

### contributing authors

**Jefferson Collins, Partner**
**Georgia Staton, Partner**
**William Schrank, Partner**
**Lori Voepel, Partner**
**Mark Zukowski, Partner**
**Jonathan Barnes, Associate**
**Ravi Patel, Associate**
**Cory Tyszka, Associate**

### magazine team

**EDITOR: Lori Voepel, Partner**
602.263.7312 lvoepel@jshfirm.com

**PHOTOGRAPHERS: William Schrank, Partner (Editorial)**
602.263.1766 wschrank@jshfirm.com

**Andrew Uilkie Photography (Attorney Headshots & Cover)**

**DESIGN TEAM:**
**Anna Walp, Marketing & Business Development Manager**
602.263.1769 awalp@jshfirm.com

**Rachel Fitch, Marketing & Media Specialist**
602.263.1798 rfitch@jshfirm.com

To request copies of The JSH Reporter and subscribe to our law alerts and case summaries, email **marketing@jshfirm.com.**

# APPELLATE HIGHLIGHTS

AUTHOR: Jonathan Barnes EMAIL: jbarnes@jshfirm.com BIO: jshfirm.com/jbarnes

**For additional information on the cases summarized below, please contact one of the lawyers in our Appellate Department or visit our website at jshfirm.com/appellate-highlights-reporter-fall-2018.**

April 3, 2018

## *Kisela v. Hughes*

### United States Supreme Court

Qualified immunity applied to officer who shot a woman who was holding a large kitchen knife, had taken steps toward another woman standing nearby, and had refused to drop the knife after at least two commands to do so.

April 3, 2018

## *Walter Ansley v. Banner Health Network*

### Arizona Court of Appeals, Division One

Hospitals' contracts with AHCCCS incorporated federal law, which bars the Hospitals from enforcing liens to recover the balance between what AHCCCS paid and the Hospitals' customary charges from patients who received settlements or damage awards from third-party tortfeasors.

April 12, 2018

## *Gonzalez v. Nguyen*

### Arizona Supreme Court

Defendant is not required to submit additional evidence outside the existing record to establish a "meritorious defense" in responding to a motion to set aside a default judgment under Arizona Rule of Civil Procedure 60(c) (now 60(b)).

(Read more about this case on page 6.)

April 24, 2018

## *Rasor v. Northwest Hospital, LLC dba Northwest Medical Center*

### Arizona Court of Appeals, Division Two

Medical malpractice plaintiff's expert witness was not qualified to opine on the standard of care, but was competent to testify regarding causation.

(Read more about the implications of this decision on page 40.)

May 11, 2018

## *Quiroz v. Alcoa*

### Arizona Supreme Court

Employer who used asbestos materials in its workplace before 1970 had no duty to protect the public from off-site contact with employees who may have been carrying asbestos fibers on their work clothes.

May 31, 2018

## *Donovan v. Yavapai County Community College District*

### Arizona Court of Appeals, Division One

Plaintiff's notice of claim, which described multiple causes of action against multiple public entities but set forth only a single settlement amount—rather than making a separate settlement demand on each entity—satisfied A.R.S. § 12-821.01(A).

June 12, 2018

## *Farmers Ins. Exch. v. EcoDry Rest. Of Arizona, L.L.C., et. al.*

### Arizona Court of Appeals, Division One

Court upheld Insureds' post-loss assignments of benefits, rights and causes of action for breach of contract to water restoration companies, enabling companies to sue Insurer directly to recover unpaid balance of bills.

June 14, 2018

## *Teufel v. American Family/Hanson*

### Arizona Supreme Court

Policy exclusion for personal liability "under any contract or agreement" does not relieve an insurer from the duty to defend its insured, an alleged builder–vendor, against a claim for negligent excavation brought by the home buyer.

June 18, 2018

## *Lozman v. City of Riviera Beach, Florida*

**United States Supreme Court**

Plaintiff did not have to establish a lack of probable cause for his arrest in order to claim that a public entity had him arrested in retaliation for exercising his First Amendment rights.

July 11, 2017

## *Yahweh v. City of Phoenix*

**(Arizona Court of Appeals, Division One)**

Affirming dismissal of claims against the City because Yahweh's notice of claim did not include a sum-certain settlement offer as required by A.R.S. § 12-821.01.

July 5, 2018

## *Kopacz v. Banner Health*

**Arizona Court of Appeals, Division One**

Plaintiff's temporary inability to consider bringing a medical malpractice claim did not toll the statute of limitations.

August 2, 2018

## *Twin City v. Lieja*

**Arizona Supreme Court**

Workers' compensation claimant who settles all of his or her third-party claims is not entitled to a post-settlement trial to determine the percentage of employer fault solely to reduce or extinguish the insurance carrier's statutory lien on the claimant's tort recovery.

August 23, 2018

## *Ryan v. Napier*

**Arizona Supreme Court**

Plaintiff who was bit by police dog cannot assert a negligence claim based solely on the officer's intentional use of physical force.

September 4, 2018

## *Stair v. Maricopa County*

**Arizona Court of Appeals**

Governmental entities did not owe a duty to widow of decedent, who was murdered by a member of a criminal street gang awaiting trial on several felony charges.

JONES, SKELTON & HOCHULI, P.L.C.

# ARIZONA'S APPELLATE ADVOCATES

**EILEEN DENNIS GILBRIDE**
602.263.4430
egilbride@jshfirm.com

**LORI VOEPEL**
602.263.7312
lvoepel@jshfirm.com

**JUSTIN ACKERMAN**
602.263.4552
jackerman@jshfirm.com

**JONATHAN BARNES**
602.263.4437
jbarnes@jshfirm.com

**SEAN MOORE**
602.263.1778
smoore@jshfirm.com

## ABOUT THE AUTHOR **JONATHAN BARNES**

Jon Barnes concentrates his practice on federal and state appeals in all types of civil litigation, including medical malpractice, governmental liability, employment, family law and torts. He also assists trial counsel in preserving the record for appeal, preparing dispositive and post-trial motions, and crafting proposed final judgments.

**602.263.4437 | jbarnes@jshfirm.com**

# CASES OF NOTE: TRIAL COURT DECISIONS

## Bill Caravetta, Kevin Broerman and Justin Ackerman Obtain Favorable Opinion in *Gonzalez v. Nguyen*



**April 2018 | Arizona Supreme Court**

JSH attorneys Bill Caravetta, Kevin Broerman, and Justin Ackerman obtained a favorable Opinion from the Arizona Supreme Court in an important default judgment case, saving their client nearly $1 million in the amount of an excessive default judgment, associated interest, and potential attorney's fees. In *Gonzalez v. Nguyen*, No. CV-17-0117-PR (April 12, 2018), the Arizona Supreme Court reversed the Arizona Court of Appeals and upheld a trial court's decision vacating a default judgment of more than $667,000 in a low speed rear-end accident case.

Quoc Nguyen was driving a van owned by his employer, Dysart Hotel, when he rear-ended Pablo Gonzalez's truck. The police report indicated the crash occurred at 10-miles per hour and "no injury" occurred. Gonzalez sued Nguyen and Dysart, however, alleging the crash caused him extensive injuries requiring surgery and physical rehabilitation, and forced him to retire from the Maricopa County Sheriff's Office. Defendants failed to answer the complaint, though Gonzalez's lawyers repeatedly inquired. A default hearing occurred at which Gonzalez presented evidence and Defendants failed to appear. The trial court entered a default judgment in the amount of $667,279.56. After receiving notice of the default judgment, Defendants filed a Rule 60(c) motion to vacate the judgment's damage award (though admitting liability), which the trial court granted.

On appeal, the Arizona Court of Appeals reversed the trial court's decision and reinstated the default damages. It reasoned that the only extrinsic support Defendants provided for vacating the default judgment was an affidavit from Defendants' insurer's claims manager avowing that the failure to respond was an oversight or administrative error. The claims manager had not offered a substantive defense to the lawsuit. The court of appeals overturned the trial court's decision vacating the judgment because Defendants had not presented a "meritorious defense" to support the motion.

Following oral argument by Justin Ackerman on behalf of Defendants, the Arizona Supreme Court reversed and reinstated the trial court's decision to vacate the default judgment. It held that although a party seeking to vacate a default judgment under Rule 60(c)(6) must show a meritorious defense to the lawsuit, it need not make that showing with extraneous evidence (i.e., an affidavit). It can point to the existing default judgment record and demonstrate that the evidence presented did not support the default judgment amount. Moreover, in this case, the default judgment record itself demonstrated a potential meritorious defense because: (a) the police reports (attached to Dysart's motion) noted the low speed of the Dysart vehicle; (b) Plaintiff did not indicate he was injured at the time of the accident; and (c) Plaintiff had incurred $68,683.58 in medical bills and $42,558.92 in lost wages, which was far less than the default judgment amount. The Court held that "where, as here, the [existing default] record suggests that the judgment amount is excessive, a trial court appropriately may provide Rule 60(c)(6) relief."

## Michele Molinario and Jon Barnes Obtain Successful Outcome in *Dyer v. City of Yuma (Dyer II)*


**June 2018 | Arizona Court of Appeals**

In *Dyer v. City of Yuma (Dyer II)*, the Arizona Court of Appeals affirmed a judgment upholding Officer Dyer's termination. The City of Yuma terminated Dyer based on violations of police department policy, and Dyer appealed to the City's merit board, which recommended Dyer's reinstatement. The City Administrator rejected that recommendation and upheld Dyer's termination, but did so without specifying any findings as required by the governing statute (*Dyer I*). Dyer sued the City, claiming that it was required to reinstate her pursuant to the merit board's recommendation (*Dyer II*). The trial court dismissed Dyer's complaint and upheld the City Administrator's decision. But the Arizona Court of Appeals in *Dyer I* had remanded the termination case based on the City Administrator's failure to specify the statutorily required findings. On remand, the City Administrator upheld Dyer's termination and set forth detailed findings in support of his decision. The trial court then entered judgment, finding that the mandate from *Dyer I* was satisfied, which the Arizona Court of Appeals in *Dyer II* subsequently affirmed.

## Doug Cullins, Ken Moskow and JSH's Appellate Department Achieve Significant Trial Court and Appellate Victory in *Shafer v. Walgreen*


**June 2018 | Arizona Court of Appeals**

JSH attorneys Doug Cullins, Ken Moskow and JSH's appeallate counsel achieved a significant trial court and appellate victory in a premises liability case where the plaintiff invoked the "mode-of-operation rule" and "res ipsa loquitur" doctrine.

Kathleen Shafer alleged that while shopping at a Walgreen store, she removed a glass air freshener refill from a shelf and the product fell from its packaging. The glass refill landed on Shafer's foot, lacerating her left big toe. Shafer did not notice anything wrong with the refill's packaging when she picked it up. No other store customers had ever been injured by a product falling from its packaging.

Shafer sued Walgreen for negligence and sought more than $3 million in damages. Walgreen moved for summary judgment, arguing there was no evidence its employees: (1) created the allegedly dangerous condition; or (2) had actual or constructive knowledge of it. Shafer argued in response that she was not required to prove notice under the "mode-of-operation rule." This rule excuses the "notice" requirement of a premises liability claim against a business only where the business could reasonably anticipate that under its particular mode of operation, hazardous conditions would "regularly occur."

Shafer also argued she was excused from proving notice under the res ipsa loquitur doctrine. The first element of this doctrine requires the plaintiff to prove the accident at issue is a type that ordinarily does not occur in the absence of negligence. After the trial court rejected Shafer's arguments and granted summary judgment to Walgreen, Shafer appealed.

Following oral argument, the Arizona Court of Appeals affirmed in a memorandum decision filed on June 5, 2018. The appellate court agreed with Walgreen that the store could not reasonably anticipate the regular occurrence of a hazardous condition where no customers had ever been injured by falling products before. The mode-of-operation rule therefore did not excuse Shafer from having to prove Walgreen's actual or constructive knowledge of a dangerous condition. The appellate court also affirmed the trial court's rejection of res ipsa loquitur because Shafer presented no evidence to support the first element of that doctrine. Summary judgment for Walgreen was therefore appropriate.

## John Masterson, Michele Molinario and Justin Ackerman Obtain Dismissal of Class Action Lawsuit in *Guillermo Tenorio-Serrano v. James Driscoll, Coconino County Sheriff et. al*



**August 2018 | U.S. District Court, District of Arizona**

John Masterson, Michele Molinario and Justin Ackerman obtained dismissal of a class action lawsuit involving an undocumented alien alleging unlawful detention against the Coconino County Sheriff's Office. On December 11, 2017 Plaintiff Guillermo Tenorio-Serrano was arrested by the Arizona Department of Public Safety for driving under the extreme influence of intoxicating liquor. At the time of his arrest, Tenorio-Serrano blew .203 and .195 on the DPS Intoxilyzer. Tenorio-Serrano was taken to the Coconino County Detention Facility.

On December 12, 2017, the United States Department of Homeland Security, through ICE, sent a Notice of Action – Immigration Detainer and a Warrant for Tenorio-Serrano to the Coconino County Sheriff's Office. The Detainer stated that there was probable cause to believe Tenorio-Serrano was a removable alien and requested the Coconino County Sheriff's Office to maintain custody of him for a period not to exceed 48 hours beyond the time he would otherwise be released in order for ICE officers to take custody of him.

Tenorio-Serrano and the ACLU filed a class action lawsuit against Coconino County Sheriff James Driscoll and Jail Commander Matthew Figueroa, alleging that the Sheriff's policy of holding pretrial detainees after they have satisfied conditions for release on state charges, was unlawful and violated the Fourth Amendment to the United States Constitution and Article 2, Section 8, of the Arizona Constitution. Tenorio-Serrano and the ACLU sought a preliminary injunction ordering his immediate release.

Prior to the lawsuit, Sheriff Driscoll stated that it was his understanding that state law required the jail to cooperate with federal authorities and honor ICE detainer requests. The Sheriff further stated that he intended to cooperate with the lawful requests of federal authorities. He noted that the intent of Arizona state law is for state law enforcement agencies to cooperate with federal agencies enforcing the immigration laws of the United States. The Sheriff also made it clear that "if a court having jurisdiction over us changes the law, we'll change our policy to comply with that immediately."

After legal briefing and oral argument, United States District Court Judge David G. Campbell ruled against the ACLU and Tenorio-Serrano on July 5, 2018. Judge Campbell determined that Tenorio-Serrano and the ACLU did not have "a fair chance of success on the merits" so he denied the request for a preliminary injunction. Judge Campbell noted that the Sheriff would face serious hardship if the court ordered him to refrain from complying with ICE detainers. The Judge further noted that an injunction would interfere with Sheriff Driscoll's judgment as an elected official, would interfere with the Arizona Legislature's policy determination that Arizona should cooperate with federal immigration enforcement officials, and might interfere with Arizona's interest in preventing unlawful immigration as specifically recognized by the United States Supreme Court.

On July 30, 2018, Tenorio-Serrano, through his ACLU attorneys, moved to dismiss the class action lawsuit against the Coconino County officials. On August 20, 2018, Judge Campbell dismissed Plaintiff's lawsuit.

As a result of the District Court's ruling, the Coconino County Sheriff's Office will continue to cooperate with federal authorities and honor ICE detainer requests.

## JSH Attorneys Win on Appeal from New Trial Order Entered Two Years After Defense Verdict in *Sloan v. Farmers Insurance Company of Arizona*



**August 2018 | Arizona Court of Appeals**

Don Myles, Lori Voepel and Ashley Villaverde Halvorson prevailed in an appeal overturning a Rule 60(c)(6) order that had set aside a defense verdict in a bad faith case, which was filed by an insured Plaintiff after her house and vehicles were destroyed by fire in 2009. Following a 24-day trial, the jury issued a verdict in the insurer's favor based on overwhelming evidence establishing that the insurer had acted reasonably: (a) by initially denying Plaintiff's insurance claims (which were paid in full after criminal arson charges against Plaintiff were dismissed in 2010); and (b) by not turning over to Plaintiff its internal fire investigator's preliminary C&O report and insurer's claim file until after privilege issues could be judicially resolved. Nearly two and one half years later, the trial court granted the extraordinary relief available under Rule 60(c)(6), Ariz. R. Civ. P., and set aside the jury's verdict. It did so based upon a 2014 Department of Public Safety Report (DPS Report) finding that two Phoenix Fire Department Captains had committed misconduct in association with their investigation of Sloan's fire and in securing a criminal indictment against Sloan.

In both the trial court and on appeal, the insurer demonstrated that it did not rely on the Phoenix Fire Department (PFD) investigation and/or Plaintiff's indictment to prove an "arson defense." Rather, it presented evidence of the PFD investigation, as well as its own exhaustive claims investigation and other evidence, to prove its conduct was reasonable at the time it initially denied Plaintiff's insurance claims and her request to turn over the insurer's file and report, both of which occurred in 2009 and 2010. The insurer argued that what an agency (DPS) found in a subsequent investigation over four years later is totally irrelevant to what the insurer based its decisions and conduct on at the time it handled Plaintiff's claims. It also argued that the evidence upon which DPS relied was provided to its investigators by Plaintiff. In other words, at the time of her bad faith trial, Plaintiff already had all of the underlying evidence upon which the DPS report was based.

The Court of Appeals agreed with the insurer that the trial court clearly erred and abused its discretion in ordering the extraordinary remedy of a new trial under Rule 60(c)(6). Because Plaintiff already had the underlying evidence at the time of her initial trial, the opinions contained in the report were the only new evidence upon which a re-trial could arguably be based. Yet, the trial court erroneously failed to even determine if the opinions would be admissible at a new trial, which was especially problematic because such evidence is not generally admissible. Moreover, the opinions and conclusions in the report were irrelevant to the central issue of whether the insurer acted reasonably in 2009 and 2010 by initially denying Plaintiff's claim and in not turning over its internal files until privilege issues could be judicially resolved. Finally, the Court of Appeals agreed that the report/opinion would not have made any difference in the verdict. The Court reversed the Rule 60(c)(6) order and remanded to the trial court.

After filing an unsuccessful motion for reconsideration, Plaintiff filed a petition for review in the Arizona Supreme Court, which was denied.

## John DiCaro and JSH's Appellate Department Obtain Summary Judgment in a Premises Liability Case

**August 2018 | Pinal County Superior Court**

JSH attorney John DiCaro worked with JSH's appellate counsel in obtaining summary judgment for their clients in a premises liability case involving a shooting at a storage facility.

A man ("Trespasser") walked uninvited onto the grounds of a storage facility ("Storage Facility") with the intention of scaring a customer ("Customer") of the Storage Facility, who was retrieving stored property. The Trespasser gained entry when someone who lived on the Storage Facility's premises ("Tenant") opened the electronic security gate for someone else, unaware that the Trespasser was also standing by the gate waiting for it to open.

Unbeknownst to the Storage Facility's owner and manager ("Owner") or the Tenant, the Trespasser was enraged at the Customer and planned to confront him at the Storage Facility. The Trespasser told no one about this plan or the fact that he was carrying a concealed gun. After entering the Storage Facility's premises without permission, the Trespasser accidentally shot the Customer in the cheek and neck after pistol-whipping him. The Trespasser is currently serving a lengthy prison sentence.

The Customer sued the Storage Facility, the Owner, the Tenant, and the Trespasser for negligence, premises liability, and vicarious liability. DiCaro moved for summary judgment in favor of the Storage Facility and the Owner on the ground that, even assuming the Tenant was the Storage Facility's employee, the Trespasser's assault was a sudden and unforeseeable attack for which the Storage Facility and Owner could not be held directly or vicariously liable. The trial court granted the motion, ruling there was no evidence the Storage Facility, the Owner, or the Tenant knew or had any reason to know of the Trespasser's assault plan or violent tendencies. The Trespasser admitted he told no one about his intentions.

The court rejected the Customer's theory that a landowner is liable whenever something bad happens on his property, noting that this goes against well-established Arizona law that "the proprietor of . . . business premises is not an insurer of the safety of invitees and is not required at his peril to keep the premises absolutely safe." *Simon v. Safeway, Inc.*, 217 Ariz. 330, 337, ¶ 18 (App. 2007). The court also declined to find the Storage Facility and the Owner liable under a "mode of operation" theory because nothing about the Storage Facility's "mode of operation" would cause it to reasonably anticipate that assaults could regularly occur.

# JSH **RESOURCE ALERT!**

## Law Alerts

JSH Law Alerts are periodic publications that provide summaries and reviews of recent court decisions. In order to provide these Alerts to our clients in a more timely manner, we publish Law Alerts within 48 hours of the case's original publication date. These Alerts are sent to our clients via email, posted to our website, and distributed via social media. To be added to our email distribution list, please send your request to marketing@jshfirm.com. Past Law Alerts are available at jshfirm.com/news.

## Reference Guide to Arizona Law

The firm's Reference Guide to Arizona Law is distributed to clients via print and electronic media. JSH attorneys update the Reference Guide as needed to reflect changes in case law and statutes. The Reference Guide includes a detailed table of contents and case law, and covers most of the major issues that arise in personal injury cases, as well as a short explanation of Arizona law on each point. To receive a copy of the latest version of our Reference Guide, email marketing@jshfirm.com.

## Arizona At-a-Glance: Defense Favorability by County

The firm's At-a-Glance provides analysis of verdict results in each county, and outlines 15 points on the most common questions and issues in personal injury claims. To download a copy of this resource, visit jshfirm.com/Arizona-at-a-glance.

## USLAW NETWORK Releases Four Updated Compendiums of Law

JSH attorneys and summer law clerks served as contributing authors for the Arizona chapters of the below Compendiums. To read and download these resources, visit USLAW.org and search "compendiums."

**Subrogation Rights for Workers' Compensation Liens**
What steps do you need to take to perfect reimbursement? This compendium answers those questions on a state-by-state basis and provides a quick reference for what is often a frustrating experience, obtaining reimbursement for third party acts.

**Nullem Tempus**
At its heart, nullum tempus stands for the doctrine that says the State is not bound by a statute of limitation unless the statute expressly mentions the State by name. Today, the doctrine is justified onthe public policy grounds that public remedies ought not be lost by the failures of public officers to seek timely relief, as they are burdened with serving the public.

**Offer of Judgment**
This compendium provides a state-by-state basis regarding offer of judgments and the procedure and practice set forth in those state's laws.

**Spoliation of Evidence**
The majority of states that have examined this issue, have preferred to remedy spoliation of evidence and the resulting damage to a party's case or defense, through sanctions or by giving adverse inference instructions to juries.

# CIVIL LITIGATION AND CASE PROGRESSION UNDER THE NEW "TIER SYSTEM"

AUTHORS: Lori Voepel & Cory Tyszka EMAILS: lvoepel@jshfirm.com; ctyszka@jshfirm.com
BIOS: jshfirm.com/lvoepel; jshfirm.com/ctyszka

Cases filed in Arizona state courts on or after July 1, 2018 will be assigned a "tier." Plaintiff should plead the applicable tier for the case within the complaint. Within 90 days of filing, the complaint must be served. Within 30 days of service, the complaint must be answered. Defendant should likewise plead the appropriate tier for the case within the answer.

Tier 1 cases are simple cases that involve minimal witnesses and documentary evidence and can be tried within one or two days. These cases typically have damages in the $30,000 to $50,000 range. Tier 2 cases are of intermediate complexity and typically have a moderate amount of documentary evidence, more than a few witnesses, and may or may not involve expert witnesses. These cases typically have damages in the $50,000 to $300,000 range. Tier 3 cases are logistically or legally complex and typically have substantial documentary evidence, many witnesses, expert witnesses, and may require numerous pretrial motions raising complex legal issues. These cases typically have damages greater than $300,000.

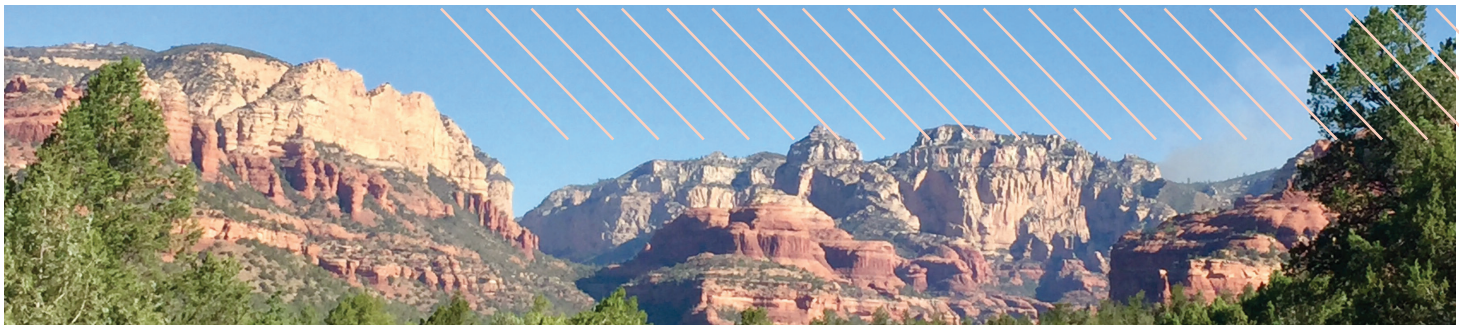
Within 30 days of filing the answer, the parties must engage in an "early meeting." During this required early meeting, the parties must discuss the anticipated course of the case, including the number of witnesses to be deposed, amount of written discovery to be undertaken, motions that may be necessary, deadlines to be set, and any other issue that will help to streamline the case.

The time set for completion of discovery begins from the date of the early meeting. Unless the parties stipulate to additional time, discovery in tier 1 cases must be completed with 120 days; discovery in tier 2 cases must be competed in 180 days; and discovery in tier 3 cases must be completed within 240 days.

Also within 30 days of filing the answer, the parties must serve their initial disclosures. No party can serve any discovery requests until that party has served its initial disclosures. Importantly, all defendants must collectively share in the discovery limits, so defendants should also confer about discovery to be undertaken in order to stay within the limits and avoid duplication. In the event additional discovery is needed, the parties can obtain "overlimit" discovery by stipulation or by motion to the court. A stipulation for overlimit discovery is effective upon filing, unless and until the court denies it. A stipulation or motion for overlimit discovery must be filed before the discovery limits have been exceeded.

In all tiers, the parties must engage in either a court-mediated settlement conference or private mediation before they can go to trial. The settlement conference or mediation must occur within 60 days of the completion of discovery.

Putting these deadlines all together, tier 1 cases should be ready for trial within 8 months from the time the answer was filed; tier 2 cases should be ready for trial within 10 months; and tier 3 cases should be ready within 12 months. These time frames are significantly shorter than what typically occurred under the prior form of the rules. Parties will therefore need to frontload discovery to the extent possible in order to move the cases along expeditiously. Although the parties can stipulate to overlimit discovery – including the time to complete discovery – the courts will want to see that the parties have made good faith efforts to complete discovery within the limits set by the amended rules.



For a more thorough discussion of the new rules, see The JSH Reporter Spring 2018 issue at pages 10-13. An easy-to-use tier chart is set forth below for your reference:

| Tier | Value | Other Case Characteristics | Fact Witness Depositions | Rogs | RFPs | RFAs | Time to Complete Discovery |
|---|---|---|---|---|---|---|---|
| 1 | 0-50K | • Simple cases; can be tried in 1-2 days<br>• Minimal documentary evidence and few witnesses<br>• E.g., auto tort, intentional tort, premise liability, insurance coverage claims | 5 hours | 5 | 5 | 10 | 120 days |
| 2 | 50K-300K | • Intermediate complexity<br>• More than minimal documentary evidence and more than a few witnesses<br>• May include expert witnesses<br>• E.g., multiple theories of liability, counterclaims, cross-claims, and/or request for injunctive relief | 15 hours | 10 | 10 | 10 | 180 days |
| 3 | 300K+ | • Logistically or legally complex and/or with numerous pretrial motions raising difficult or novel legal issues<br>• Voluminous documentary evidence, management of a large number of witnesses or separately represented parties, or require coordination with related pending actions<br>• E.g., class actions, antitrust, multiparty commercials or construction cases, securities cases, environmental torts, construction defect, products liability, medial malpractice, mass torts | 30 hours | 20 | 10 | 20 | 240 days |

## ABOUT THE AUTHOR **LORI VOEPEL**

Lori Voepel leads the firm's Appellate Department. She has handled 300+ federal and state appeals in virtually every area of the law, including governmental liability, medical and legal malpractice, employment law, civil rights, insurance defense and bad faith, product liability, school law, prison liability, administrative law, commercial law, construction law, airline liability, criminal law, workers' compensation, and family law.

602.263.7312 | lvoepel@jshfirm.com

## ABOUT THE AUTHOR **CORY TYSZKA**

Cory Tyszka focuses her practice in the areas of medical malpractice and health care liability defense, products liability, and wrongful death and personal injury defense.

602.263.1739 | ctyszka@jshfirm.com

# BEYOND THE CHARGE: EXHAUSTION OF EEOC ADMINISTRATIVE REMEDIES FOR EVENTS TAKING PLACE DURING THE EEOC INVESTIGATION

AUTHORS: Georgia Staton & Ravi Patel EMAILS: gstaton@jshfirm.com; rpatel@jshfirm.com
BIOS: jshfirm.com/gstaton; jshfirm.com/rpatel

Originally published in the Spring/Summer 2018 Edition of *USLAW Magazine*.

## I. Introduction

The number of charges filed with the U.S. Equal Opportunity Employment Commission ("EEOC") has risen steadily over the past 3 years[1], and is expected to increase further as discrimination in the workplace has received increasingly high profile attention in the media. Before an employee can file a lawsuit alleging employment discrimination or retaliation, he or she must first exhaust their administrative remedies by timely filing a charge with the EEOC within 180 days of the unlawful employment action (or 300 days where a state agency has a workshare agreement with the EEOC).

This requirement serves the important purpose of providing the EEOC an opportunity to investigate discriminatory practices and perform its role of obtaining voluntary compliance and promoting conciliation. See *B.K.B. v. Maui Police Dep't*, 276 F.3d 1091, 1099 (9th Cir. 2002). The requirement also provides notice to the employer of the allegations against it, and allows the employer to respond to the allegations in a position statement.

In 2002, the Supreme Court held that plaintiffs could not pursue claims based on alleged acts of discrimination that took place more than 300 days before their charge was filed. In doing so, the Supreme Court held that "[e]ach incident of discrimination and each retaliatory adverse employment decision constitutes a separate actionable 'unlawful employment practice.'" *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 113-114 (2002). However, the Supreme Court did not explain how to address additional unlawful employment practices which occur after the submission of the initial charge with the EEOC. This raises the question, does an employee have to file a new charge to exhaust his administrative remedies with respect to new discriminatory or retaliatory acts which occur after the employee submits the intial EEOC charge?

Courts disagree on the answer to this question. Relying on *Morgan*, the Courts of Appeal for the Eighth and Tenth Circuits require that an employee who suffers additional acts of discrimination after an initial EEOC charge, file a new charge of discrimination for each subsequent set of discriminatory or retaliatory acts. Other Courts of Appeal disagree, holding that an alleged discriminatory act may be exhausted if the new claims are "like or reasonably related to" the allegations contained in the EEOC charge or were actually investigated by the EEOC during its investigation of the charge.

## II. Discrimination and Hostile Work Environment Claims

The Eighth and Tenth Circuits require strict exhaustion of post-charge claims of discrimination through the filing of a new charge. *Eisenhour v. Weber County*, 744 F.3d 1220, 1226 (10th Cir. 2014) (federal courts lack jurisdiction over incidents occurring after the filing of an EEOC claim unless the plaintiff files a new EEOC claim or otherwise amends her original EEOC claim to add the new incidents); *Richter v. Advance Auto Parts, Inc.*, 686 F.3d 847, 851 (8th Cir. 2012)(accord). However these Courts are in the minority.

[1]See Charge Statistics FY1997-FY2015, available at https://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm

The majority of Courts, including the First, Second, Sixth, Seventh, and Ninth Circuits, in determining whether a new claim was exhausted by an initial charge, consider whether new claims are "like or reasonably related to" the allegations contained in the initial EEOC charge.

In the Ninth Circuit, a claim is "like or reasonably related to" allegations in an EEOC charge if the claims "fell within the scope of the EEOC's actual investigation or an EEOC investigation which can reasonably be expected to grow out of the charge of discrimination." *Lyons v. England*, 307 F.3d 1092, 1104 (9th Cir. 2002) (quotation and emphasis omitted). This means that the facts alleged in the charge must put the EEOC, and by extension, the employer, on notice of the acts that the employee alleges were discriminatory.

In the context of a hostile work environment claim, a district court for the Southern District of California, recently explained the application of this rule.

> An EEOC investigation into a racial discrimination claim can be expected to encompass an investigation into a Plaintiff's hostile work environment claim if (1) the hostile work environment claim is based on facts that would have come to the EEOC's attention during its investigation of the claim for racial discrimination and (2) those facts "would...have put the EEO investigator on notice of a pattern of conduct 'sufficiently severe or pervasive' so as to create an 'abusive work environment.' " *Swinnie v. Geren*, 379 F. App'x 665, 667 (9th Cir. 2010) (quoting *Manatt v. Bank of Am.*, 339 F.3d 792, 798 (9th Cir. 2003)).

*Edge, v. Donahoe*, 15-CV-0353-WQH-KSC, 2017 WL 6541022, at *7 (S.D. Cal. Dec. 21, 2017).

Similarly, the Sixth Circuit recently held that courts may consider both legal theories and acts not specifically alleged in the charge, if they are "reasonably expected to fall within the scope of the original EEOC investigation." *Watson v. Ohio Dep't of Rehab. & Correction*, 690 Fed. Appx. 885, 890 (6th Cir. 2017). However, if the employee files a second EEOC charge, "he must include in it all acts and claims that had occurred since the previous EEOC charge or else he waives them." *Id*.

In the First Circuit, "the scope of the investigation rule permits a district court to look beyond the four corners of the underlying administrative charge to consider collateral and alternative bases or acts that would have been uncovered in a reasonable investigation." *Thornton v. United Parcel Serv., Inc.*, 587 F.3d 27, 32 (1st Cir. 2009). However, the factual statement in the written charge should "alert[] the agency to [the] alternative basis of discrimination" raised by the Plaintiff in court. *Id*.

In the Seventh Circuit, the newly asserted claim and the EEOC charge must, "at a minimum, describe the same conduct and implicate the same individuals." *Huri v. Office of the Chief Judge of the Circuit Court of Cook County*, 804 F.3d 826, 831–32 (7th Cir. 2015).

> **"...FACTS ALLEGED IN THE CHARGE MUST PUT THE EEOC, AND BY EXTENSION, THE EMPLOYER, ON NOTICE OF THE ACTS THAT THE EMPLOYEE ALLEGES WERE DISCRIMINATORY."**

In the Second Circuit, subsequent conduct is reasonably related to conduct in an EEOC charge if: [1] the claim would fall within the reasonably expected scope of an EEOC investigation of the charges of discrimination; [2] it alleges retaliation for filing the EEOC charge; or [3] the plaintiff "alleges further incidents of discrimination carried out in precisely the same manner alleged in the EEOC charge." *Alfano v. Costello*, 294 F.3d 365, 381 (2d Cir. 2002).

## III. Retaliation Claims

The Eighth and Tenth Circuits also require strict exhaustion of post-charge claims of retaliation through the filing of a new charge. Eisenhour, supra, at 1226, (10th Cir.); Richter, supra, at 851 (8th Cir.). However, other Courts of Appeals will allow a plaintiff to bring a claim of retaliation without filing a separate charge with the EEOC.

In the Second, Fifth, Sixth and Seventh Circuits, an employee does not need to file a separate charge to allege retaliation if the protected activity being retaliated against is the filing of a prior EEOC charge. *Alfano v. Costello*, supra, (2d Cir.); *Phillips v. Caris Life Scis., Inc.*, 16-11299, -- Fed. Appx. ---, 2017 WL 5987751, at *3 (5th Cir. Dec. 1, 2017); *Delisle v. Brimfield Twp. Police Dept.*, 94 Fed. Appx. 247, 254 (6th Cir. 2004); *Swearnigen-El v. Cook County Sheriff's Dept.*, 602 F.3d 852, 864-65 (7th Cir. 2010).

However, the Fifth Circuit has narrowed this exception to pure claims of retaliation. See *Phillips*, 2017 WL 5987751, at *3. An employee who alleges an adverse employment action that is both discriminatory and retaliatory must exhaust their administrative remedies by filing a new charge or amending a pending charge. *Id*.

## IV. Practice Tips

The liberal approach taken by the majority of courts in allowing employees to bring discrimination and retaliation claims which occur after the submission of their initial EEOC charge without identifying them in a new charge requires a proactive investigation and defense. Following receipt of a notice of a charge of discrimination, an employer's internal investigation should look beyond the specific allegations in the charge to include conduct which may be related to the charge. This will allow the employer to take prompt action if additional issues are discovered, and to more accurately assess its exposure to these claims.

In cases where employees seek to assert unexhausted claims in litigation, defense counsel needs to be prepared to show that the new claims are outside the scope of the agency's investigation. Counsel should take the following steps upon learning a complaint has been filed to identify the scope of the EEOC investigation:

(1) Promptly request the EEOC's investigative file by submitting a Section 83 request[2];

(2) Analyze the charge, intake questionnaire, notes, correspondence and witness statements to determine what alleged acts were reported to the EEOC; and

(3) Counsel should also check to see whether the EEOC instructed the employee to file an amended charge to address new allegations, and whether the employee complied.

Counsel should then analyze the allegations in the complaint to assess whether it alleges adverse employment actions outside of the scope of the EEOC's investigation.

[2]Section 83 refers to Section 83 of the EEOC compliance manual, which governs the release of the investigative file. To submit a Section 83 request, a Respondent must submit a signed written request to the District Director responsible for the district, field, area or local office where you believe the records are located.

## ABOUT THE AUTHOR **GEORGIA STATON**

Georgia Staton has more than 43 years of trial experience representing governmental entities including the State of Arizona, counties throughout the state and the City of Phoenix, as well as school districts throughout Arizona and privately held corporations. She is a Fellow in the American College of Trial Lawyers and is currently the Arizona State Chair. Georgia is committed to defending clients on issues involving governmental liability, employment law, personal injury and wrongful death claims, as well as matters involving alleged violations of civil rights. She has tried more than 75 cases to verdict in State and Federal court. Many of her cases involve allegations against law enforcement including false arrest, excessive force, pursuit cases and SWAT actions. She has also defended both public and private entities in lawsuits involving Title VII gender and racial discrimination claims, and sexual harassment claims, as well as lawsuits involving the Americans With Disabilities Act (ADA) and Family Medical Leave Act (FMLA).

602.263.1752 | gstaton@jshfirm.com

## ABOUT THE AUTHOR **RAVI PATEL**

Ravi Patel defends clients in matters involving employment and civil rights issues, governmental liability, and education defense. In addition, Ravi has represented corporations, municipalities, and employers in civil rights and employment matters, including Title VII, FMLA, FLSA, ADA, wrongful termination, and in proceedings before the NLRB.

602.263.1738 | rpatel@jshfirm.com

# WELCOME RECENT LAW SCHOOL GRADUATES

Congratulations to our newest associates, Nicolas Martino, Brendan Melander and Alexis Wood. All three were 2017 JSH Summer Associates, where they had the opportunity to observe trials, depositions, mediations, settlement conferences, and arbitrations. In May 2018, Nic, Brendan and Lexi all graduated from the Sandra Day O'Connor College of Law at Arizona State University.

## Nicolas Martino

**Associate**
**nmartino@jshfirm.com**
**602.263.1795**
**jshfirm.com/nmartino**

Nic joins the firm's Transportation, Auto, Products and General Liability Trial Group. During law school, Nic was a member of the Jurimetrics: The Journal of Law, Science, and Technology, Moot Court, Environmental Law Society, and the Corporate and Business Law Society. He earned his Bachelors of Science in Environmental and Water Resource Economics from the University of Arizona.

## Brendan Melander

**Associate**
**bmelander@jshfirm.com**
**602.263.1788**
**jshfirm.com/bmelander**

Brendan joins our General Liability and Auto Defense Trial Group. He received the Daniel Cracchiolo Scholarship and was a two-time Pedrick Scholar Honoree. He was a member of the Sports & Entertainment Law Journal and a Teaching Assistant for Legal Method and Writing. Brendan received his Bachelors of Science in Marketing from Arizona State University graduating *magna cum laude*.

## Alexis Wood

**Associate**
**awood@jshfirm.com**
**602.263.1734**
**jshfirm.com/awood**

Lexi joins our Bad Faith and Extra-Contractual Liability Trial Group. During law school, Lexi participated in the Client Counseling Moot Court Competition and the Oral Argument Moot Court Competition. She was a member of the Women's Law Students Association and was the 2L Class Representative of the Student Bar Association. Lexi earned her Bachelors of Arts in Psychology from Auburn University graduating *summa cum laude*.

# 26 JSH LAWYERS SELECTED TO SOUTHWEST SUPER LAWYERS & RISING STARS

JSH is pleased to announce that 26 of our attorneys have been named to the 2018 edition of *Southwest Super Lawyers* and *Rising Stars*. Each year, no more than five percent of the lawyers in the state are selected by the research team at Super Lawyers to receive the honor of being listed as a Southwest Super Lawyer and no more than 2.5 percent of lawyers in the state are selected as Rising Stars.

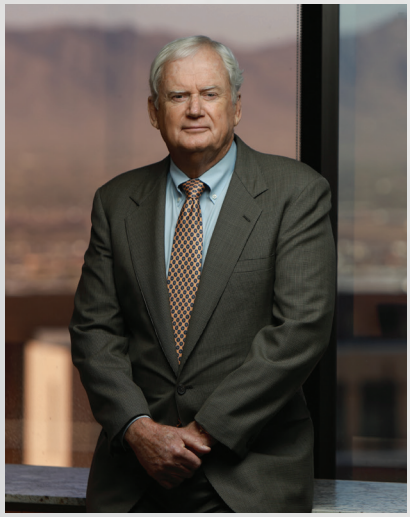
### Southwest Super Lawyers

Donn Alexander
Stephen Bullington
David Cohen
John DiCaro
Eileen GilBride
Edward Hochuli
Gary Linder
Michael Ludwig
Donald Myles
Jay Rosenthal
Russell Skelton
Josh Snell
Phillip Stanfield
Georgia Staton
Lori Voepel
Mark Zukowski

### Southwest Rising Stars

Brandi Blair
Chelsey Golightly
Ashley Villaverde Halvorson
Jeremy Johnson
Daniel King
Kenneth Moskow
Christopher Pierce
David Potts
Erik Stone
David Stout

# JSH WELCOMES FIVE NEW ATTORNEYS



## James Evans

**jevans@jshfirm.com | 602.263.1765 | jshfirm.com/jevans**

During his 36-year career, James Evans has served as lead counsel in more than 100 jury trials. He is experienced in all areas of litigation, focusing primarily in the areas of wrongful death and personal injury, and construction litigation. Jim also served as a judge pro tem for more than 15 years, providing him with a unique perspective, both in front of a jury and behind the bench, and he served as the Chairman of the Governor's Task Force on Tort Reform (relating to claims against governmental entities). He joins the firm's General Liability and Auto Trial Group.

Jim earned his J.D. from Arizona State University, Sandra Day O'Connor College of Law, and his M.A. and B.S. from Northern Arizona University.

## Brad Frandsen

**bfrandsen@jshfirm.com | 602.263.1768 | jshfirm.com/bfrandsen**

Brad Frandsen focuses his practice in the areas of general civil litigation, insurance defense, premises liability and automobile liability defense. Prior to joining JSH, Brad worked for a global tax firm where he focused on tax consulting, compliance and planning related to protecting tax exempt status, including IRS audit defense strategies, tax provision reviews and other federal, state and international tax matters for nonprofit corporations and tax-exempt organizations.

During and after law school, Brad gained significant legal experience in a variety of extern and law clerk positions. He worked as a law clerk at an Employment and Criminal Defense firm; research assistant to a taxation professor at ASU; legal extern for Justice Andrew W. Gould in the Arizona Court of Appeals, Division One; legal intern in the legal department of Clear Channel Outdoor, Inc.; and legal extern with the Tempe City Attorney's Office.

Brad earned his J.D., *cum laude*, from Arizona State University, Sandra Day O'Connor College of Law and his B.S., *cum laude*, in Finance from Arizona State University.

## Derek Graffious

**dgraffious@jshfirm.com | 602.263.1748 | jshfirm.com/dgraffious**

Derek Graffious represents governmental entities in matters involving civil rights, police defense, prison matters, insurance defense, wrongful death, and personal injury, as well as general civil litigation. Before joining the firm, Derek served as a judicial clerk for the Honorable Randall M. Howe at the Arizona Court of Appeals, Division One.

While in law school at the University of Arizona, Derek worked as a law clerk in the Gangs Bureau of the Maricopa County Attorney's Office and as a certified limited practice student for the Child and Family Law Clinic. Derek served as the Vice President of the Student Bar Association and worked as a teaching fellow for undergraduate students. He earned the Chandler/Carroll Public Service Award and the Ralph W. Aigler Memorial Award for the most significant scholarly contribution to the College of Law. While pursuing his undergraduate degree in Psychology, Derek worked as a research assistant in the Legal Psychology Research Lab.

Derek earned his B.S., *summa cum laude,* in Psychology from Arizona State University.

## Courtney Moran

**cmoran@jshfirm.com | 602.263.1744 | jshfirm.com/cmoran**

Courtney Moran works in the firm's Transportation, Auto, Products and General Liability Trial Group. Before joining JSH, she worked for two years as an associate and law clerk for a consumer-focused law firm, representing clients in issues under the Fair Debt Collection Practices Act, Telephone Consumer Protection Act, Electronic Funds Transfer Act, Truth in Lending Act, and Fair Credit Reporting Act. Courtney also worked extensively on class actions.

During law school, Courtney became an Advocacy Fellow of ASU Law and worked as a student mediator in the Lodestar Mediation Clinic at ASU. While there, she led mediations in the Maricopa County Justice Courts and earned her mediation certification. She also served as Associate Editor and Book and Film Review Editor of Jurimetrics: The Journal of Law, Science, and Technology. Courtney was also an active volunteer helping to raise $18,000 for domestic violence shelters and providing pro bono and human rights outreach services in Ipeti Colono, Panama. She earned a double B.A. in Political Science and Philosophy, *cum laude*, from California State University, San Bernardino.

## Kimberly Page

**kpage@jshfirm.com | 602.263.1780 | jshfirm.com/kpage**

Kimberly Page focuses her practice on professional liability, bad faith and complex litigation. Before joining JSH, she gained experience in insurance defense litigation for construction defect and general liability matters, as well as legal writing, depositions, mediations, trial and arbitration preparation, and appeals briefing. While in law school, Kimberly volunteered with the Hofstra Law Criminal Justice Clinic, where she represented indigent clients in the Nassau County District Court and Queens County Criminal Court, providing clients comprehensive legal representation, from initial interview to sentencing.

Kimberly attended Maurice A. Deane School of Law at Hofstra University where she was a 2nd Place Finalist in the New York ABA Labor and Employment Trial Competition and Semi-Finalist in the Hofstra Spring 2013 Intramural Mock Trial Competition. She was also a member of the Hofstra Trial Advocacy Association.

Kimberly received her Bachelors of Fine Arts in Dance Performance from Butler University in Indianapolis.

# COMING FULL CIRCLE: MAKING THE CASE FOR THE RETURN OF THE INITIAL JOINT MEDIATION SESSION

AUTHOR: Mark Zukowski EMAIL: mzukowski@jshfirm.com BIO: jshfirm.com/mzukowski

Early in my career, an initial joint mediation session between the parties, their attorneys and the mediator was the norm, not the exception. Mediators used this initial joint session to educate the parties and attorneys on the differences between litigation and mediation, allowing the mediator to set the stage on how he or she would conduct the mediation. An initial joint mediation session also allowed the attorneys to present their cases to the other side, face-to-face, without their messages being filtered by the mediator or opposing counsel. Finally, it provided the parties an important opportunity to become engaged in the mediation process. Over time, however, an initial joint mediation session conducted by the mediator has become the rare exception. So why the change? And, why am I advocating for the return of the initial joint mediation session?

Before making my case, I will address the most common explanations for why mediators, lawyers and the parties abandoned the initial joint mediation session.

**Mediators contributed to the demise of the initial joint mediation session.** Too many mediators refused to adjust their playbook and script during the mediation process. As mediation became more commonplace, lawyers and their clients became more familiar with the mediation process, making the mediator's long and detailed explanation of the process unnecessary and a waste of valuable time. Less skilled mediators were also more than happy to abandon the joint session in order to avoid losing control.

**Lawyers also contributed to the decline of the initial joint mediation session.** Due to lack of proper preparation and control, lawyers' opening statements during the initial joint session became confrontational and polarizing and, too often, only served to alienate the other side. Mediators often felt, and rightly so, that they were then responsible for undoing the damage done during the initial joint mediation session.

Some lawyers simply refused to give up control over the mediation process. Many feared their clients would say or do something during the initial joint mediation session that would hurt their case. Less skilled lawyers did not recognize the opportunity presented to them by directly addressing the other side, while others did not wish to put in the time necessary to prepare their opening remarks. Still others feared they would be perceived by the other side or their clients as weak if opposed by a more skillful or experienced attorney.

Moreover, the number of lawyers practicing in the Phoenix area has grown exponentially in the past 10 years, bringing about far less familiarity with one another than lawyers used to enjoy .

> "AN INITIAL JOINT MEDIATION SESSION ALSO ALLOWS THE PARTIES TO BETTER EVALUATE WHETHER THE OTHER SIDE IS SERIOUS AND COMMITTED TO FINDING COMMON GROUND. IT MAKES DEFENDING UNREASONABLE POSITIONS MUCH MORE DIFFICULT."

The "fear of the unknown" led to a reduced sense of comfort in participating in an initial joint mediation session.

**Another common justification given by lawyers and mediators for abandoning the initial joint mediation session** was that nothing new was learned, yet mediations took longer and cost more. Many lawyers and mediators also felt litigants would be more candid in private caucuses than in a joint session where the opportunity to advocate, confront and puff was too tempting.

**And so, over time, the initial joint mediation session began to disappear.** Mediators and lawyers settled in to the new comfort zone of mediating cases solely through private caucuses. In doing so, however, mediators and litigants have abandoned a valuable tool in their mediation arsenal. Is there still a place today for the initial joint mediation session in today's legal climate? Can an initial joint mediation session lead to more success in mediation and higher satisfaction with the process? This mediator says yes.

**Allow me to make the case for the return of the initial joint mediation session.** Let's start with the basic tenet of mediation: that it is a voluntary process where parties control their own destiny in reaching a compromise of their dispute. I submit that success in mediation can be enhanced by the initial joint mediation session. In order to maximize mediation success, productive dialogue is essential to allow each side to tell their story and better appreciate the other side's position. An initial joint mediation session also allows the parties to better evaluate whether the other side is serious and committed to finding common ground. It makes defending unreasonable positions much more difficult. Further, in cases where legal issues or a keen understanding of the facts is critical, having the ability to present your case directly to the other side can make the difference between failure and success. There is no better way to test your case or evaluate responses to your position than with the opportunity to speak directly to the other side. An initial joint mediation session can also help discover hidden agendas, wants and needs that can often derail a mediation.

**From a claimant's perspective,** the initial joint mediation session allows a claimant to become more connected with the process. The importance of this cannot be overstated. Too often at the end of a meditation—particularly where the case did not settle—claimants express frustration at not having the opportunity to tell their story directly to the other side. Many claimants need to tell their story—"vent" if you will—before they are emotionally ready to discuss a reasonable resolution of their case.

Claimant attorneys also miss a golden opportunity by foregoing the initial joint mediation session. Good lawyers recognize that in an initial joint mediation session, their target audience is not opposing counsel or even the mediator. Rather, it is the opportunity to directly address the opposing party. What better way to justify a demand than to showcase their client's true and raw emotions? If claimants are sufficiently prepared for the joint session and allowed to tell their story unfiltered by their attorneys, it can have a dramatic impact on the defense. I have witnessed a seasoned defense attorney share tears with a severely injured claimant as the claimant discussed the accident and how their injuries affect them every day of their lives. We all recognize the emotion involved in resolving a case. Many claimants will feel frustrated by not being able to confront the party they believe is responsible for causing their injuries. Likewise, many claimants will be better prepared to discuss settlement in a rational and objective manner once they have had the opportunity to "vent."

**From a defense perspective,** an initial joint mediation session can yield significant benefits. An apology at the start of an initial joint mediation session or explanation of changes instituted to prevent others from being exposed to similar risks made by the litigants themselves can be a powerful message that diffuses anger and leads to case resolution. As an experienced mediator, I have witnessed skilled defense attorneys and, more importantly, their clients, give an honest and heartfelt apology for the accident or incident at hand. When accompanied by a promise to discuss fair compensation for the claimant's injuries, the claimant's emotional roadblock is often diffused and discussion for a rational settlement can commence. An initial joint mediation session also allows a skilled defense attorney to direct his or her message to the litigant without fear that the message will be filtered by opposing counsel or the mediator in private caucus. This ensures that a claimant will be forced to view their case in a light that it will likely be presented to a jury, should the case not settle.

**In cases where an insurance company is involved in the claim,** it is not uncommon that claim representatives have evaluated the case in a vacuum, relying on defense counsel's impression of the

claimant and the case. It is not surprising that the value of a case can change dramatically depending on how a claimant presents. Too often, due to busy schedules and differing geographic locations, claim representatives have less opportunity to meet claimants in person. My experience is that claim representatives can dramatically alter their settlement position during mediation after having an opportunity to interact with and evaluate a claimant across the table. Better to learn that lesson in mediation than at trial.

**Impacting litigants and their attorneys on both sides of the table, communication almost always suffers when the parties are separated.** Messages get filtered, intentionally or otherwise by mediators. Mediators become messengers or worse, unduly insert their evaluation and perspective of the case. Good negotiators want to watch, listen and evaluate the other side's response to their message. This becomes impossible in private caucus.

Where parties wish to maintain an ongoing business or personal relationship, or employment status, an initial joint mediation session should be the norm. Joint sessions can be productive during mediation to address specific hot-button issues, navigate an impasse and explore new settlement options. Joint sessions during mediation help keep the parties engaged. They also assist the mediator in reminding the parties of the progress made during the mediation and to obtain a renewed commitment to the process, all of which can ultimately lead to a successful resolution of the case. Sometimes all it takes is for one side to hear that the other is willing to discuss further compromise if the commitment is reciprocated.

Consider the reasons why cases settle at mediation. With the assistance of a skilled mediator, attorneys and their clients gain a new perspective of their case that can lead to further compromise. A skillfully prepared and presented opening statement in a joint mediation session provides talking points that empower a mediator to solicit changes in settlement positions during private caucuses. An initial joint mediation session, regardless of whether the case settles, also results in a greater sense of satisfaction and fairness when parties are given the opportunity to participate in the process.

**It has often been said that in a majority of cases jurors make up their minds after the opening statements at trial.** So if opening statements at trial are so critical to the success of your case, why give up the same opportunity during mediation? As a trial lawyer, can you ever imagine allowing the trial judge to make your opening statement for you? As trial lawyers, we mourn the loss of control over the voir dire process. Our natural urge is to control every aspect of a jury trial. Why then would we take the opposite approach in mediation?

**Assuming I have convinced you to rethink the joint session in mediation,** how can both parties make the best use of this opportunity? This is where the skill of the mediator comes into play. I am a strong advocate of conducting a pre-mediation session with the attorneys before agreeing to an initial joint mediation session, as it allows me to understand how best to structure the joint session. A successful initial joint mediation session requires the mediator to maintain control over the process. Ground rules should be discussed and agreed on prior to the mediation, and it is always a good idea to review them with the parties and their attorneys at the start of the joint session. The parties and their attorneys should also know that they have the opportunity to end the joint session at any time. The mediator can enhance the value of the joint session by asking pertinent questions, keeping the participants focused and engaged, and reinforcing the nature of mediation—compromise.

**Is an initial joint mediation session recommended for every case?** Clearly no. Cases involving employment discrimination, elder abuse, or physical and sexual abuse, where the parties are so obviously not on a level playing field, are probably not good candidates for joint mediation sessions. It is always important for the lawyers and the mediator to carefully discuss the benefits and potential pitfalls before proceeding with an initial joint mediation session. If properly prepared and controlled, however, an initial joint mediation session can lead to better mediation results.

## ABOUT THE AUTHOR **MARK ZUKOWSKI**

Mark Zukowski has served as an arbitrator and mediator for more than 20 years. He received extensive training through the American Arbitration Association (AAA) and the Straus Institute for Dispute Resolution at Pepperdine University. Mark regularly serves as an arbitrator and mediator in a variety of personal injury and commercial cases.

602.263.1759 | mzukowski@jshfirm.com

# JSH Hires Four Summer Associates

For three months this past summer, Ian, Nicole, Brian and Evann (Pictured Left to Right) joined JSH as summer associates. Our summer law clerk program is designed to introduce law students to private practice firms, giving them an opportunity to explore various practice areas and gain insight into what it's like to be a lawyer at JSH. Law clerks are given the opportunity to observe trials, depositions, mediations and arbitrations, as well as get to know our attorneys and staff at social events hosted throughout the summer.

All four students will receive their juris doctorate Spring 2019.

**Ian Beck** is pursuing his J.D. at Michigan State University College of Law. He is an active member of the St. Thomas More Society and Latino Law Society. Ian is also a Donald Nystrom Best Brief Competition Finalist. Ian graduated *cum laude* from Arizona State University, W.P. Carey School of Business with a Bachelor of Arts in Business Law.

**Brian Cuevas** is earning his J.D. at Sandra Day O'Connor College of Law, Arizona State University. Brian is a member of the Law Journal for Social Justice, Equal Justice Works AmeriCorps, Moot Court, Chicano Latino Law Students Association, Corporate and Business Law Society, and is a Student Ambassador. He is also the recipient of a Merit Based Tuition Scholarship. Brian graduated *summa cum laude* from Arizona State University with a Bachelor of Arts in Justice Studies and minor in Philosophy.

**Nicole Prefontaine** is earning her J.D. at Sandra Day O'Connor College of Law, Arizona State University. She serves as associate editor of the Jurimetrics Journal, is a member of the Corporate and Business Law Society, and was a Fall 2016 Pedrick Scholar. Nicole received her Bachelors of Science in Legal Studies from the University of Wisconsin – Madison.

**Evann Waschuk** is pursuing her J.D. at Sandra Day O'Connor College of Law, Arizona State University. She is a member of the Corporate and Business Law Society, and Sports and Entertainment Law Journal. While earning her Bachelors of Arts *magna cum laude* in Business Administration from Bellarmine University in Louisville, Evann played on the women's tennis team and served as team Captain.

# "AN" VERSUS "ANY": WHEN ONE WORD MAKES A PROFOUND DIFFERENCE IN AN INSURANCE CONTRACT

AUTHOR: **Jefferson Collins** EMAIL: **jcollins@jshfirm.com** BIO: **jshfirm.com/jcollins**

A fundamental principle of insurance is that it provides a safety net for fortuitous events which may create liability against the insured. Equally fundamental is the principle that liability insurance policies do not insure foreseen, expected or intentional acts or omissions of an insured. With regard to a commercial general liability policy, these fundamentals are enshrined in the requirement of an "occurrence," as used in the Insuring Agreement and defined by the policy, and in the exclusion for "expected or intended injury." However, these principles are not always satisfied.

Unfortunately for insurers, there may be certain circumstances based upon specific policy wording in which there is coverage for an insured-employer for its vicarious liability arising out of the intentional and excluded conduct of its employees. This analysis, in Arizona and elsewhere, centers around a single word in the "expected or intended injury" exclusion. The standard exclusion states:

> **Expected Or Intended Injury**
>
> "Bodily injury" or "property damage" expected or intended from the standpoint of [the] [an] [any] insured. This exclusion does not apply to "bodily injury" resulting from use of reasonable force to protect persons or property.

The bracketed words [the] [an] [any] have been assigned significant importance in the case law, and are also at issue in cases examining other liability exclusions. Depending on which word is used in the exclusion, an employer-insured may be covered for the vicarious liability of an employee who acted with intent to cause "bodily injury." This includes cases of clear intent to cause physical harm constituting assault, and this result is contrary to the fundamental insurance principle of protecting against only fortuitous risks.

The Arizona Court of Appeals addressed this issue in *American Family Mutual Insurance Company v. White*, 204 Ariz. 500, 65 P.3d 449 (App. 2003). In White, American Family issued a homeowners policy to its insureds, whose son was indicted on two counts of aggravated assault after assaulting the plaintiff. In the civil litigation, the plaintiff alleged that the insureds were liable for negligent supervision of their son. American Family denied coverage for the claims based upon a "violation of law" exclusion, which excluded bodily injury "arising out of . . . violation of any criminal law for which **any** insured is convicted . . . ." (emphasis added). In *White*, the appellant argued that the severability clause mandates that an insurer determine the applicability of exclusionary clauses separately as to any insured asserting coverage. This clause states, in part, that the rights or duties assigned in the coverage apply "separately to each insured against whom a claim is made or 'suit' 'is brought." As such, the appellant claimed that the exclusion did not apply to the negligent supervision claim against the insureds because only their son was convicted of violating a criminal law.

The court held that the phrase "any insured" in an exclusionary clause means something more than the phrase "an insured." For purposes of this analysis, "the" can be similarly treated as "an." Specifically, the distinction is that [an] refers to one object, and [any] refers to one or more objects of certain type. Therefore, the court held that the phrase "any insured" in an exclusion bars coverage for any claim attributable to the excludable acts of any insured, even if the policy contains a severability clause. Had the phrase read "an insured," the excludable conduct would had to have been attributable to each insured separately.

Arizona courts have not yet addressed this distinction in the context of the "expected or intended" exclusion in a vicarious liability situation. However, there is no indication that an Arizona appellate court would not apply the same rationale adopted in *White* to such an exclusion. This leads to the illogical conclusion that an insurer would have to prove that the employer-insured also acted intentionally to preclude coverage for a purely vicarious liability claim. Because the underlying merits of the vicarious liability claim do not rely upon proof of the employer's mental state, that "intent" will never be at issue and there will always be coverage for the vicarious liability arising out of the non-fortuitous and intentional acts of an employee. Although the separate analysis of each insured's state of mind may be logical in the context of other non-vicarious claims that require an analysis of the insured-employer's separate actions (negligent

hiring, supervision, retention or entrustment), it is not so in the context of a purely vicarious liability claim.

There is some indication from the *White* decision that common law may support application of the exclusion to exclude vicarious liability claims against the insured-employer. After conducting its policy-based analysis, the court held:

> We *also* conclude that the negligent supervision claim against the Wildes is excluded because it derives from the claim against Travis, which is excluded. See *Behrens v. Aetna Life & CAS.*, 153 Ariz. 301, 736 P.2d at 385 (1987) (finding that a claim for negligent entrustment or supervision could not exist apart from the excluded negligent operation of a boat).

*White*, 204 Ariz. at 508. (emphasis added). Based upon this language, the court left open the possibility of a similar challenge to cases involving vicarious liability claims arising out of excluded conduct. That would appear to be an uphill battle given that the primary holding of the court was based upon specific policy language ("any" versus "an") and well-settled analysis in cases across the country. Also, the *Behrens*' decision, cited in *White*, did not involve an analysis of the "any" versus "an/the" issue in conjunction with the severability clause.

Aside from the exclusion in addressing intentional acts, there is the potential coverage argument that the "bodily injury" was not caused by an "occurrence," i.e. an accident. If the bodily injury was caused by the intentional acts of an employee, then it was not accidental. Therefore, it should be a logical extension that any claims arising out of that conduct, including vicarious claims, should not be covered as not qualifying for coverage under the Insuring Agreement. This analysis is independent of the applicability of the exclusion addressed above and was addressed by the United States District Court, District of Arizona, in *National Fire Insurance Company of Hartford v. Lewis*, 212 WL 6552596 (D. Ariz. 2012).

In that matter, National Fire issued a business owners' liability insurance policy to a medical practice. The practice and individual physicians were sued based on allegations that a physician inappropriately viewed and touched patients under the guise of performing legitimate medical treatment, allegedly constituting assault and battery. Further, the practice and other physicians were allegedly vicariously liable for that tortious conduct. The court noted that none of the parties contended that the defendants intended or expected the tortfeasor doctor to do what he did. Thus, while the tortfeasor doctor may have intended his own actions, from the perspective of the other defendants, the actions were "undesigned, sudden and unexpected events" that met the definition of an accident. The court determined that "consequently, there has been an 'occurrence' under the terms of the business owner policies," and the vicarious liability claim qualified for coverage under the Insuring Agreement.

> "ALTHOUGH THE "OCCURRENCE" ANALYSIS ARISES OUT OF COMMON LAW LARGELY BEYOND AN INSURER'S CONTROL, AN INSURER CAN CONTROL THIS RISK BY CHANGING ONE WORD IN THE "EXPECTED OR INTENDED INJURY" EXCLUSION."

*National Fire* is a District Court decision, and that portion of the court's opinion is not premised upon any well-settled Arizona law interpreting whether an "occurrence" could be attributed to an insured-employer in a vicarious liability claim arising out of the intentional conduct of an employee. Thus, there is an argument that this issue remains unsettled in Arizona, and it should be examined by an Arizona state appellate court. Aside from being a co-conspirator, it is difficult to imagine a factual scenario in which an employer-insured intends for its employee to intentionally cause another harm so that the vicarious claim would be considered non-accidental and not covered.

The practical effect of *White* and *National Fire* is that coverage may be afforded under a liability policy for clearly non-accidental conduct. Although the "occurrence" analysis arises out of common law largely beyond an insurer's control, an insurer can control this risk by changing one word in the "expected or intended injury" exclusion. Using "any" as opposed to "an" or "the" excludes all claims arising out of excluded conduct, and fulfills the insurance principle of protection only against fortuitous events.

ABOUT THE AUTHOR **JEFFERSON COLLINS**

Jeff Collins dedicates his practice to representing insurance carriers in coverage-related issues. He helps clients with policy interpretation in the first- and third-party contexts and litigation in various lines of insurance, including commercial, professional and personal.

602.263.7346 | jcollins@jshfirm.com


JS&H
JONE
SKEL
HOC

ES,
LTON &
HULI, P.L.C.

YEARS

JSHFIRM.COM

# INTERVIEW WITH JSH'S TWO LONGEST-TERM STAFF MEMBERS

**Gail Coniglio**
Paralegal

**Ellen Yanok**
Payroll Administrator

JSH continues to celebrate its 35th anniversary this year. Beginning with 12 lawyers and 20 staff members in 1983, JSH has grown to more than 200 lawyers and staff. Here, we feature an interview with two of the firm's longest-term employees—one of whom has been with JSH since 1984, and one who began working with one of the firm's founding partners, Bill Jones, in 1979. The firm is honored to have many long-term employees who have participated in the growth and success of JSH over the years...and we appreciate them all.

## When did you join JSH?

**EY:** I began working with Bill Jones on April 15, 1979 at the age of 17. In 1983, I was asked to come along with the attorneys who were starting Jones, Skelton & Hochuli.

**GC:** I joined Jones, Skelton & Hochuli on January 16, 1984.

## What did you do before joining the firm?

**EY:** I worked for attorney John F. Goodson at Cunningham, Goodson and Tiffany through a program at high school.

**GC:** Prior to that, I worked as a legal secretary for a small law firm in Illinois.

## What was your first role at JSH?

**EY:** Errand runner/copy girl.

**GC:** My first role was legal secretary to an associate who is now the managing partner.

## When did you transition into your current role?

**EY:** The firm started using billing software for their legal invoices, and at that point I moved into what would become the Accounting Department. Prior to that, we had a "time bank" with time slips from which manual bills were typed.

**GC:** In 2001, I transitioned into my current role as paralegal handling civil defense litigation.

## What do you enjoy most about your job?

**EY:** I take pride in being spot on with my financial work for the firm. It's important that they have correct financial information and that's my job!

**GC:** I became a paralegal to do the type of work I like best. I enjoy working up cases and making sure the attorney has as much information as possible to properly defend the client.

## What has changed the most in the past 35 years at JSH and in the legal industry?

**EY:** When the firm was started in 1983, there was an administrator and 2 of us doing billing, accounts receivable, accounts payable...all of it! Now, we in the accounting department are a team of 12, including our Director of Finance, Dana Marinaro. I'm lucky to work with such an awesome group of people.

**GC:** The biggest change at Jones, Skelton & Hochuli in the last 30-35 years has been its growth. The firm started with about a dozen attorneys and has now grown to over 80. The firm utilizes substantially more paralegals now than it did in the beginning and has expanded its areas of practice.

Also, the legal industry has changed significantly with the influx of technology and e-discovery, and is constantly evolving. My role has also changed over the years to keep up with new court rules and procedures.

## What is special about the firm that has kept you here for most of your career?

**EY:** In April 2019, I will celebrate my 40th anniversary. I've been treated like part of a family during my years here, and have a great respect for the people who formed our firm and those who have come and gone over these four decades. Having one of our founding partners pass away in May 2017 was quite a blow and reminded me to take time to appreciate those of us who are still here.

**GC:** The firm has felt like home over the last 34 years.

## In addition to your role as payroll administrator and paralegal, respectively, how else are you involved at the firm?

**EY:** I am the Treasurer for the Charity Committee, ensuring the proceeds of their hard work to help our community are accurately accounted for.

**GC:** In years past, I operated courtroom technology along with my other paralegal duties. I also support the firm's Charity Committee.

## What is something outsiders may not know about the firm?

**EY:** That would be telling secrets and I don't do that!!

**GC:** The firm participates in many charitable activities such as back-to-school drives and adopting families at Christmas. Money is raised through various events throughout the year. Also, staff members donate their paid time off when a co-worker needs extended medical leave.

## What is your favorite memory of JSH?

**EY:** It's hard to pick one memory from 40 years of memories. There are so many and I'm hoping many more to come.

**GC:** I have many favorite memories of Jones, Skelton & Hochuli – the camaraderie between co-workers, and the firm activities and events held throughout the years.

# DEFENDANTS SHOULD PRESERVE "NO-DUTY" ARGUMENTS IN NEGLIGENCE CASES WITH PRETRIAL AND POST-TRIAL MOTIONS

AUTHORS: Lori Voepel & Jennifer Anderson EMAIL: lvoepel@jshfirm.com BIO: jshfirm.com/lvoepel

In *Quiroz v. ALCOA Inc.*, 243 Ariz. 560 (2018), the Arizona Supreme Court clarified the "duty" element of a negligence claim and reaffirmed prior decisions holding that: (1) the plaintiff must prove the duty element in every case because courts will not presume a duty exists; (2) foreseeability is not a factor in determining the existence of a duty; (3) duties are based on special relationships or public policy; and (4) public policy may be expressed in state statutes, federal statutes, or the common law. The court refused to adopt the duty framework set forth in the Third Restatement of Torts, which ordinarily presumes a duty when a defendant's actions create a risk of harm to a plaintiff.

What does this mean in practice? Duty is a threshold issue and "a legal matter to be determined before the case-specific facts are considered." *Gipson v. Kasey*, 214 Ariz. 141, 145, ¶ 21 (2007) (emphasis in original). Therefore, in every negligence case, defendants and their counsel should assess whether the plaintiff was owed a duty of care. If not, defense counsel should file a motion to dismiss, motion for judgment on the pleadings, or motion for summary judgment based on the lack of a duty.

Keep in mind that the denial of one of these pretrial motions is generally not reviewable on appeal, even after a final judgment is entered. See *John C. Lincoln Hosp. & Health Corp. v. Maricopa County*, 208 Ariz. 532, 539, ¶ 19 (App. 2004); *ClearOne Communications, Inc. v. Biamp Sys.*, 653 F.3d 1163, 1172 (10th Cir. 2011). A defendant who wants to preserve a no-duty issue for appeal must do so by reasserting it in a motion for judgment as a matter of law both during and after trial, or in some other post-trial motion. *John C. Lincoln Hosp.*, 208 Ariz. at 539, ¶ 19; see Ariz. R. Civ. P. 50.

There is an exception to this preservation rule for a "purely legal issue" asserted in a summary judgment motion. *Ryan v. San Francisco Peaks Trucking Co., Inc.*, 228 Ariz. 42, 48, ¶ 20 (App. 2011). A "purely legal issue" is "one that does not require the determination of any predicate facts." *John C. Lincoln Hosp.*, 208 Ariz. at 539, ¶ 19. Whether a duty exists is arguably a "purely legal issue." But it is still the better practice to reassert a no-duty argument in a Rule 50 motion if a pretrial motion is unsuccessful. The JSH appellate practice group stands ready to assist the firm's trial attorneys and their clients with such motions, and with any other pretrial or post-trial motions that need to be filed.

## ABOUT THE AUTHOR **LORI VOEPEL**

Lori Voepel has handled more than 300 state and federal appeals in virtually every area of law. She also provides appellate guidance to trial attorneys in all stages of litigation, from the pleading through post-trial stages. She serves as the Chair of the firm's Appellate Department

**602.263.7312 | lvoepel@jshfirm.com**

## ABOUT THE AUTHOR **JENNIFER ANDERSON**

Jennifer Anderson is a former associate in the firm's Appellate Department. After five years working at JSH, Jennifer recently accepted a position at the Arizona Center for Law in the Public Interest.

# 22 JSH ATTORNEYS NAMED IN THE 2019 EDITION OF BEST LAWYERS IN AMERICA®

Twenty-two of the firm's partners were recently selected by their peers for inclusion in the 2019 edition of *Best Lawyers in America*®. Partner Jeff Collins is making his first appearance in *Best Lawyers in America*®.

**Robert Berk**
Recognized since 2014
Product Liability Litigation - Defendants

**Stephen Bullington**
Recognized since 2009
Medical Malpractice Law - Defendants

**David Cohen**
Recognized since 2018
Medical Malpractice Law - Defendants

**Jefferson Collins**
Recognized since 2019
Litigation - Insurance
Personal Injury Litigation - Defendants

**James Curran**
Recognized since 2018
Commercial Litigation

**Gregory Folger**
Recognized since 1995
Workers' Compensation Law - Employers

**Eileen Dennis GilBride**
Recognized since 2009
Appellate Practice

**Michael Hensley**
Recognized since 2018
Insurance Law
Litigation - Insurance

**Edward Hochuli**
Recognized since 2003
Insurance Law
Personal Injury Litigation - Defendants

**William Holm**
Recognized since 2014
Insurance Law
Litigation - Insurance

**Gordon Lewis**
Recognized since 2007
Education Law
Employment Law - Management
Litigation - Labor and Employment

**Gary Linder**
Recognized since 2016
Personal Injury Litigation - Defendants

**Michael Ludwig**
Recognized since 2014
Construction Law

**John Masterson**
Recognized since 2003
Personal Injury Litigation - Defendants

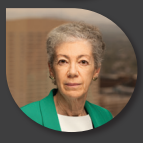
**Ryan McCarthy**
Recognized since 2016
Product Liability Litigation - Defendants

**A. Melvin McDonald**
Recognized since 2014
Criminal Defense: General Practice

**Donald Myles**
Recognized since 2013
Insurance Law
Litigation - Insurance

**James Osborne**
Recognized since 2003
Commercial Litigation

**Russell Skelton**
Recognized since 1995
Medical Malpractice Law - Defendants
Workers' Compensation Law - Employers



**Georgia Staton**
Recognized since 2015
Employment Law - Management

**Lori Voepel**
Recognized since 2018
Appellate Practice

**Mark Zukowski**
Recognized since 2018
Arbitration

# IN HER OWN WORDS:
# JSH'S WOMEN LAWYERS

JSH & WOMEN LAWYERS WOMEN LEADERS

In our Spring 2018 issue of The JSH Reporter, we began our celebration of the firm's 35th anniversary with a focus on our founding partners and the women lawyers who helped to lay our firm's foundation. In this issue, we are proud to feature each of our accomplished women lawyers with this Q&A-style profile.

## BRANDI BLAIR
### PARTNER

PREMISES LIABILITY & PROFESSIONAL LIABILITY
JOINED JSH IN 2008
JSHFIRM.COM/BBLAIR

**What do you think it takes to be a successful lawyer?**
There are so many paths to success in the legal field. For me, the phrase that comes to mind is one that I first heard from my drill sergeant—"internal fortitude." There are a lot of highs to ride in litigation. There are big wins, exciting challenges, and new clients. But the real work occurs when you are on the mats and bleeding. And you will be on the mats and bleeding. That's when you have to steel yourself, check your ego, stand back up, and find a way to keep fighting.

**What is special about JSH that has kept you here for 10 years?**
I know it sounds trite, but the people have kept me at JSH. I have always felt lucky to work at a firm that has so many talented people willing to teach me, to challenge me, and sometimes just put up with me.

**What is the most valuable career advice anyone's ever given you?**
This one is easy. On my first day of practice, Ed Hochuli told me to always remember that it's a marathon, and not a sprint. This is a profession that can be grueling. It takes endurance and an eye on the long game. If you expect consistent and instant gratification in your cases or your career development, you're never going to get where you need to be.

**What advice would you offer to those considering or pursuing a career transition into law?**
I started in the military, and transitioned into law after my term of service. The fact that I came into practice in a nontraditional way added a lot of depth to my practice. A greater breadth of experience is an asset in a career that demands a deep understanding of all sorts of people, with all sorts of conflicts and issues.

## CRISTINA CHAIT
### PARTNER

MEDICAL MALPRACTICE DEFENSE
JOINED JSH IN 2000
JSHFIRM.COM/CCHAIT

**Leadership at JSH:** Medical Liability & Health Care Trial Group Leader; Diversity Committee Member

**What recommendations would you offer new law graduates?**
Try all areas of the law! I went to law school to be a tax lawyer and now I practice medical malpractice litigation. When a job opportunity came up to try health care issues, I thought it would be advisable to round out my experience and have never left the area of practice after 25 years. At the beginning of a practice, try as many areas of the law as are available to you.

**By what standards do you measure success?**
The best compliment you can receive is that you are fair and professional. It is easy to fall into the category of being such an advocate that you forget to be professional to those who we work with and against. It's a long career if you are lucky, and you will run into the same people for many years. Practice as if you will need someone to extend courtesy and professionalism to you someday as well.

## KATHLEEN ELDER
### PARTNER

MEDICAL MALPRACTICE DEFENSE
JOINED JSH IN 2002
JSHFIRM.COM/KELDER

**What is most rewarding about practicing law?**
Practicing in the field of medical malpractice, I have the honor of defending professionals that have devoted their lives to helping others navigate through sickness and illnesses that their patients often do not understand. These professionals often

spend more time in hospitals and medical offices than they do with their own families. Having a lawsuit or board complaint filed against a professional is often one of the most trying times of their career, and has caused many a professional to feel like giving up being a physician or nurse, or being suspicious of all patients that walk through the door. I find it very rewarding to help guide clients through the process of litigation, letting them know what to expect, and helping them come to a resolution, whether that be through settlement or trial. There is nothing more rewarding than getting a client through several weeks of trial, facing a jury, and obtaining a defense verdict.

**Who mentored you or most influenced your legal career?**
We have a number of outstanding lawyers here at JSH who I have turned to throughout my career for different reasons. That is one of the best things about working at JSH. Although an issue may be new to you, chances are good that one of our other partners have faced a similar issue and can provide some guidance. That said, the attorney who most influenced me and my career was Bill Jones. I had the opportunity to train under Bill, as well as go to trial with him over the years. His dedication to his clients and passion for the law itself was inspiring and made me want to better my skills every day. If you had a question or dilemma, he always took the time out of his busy day to give advice and help you through it. He also had a way of pushing you to find your own voice, your own way of doing things, rather than trying to emulate someone else's style. Finally, he taught me that the most important thing you have as a young attorney is your credibility. His words, dedication, and inspiration will always be with me.

## EILEEN GILBRIDE
### PARTNER

APPELLATE
JOINED JSH IN 1993
JSHFIRM.COM/EGILBRIDE

**Leadership at JSH:** Management Committee Member; Marketing Committee Member

**What brought you to your specific practice area?**
I clerked on the Arizona Court of Appeals and the Arizona Supreme Court and loved it. I especially enjoyed the one-on-one interaction I had with the judges and justices, debating issues and getting their views on the legal issues. Also, writing is my thing. I love the art of turning a phrase to make a point not only understandable, but vivid.

**By what standards do you measure success?**
In my view, I am successful when I go to bed at night feeling that I have taken care of my family, that I have met the challenges of my work with focus, intelligence and creativity, that I have treated others with respect, and that I have given of myself to make a little piece of the world a better place.

**What is special about JSH that has kept you here for 25 years?**
The people. Folks here are not only genuinely caring, but they are extremely good at what they do, and everyone works together as a team. When I couple this environment with my affection and aptitude for appellate work, I feel like the luckiest lawyer in the state to be able to do what I do here at the firm.

## ASHLEY VILLAVERDE HALVORSON
### PARTNER

BAD FAITH AND EXTRA-CONTRACTUAL LIABILITY
JOINED JSH IN 2009
JSHFIRM.COM/AHALVORSON

**Leadership at JSH:** Diversity Committee Member

**Leadership outside JSH:** Los Abogados President

**Who mentored you or most influenced your legal career?**
**JSH Partners** Josh Snell and Don Myles have been mentors. Both were incredibly generous with their time and I made full use of it! Mentoring is such an important part of developing as an attorney, and I'm glad to now be able to pass it down to new attorneys. Our firm is built on this model.

**What do you think it takes to be a successful lawyer?**
A mindset of service and problem solving.

**What advice would you give other lawyers on finding balance between your demanding law firm life and life away from the office?**
There is no balance. Just do your best and don't be too hard on yourself.

**What is special about JSH that has kept you here for 9 years?**
Definitely the people and collegiate culture. We have many talented attorneys who are invested in our collective success.

**How do you most like to spend your free time?**
We have a 2-year old and a 5-month old. There is no free time! When we can, we like to spend time in the mountains or by the beach.

## MICHELE MOLINARIO
### PARTNER

GOVERNMENTAL LIABILITY & EMPLOYMENT DEFENSE
JOINED JSH IN 2008
JSHFIRM.COM/MMOLINARIO

**Leadership at JSH:** Trial Group Leaders Chair; Governmental Liability & Employment Trial Group Co-Chair; Marketing Committee Member

**When did you first become interested in law?**
While I was a senior in high school, I worked part-time for the City of Tempe in the Human Resources Department. I may not have realized it then, but the exposure to personnel issues in the Human Resources Department led to my interest in employment law. After high school graduation I accepted a full-time administrative civilian position with the Tempe Police Department. I knew right away that I was interested in the law. During my time with Tempe Police, I observed police practices, defensive training, and investigative techniques, which sparked and deepened an interest in constitutional law.

**What brought you to your specific area of practice?**
Little did I know in high school, when I began my employment with the City of Tempe, that my interest in employment issues and police practices would lead me to develop a unique legal practice that focuses on employment law and law enforcement defense. My prior work experience led to my decision to go to law school and more importantly, heavily influenced my entire legal career path.

**What do you think it takes to be a successful lawyer?**
A genuine passion for the work you do and the people you represent.

## GEORGIA STATON
### PARTNER

GOVERNMENTAL LIABILITY & EMPLOYMENT DEFENSE
JOINED JSH IN 1984
JSHFIRM.COM/GSTATON

**Leadership at JSH:** Governmental Liability & Employment Trial Group Co-Chair

**Leadership outside JSH:** American College of Trial Lawyers (ACTL), Chair of Arizona State Committee

**Who mentored you or most influenced your legal career?**
In 1974 when I was sworn in as a prosecutor in Kansas, there were no mentors. It was just sink or swim. When I joined JSH in 1984, I worked closely with Bill Jones and took my cues from him. He was very helpful as I transitioned from public to private practice.

**What do you think it takes to be a successful lawyer?**
A love of what you are doing. If you don't love it, then you will be miserable. If you do, you will thrive.

**What brought you to your specific practice area?**
Serendipity. Defending governmental entities (civil rights, employment, etc.) seemed natural given my background as a prosecutor.

**What advice would you offer to those considering or pursuing a career transition into law?**
Know that you hold people's lives, reputations and fortunes in your hands, and act accordingly. Understand that this is a profession, not an "industry." Recognize the role of lawyers in society, and if you cannot commit to spending the time and effort to make the rule of law work, then look elsewhere.

## LORI VOEPEL
### PARTNER

APPELLATE
JOINED JSH IN 2005
JSHFIRM.COM/LVOEPEL

**Leadership at JSH:** Chair of Appellate Department; Charity Committee Member; Editor of The JSH Reporter

**Leadership outside JSH:** Horace Rumpole Inn of Court, Program Chair

**What recommendations would you offer new law graduates?**
Very few attorneys know the type of law they want to practice when they first graduate from law school. That's why I recommend that recent grads look for opportunities where they will receive mentoring and an opportunity to grow and develop their skills. To identify those potential firms, I think it is wise for new attorneys to research a variety of public and private firms and seek input from their law professors (and attorneys or judges they might know) to see which firms offer good training and mentoring.

**When did you first become interested in the law?**
Before college, I worked in radio broadcasting for eight years, first as an announcer while in high school, then as news director, sales manager, and ultimately, general manager of two radio stations. Part of my job as news director was to cover city council and school board meetings, police and fire, the state legislature and congress, and elections. This is where my interest in the law first took hold. That interest grew when I went to college and joined the debate team. My last year in college, I was selected to serve as a legislative intern in the Arizona House of Representatives. That experience reinforced my desire to become an attorney.

**What advice would you give other lawyers on finding balance between your demanding law firm life and life away from the office?**
There is no such thing as "perfect" balance. In addition to my appellate law practice here at JSH, I am a wife and mother of a 9-year-old daughter who is involved in numerous activities. Learning to balance my law practice, professional

commitments, family life and business development has been challenging. I have fortunately come to realize that achieving all these goals does not require me to become "superwoman." Instead, it has required me to develop and use organizational and business development tools based on my own personality and needs, setting specific goals for myself, and learning how to network with other women lawyers for support and referrals. I am always busy, but I love having a full life, especially where it means enjoying the appellate practice I love and the rewards of motherhood I cherish.

**What advice would you offer to those considering or pursuing a career transition into law?**
Everyone brings something unique to the practice of law based on their own backgrounds and experiences. My experiences in broadcasting, on the debate team, as a legislative intern, and as a criminal trial and appeals lawyer, all combined to make me the appellate lawyer and professional I am today. Identify your strengths and build on them, and make your practice your own. Only then will you achieve true satisfaction as an attorney.

## DIANA ELSTON
### ASSOCIATE

GENERAL LIABILITY
JOINED JSH IN 2012
JSHFIRM.COM/DELSTON

**What advice would you offer to those considering or pursuing a career transition into law?**
In considering a transition into the legal field, I have realized that it is never too late to change careers. I spent a few years teaching before going to law school, and I've found that the experience I gained as a music teacher has been very valuable as an attorney. The maturity and perspective that comes with having a prior career can really be an advantage. Teaching helped me learn interpersonal skills and the value of a solid work ethic. I always advise looking at the economic aspect of law school, but if it is financially feasible, I think the life experience gained from a prior career can be an advantage that cannot be gained any other way.

**What is special about JSH that has kept you here for six years?**
The people. I have the opportunity to work with people who are fantastic attorneys. This gives me positive role models to look up to, learn from, and collaborate with every day.

## ELIZABETH GILBERT
### ASSOCIATE

MEDICAL MALPRACTICE DEFENSE
JOINED JSH IN 2012
JSHFIRM.COM/EGILBERT

**By what standards do you measure success?**
I measure my success by whether I have been able to meet the needs and expectations of my clients. In order to be successful, we have to know what the client determines to be a successful outcome and then strive to meet that goal. In my career, I have had a number of different types of clients. As a prosecutor, I didn't have a "client," but considered the victim(s) and the community to be the individuals whose interests I needed to serve and would prosecute based on the best interests of those groups. In private practice, I always strive to determine the goal of the client and then prepare my case in an effort to meet those goals. If the client is satisfied that the goals have been met and is happy with the ultimate outcome of the matter, then I have achieved success.

**What advice would you give other lawyers on finding balance between your demanding law firm life and life away from the office?**
Don't beat yourself up for wanting to have a life outside of your practice. I believe in order for you to be a successful lawyer, you have to be a well-rounded and happy person. You have to give yourself permission to take time for yourself and engage in activities that bring you joy, in whatever form that takes. As women, we all too often put everyone else's needs, e.g. family, clients, bosses, etc., ahead of our own, leaving no time to take care of ourselves. When we do that, we actually short-change everyone in our lives. We have to make time to take care of ourselves so that we can continue to meet the needs of the other people in our lives. To keep this balance for me, I specifically plan for those "non-work" events that bring me joy and do not allow work to interfere with those plans, unless it is absolutely necessary. This has brought balance to my life and, I think, made me a better lawyer for my clients.

**What is special about JSH that has kept you here for six years?**
JSH has provided an atmosphere of openness and acceptance to allow me to build my practice and balance having a life outside of my practice. JSH fosters an environment of collaboration, which has allowed me to learn from many exceptional trial attorneys and, at the same time, has allowed me to share my experiences with others so that we all can raise the level of service provided to our clients. Additionally, JSH values the viewpoints and experiences that I bring as a female attorney, and supports and promotes using those assets for the benefit of our clients and the firm as a whole.

## CHELSEY GOLIGHTLY
## ASSOCIATE

GENERAL CIVIL LITIGATION, & WRONGFUL DEATH & PERSONAL INJURY DEFENSE
JOINED JSH IN 2012
JSHFIRM.COM/CGOLIGHTLY

**Leadership at JSH:** Recruiting Committee Member; Diversity Committee Member; 401k Committee Member

**Leadership outside JSH:** Fiesta Bowl Committee; Association of Defense Trial Attorneys (ADTA) Social Media Chair

**What is the most valuable career advice anyone has given you?**
In a word, listen. You have to understand who you are talking to and respect your audience. Whether you're speaking with a client, arguing in front of the court, or having a conversation with opposing counsel, the more you listen and try to understand something from a different perspective, the more effective you'll be as an advocate.

**What do you think it takes to be a successful lawyer?**
You have to be willing to work hard and love what you do. Being an attorney is not intuitive. You have to be willing to admit that you know nothing at the outset and act accordingly. Ask questions, shadow other lawyers, watch and learn. You also have to be passionate about what you are doing. In my experience, the best lawyers are the ones who you can tell genuinely love what they are doing and are invested in the outcome.

**What recommendations would you offer recent law school graduates?**
I've been on the firm's recruiting committee since shortly after I started with JSH almost seven years ago. One comment that I hear frequently within the legal community is that no one wants to work hard anymore (sorry, millennials). It's nonsense. My advice is to prove them wrong. Put in the time and get involved on your firm's committees and within the community. The more effort you put in, the less people will care about what year you were born.

## COURTNEY MORAN
## ASSOCIATE

TRANSPORTATION & AUTO LIABILITY DEFENSE
JOINED JSH IN 2018
JSHFIRM.COM/CMORAN

**What advice would you give other lawyers on finding balance between your demanding law firm life and life away from the office?**
Reflection and awareness are essential to finding balance. At the end of every week, set aside some time to reflect on areas that you want to improve. During this reflection time, ask whether you are satisfied in not only your work and law firm life, but also in your finances, personal growth, attitude, health, family, relationships, and social life. If not, make time during the following week for that particular area which can use improvement. Such reflection and awareness will identify what feels unbalanced and what actions and choices can be made toward balance.

**What is the most valuable career advice anyone has given you?**
Always have a three, five, and ten-year career plan. Have these plans written down, remind yourself of these plans often, and do not be afraid to change them.

**What recommendations would you offer recent law school graduates?**
I highly recommend that new graduates find a mentor who is successful and enthusiastic, who is willing and able to provide guidance, and who will take a personal interest in your success.

## KIMBERLY PAGE
## ASSOCIATE

PROFESSIONAL LIABILITY DEFENSE
JOINED JSH IN 2018
JSHFIRM.COM/KPAGE

**What advice would you give other lawyers on finding balance between your demanding law firm life and life away from the office?**
Aside from times when you are expecting an important email, avoid over-checking your email when you are done working for the day. Reading a cranky email sent after business hours will only ruin your night and often does not require an immediate response.

**What recommendations would you offer recent law school graduates?**
I would recommend trying to work for an insurance defense firm right out of law school. The nature of this work instills good time-keeping habits, organization, and the experience of managing different audiences (carrier, client, opposing counsel, court).

## CLARICE SPICKER
## ASSOCIATE

TRUCKING & TRANSPORTATION LIABILITY DEFENSE
JOINED JSH IN 2013
JSHFIRM.COM/CSPICKER

**Who mentored you or most influenced your legal career?**
This is a hard question. I have had many mentors during my five plus years at the firm. I have had partners and associates alike who have taken the time to invest in my career and success as a lawyer. Overall, I would have to say Phil Stanfield has mentored and influenced my career the most. He is brilliant and very direct in his style of lawyering. He has invested in me and my work, and has provided a constructive environment in which I can excel.

**What is special about JSH that has kept you here for five years?**
Hands down the culture and the atmosphere. This is an environment where you get to participate and learn about the law and litigation very quickly. Everyone here is supportive of each other and wants to see each other succeed; that is how the firm is ultimately successful. The close relationship amongst colleagues creates a refreshing work environment.

## ERICA SPURLOCK
## ASSOCIATE

TRUCKING & TRANSPORTATION DEFENSE
JOINED JSH IN 2015
JSHFIRM.COM/ESPURLOCK
JOINED JSH IN 2015

**Leadership at JSH:** Recruiting Committee Member

**Leadership outside JSH:** Club Basketball Coach, Girls, 5-6th Grade and 7-8th Grade teams

**Who mentored you or most influenced your legal career?**
My mom graduated from law school in Arizona in the 1980s and spent her early career in large, corporate law firms before moving over to the AG's Office and then, for the last 12 years, working for herself. My mom excelled in the law during a time when firms mandated women wear pantyhose every day (even during the hot Arizona summers!) and women were treated quite differently from their male colleagues. She has – and continues to have – an outstanding trial record and career, and is a wonderful example to me of how to be a career woman who balances family, community involvement, travel and dog-sitting her grand-dog with ease. If I can navigate my practice with even half of the victories and poise she has, I will consider it a true success.

**When did you first become interested in law?**
My favorite bedtime stories growing up were based loosely on the personal injury cases my dad handled as a young lawyer. I recall one where a TV fell off the back of a pick-up truck on the freeway injuring the driver of the vehicle behind him. I was maybe three years old at the time... need I say more?

**What brought you to your specific practice area?**
Coincidence landed me into the Transportation and General Liability trial group when I started at JSH, but it was a combination of the remarkably supportive partners I work with and a fascination with the industry that has kept me interested in trucking and transportation.

## LINDA TIVORSAK
## ASSOCIATE

TRUCKING & TRANSPORTATION LIABILITY DEFENSE
JOINED JSH IN 2013
JSHFIRM.COM/LTIVORSAK

**What do you think it takes to be a successful lawyer?**
Being able to relate and talk to people, accepting criticism, and realizing that you (the lawyer) are usually not the most important person in the case.

**What advice would you give other lawyers on finding balance between your demanding law firm life and life away from the office?**
No one ever looks back at life and says, "I wish I had worked more." Work hard, but take time to do things that keep you sane and balanced. You can't be a good lawyer if all you do is spend all your time in the office or working.

**What is the most valuable career advice anyone has given you?**
Don't type in all-caps or over use "ASAP"—it doesn't work, and no one likes it.

## CORY TYSZKA
## ASSOCIATE

MEDICAL MALPRACTICE DEFENSE
JOINED JSH IN 2015
JSHFIRM.COM/CTYSZKA

**Leadership outside JSH:** AWLA Maricopa Chapter Steering Committee

**What is the most valuable career advice anyone has given you?**
Good luck comes to those who work hard.

**What is most rewarding about practicing law?**
It is rewarding to help clients through one of the most difficult times of their lives, when they are most vulnerable because their professional competence is being questioned on a public stage. I appreciate the opportunity to give back to the healthcare profession in a meaningful way, since those in it provide such a valuable service to society.

**What brought you to your specific practice area?**
I have always loved science and at one point I had considered applying to medical school. I ended up taking a different path, but defending healthcare liability cases allows me to combine my love of the law with my interest in medicine.

## LAURA VAN BUREN
### ASSOCIATE

BAD FAITH AND EXTRA-CONTRACTUAL LIABILITY
JOINED JSH IN 2017
JSHFIRM.COM/LVANBUREN

**What brought you to your specific practice area?**
I knew that I wanted to be a litigator after a summer internship with the Scottsdale City Attorney's Office. I was fascinated watching depositions and hearings, and helping prepare for trial. When I returned to ASU law school, I had the opportunity to take a number of litigation- and trial-oriented classes with some of the best trial attorneys in Phoenix. At JSH, I am in the professional liability, bad faith, and complex litigation trial group, and it is the perfect fit for me. I love helping clients work through complex legal and factual issues and develop a winning strategy. Every case brings a unique set of issues and challenges, and I thrive on the intellectual challenge and opportunity to craft creative arguments.

**Why did you join JSH?**
The partners at JSH have unparalleled litigation and trial experience. They give associates the chance to make meaningful contributions to all types of cases, while also providing invaluable mentorship and career guidance. JSH also takes education of associates very seriously, and I am learning and improving my legal skills every day.

## ALEXIS WOOD
### ASSOCIATE

BAD FAITH AND EXTRA-CONTRACTUAL LIABILITY
JOINED JSH IN 2018
JSHFIRM.COM/AWOOD

**When did you first become interested in law?**
My mom is also an attorney. I remember going to work with her when I was a kid, and she would let me look up words in her Black's Law Dictionary. I have wanted to be a lawyer ever since.

**Why did you choose to join JSH after law school?**
Throughout my time in law school, I had always been defense-minded. When choosing which firms to apply to for on-campus interviews, JSH stuck out to me because of the broad variety of practice areas and its great reputation. I really hit it off with my interviewers, and the rest is history.

**What recommendations would you offer recent law school graduates?**
When studying for the bar exam gets to be difficult, remember why you went to law school in the first place. It is easy to get bogged down with whatever tasks your preparation course has listed for you that day and lose sight of the big picture. Once you make it through those couple months, it will all be worth it.

# IN-HOUSE NEWS & EVENTS

## JSH Shining Stars Honored at Annual Administrative Professionals Day Breakfast

Our annual Staff Appreciation Day kicked off with a toast from our Managing Partner, Bill Holm, and breakfast served on our 27th-floor patio. Every year, JSH lawyers and staff nominate employees for recognition as a "JSH Shining Star." A Shining Star is a person who goes the extra mile, is a team player, maintains grace under fire, provides service with a smile, and is proactive, friendly and professional. This year, we are proud to congratulate Jennifer Bernardo (Legal Secretary, 12 years at JSH), Rachel Fitch (Media & Marketing Specialist, 3 years at JSH), and Trish Lucero (Paralegal, 4 years at JSH).

# HELP US HELP YOU: PROPOSED BUSINESS GUIDELINES FROM DEFENSE COUNSEL

AUTHOR: William Schrank EMAIL: wschrank@jshfirm.com BIO: jshfirm.com/wschrank

Throughout my 34 years of practicing law in Arizona with Jones, Skelton & Hochuli, I have seen numerous changes in court rules and procedures, client development and marketing, defense strategies and philosophies, case management procedures, and client litigation guidelines and billing practices. Many changes have improved the practice of law, while others may have been more detrimental than beneficial. When I began practicing law in 1984, there were no fax machines or computers, much less mobile phones, emails, the Internet, tele-video conferencing and electronic filings. Clients rarely, if ever, developed and utilized litigation/business guidelines, and for the few clients who did, the guidelines were brief. Today, clients and companies each maintain their own set of comprehensive guidelines that delineate reporting and case management requirements, billing "dos and don'ts," and tasks and activities that are no longer billable.

Using today's litigation and business guidelines as a framework for this article, I will propose another set of guidelines that can not only be applied in attorney-client relationships, but also in our communications and relationships with adverse claimants/counsel, witnesses, vendors and experts. In fact, some of these guidelines may be practiced outside of the business context and in our personal lives. You will find that several of the following proposed guidelines are not new; many were the standard and expected way of doing business in years past, but have somehow gone out of mode in today's business culture. This article endeavors to remind readers of the importance of considering and embracing some of the business practices of long ago (or at least before email and mobile phones dominated our lives).

## Don't Underestimate the Value of a Phone Call.

I still believe more can be accomplished in less time via personal phone conversations than most other means of communications. The problem, however, is that it can be difficult to connect by phone given the demanding schedules of all those involved. Nevertheless, phone calls allow for the spontaneous exchange of information, feedback, discussion and decision-making. I have found there are fewer misunderstandings as a result of a personal phone call. Phone calls also allow for human contact, light-hearted discussions, and a better understanding of a person's true feelings and perspective (spontaneous response, voice tone and inflection, etc.).

Although some may feel they are more candid/direct/brave in email than in a phone call, emails can easily be ignored, and their intention often misconstrued – whether negative or positive, intentional or accidental. It is much more difficult to ignore, delete, or completely forget the contents of a candid phone conversation.

## Don't Rely too Heavily on Email Communications.

Without question, email communications are necessary in today's fast-paced, mobile and global business climate. Emails are expedient and provide written documentation of important communications. But, emails have shortcomings. In particular, emails can create unrealistic expectations. Sending an email is easy; it's convenient for the sender. But simply because an email is sent does not mean the recipient actually reviews and comprehends the message. The recipient still opens, reviews and analyzes the email on his/her own schedule, which may not match the sender's expectations. Consider the recipient who receives 100 or more emails daily. Depending on the recipient's schedule and other demands, they may not have the opportunity to review and respond the same or even next day. There are still only 24 hours in a day. All too often, we expect expedient responses to our emails simply because we hit "send," regardless of what may be consuming the time and attention of the recipient. It is also important to remember that, generally speaking, it's easier to send an email than it is to respond to an email, particularly if the email requests an analysis or responses to multiple questions.

## Provide Complete and Correct Information.

The more information I can provide to someone that enables them to respond promptly and accurately, the better off I am. For example, when I am sending an email, I make sure to provide a claim number/matter or case name, the name of at least one party, the date of loss, and my complete contact information (email address, phone number, etc.). If the email recipient has to spend any time looking up pertinent information such as this, my email will likely be placed lower on their "to-do list." Never should the recipient need to devote time looking up basic information such as my phone number, names of parties, etc. If there is a particular witness I want contacted, I will provide the name of that witness and the witness's contact information, to the extent I have it. Additionally, I usually make it clear at the beginning and end of the email the information I seek. The less work the recipient has to do to answer the question or accomplish the task, the more likely it will be done promptly.

## Be Respectful of Other's Time and Commitments.

Regardless of whether you choose to send an email or make a phone call, always be mindful of the information you seek and the task you are requesting from the other person. In particular, be cognizant of how much time that task may take and what the person may have to do to complete the task. While I would like to believe that I am always top priority for opposing counsel and/or experts, that is simply not the case. They, too, have other matters – professional and personal – that require their attention. Rarely has someone chartered their day with my timetable top of mind. Consequently, it is important to allow the other person a reasonable amount of time to respond and complete the requested task. Work demands ebb and flow daily, weekly and monthly, and when someone responds to me promptly, it is usually because they have rearranged their priorities and schedule out of courtesy to me, not because they had nothing else to do.

> "ALTHOUGH SOME MAY FEEL THEY ARE MORE CANDID/ DIRECT/BRAVE IN EMAIL THAN IN A PHONE CALL, EMAILS CAN EASILY BE IGNORED, AND THEIR INTENTION OFTEN MISCONSTRUED."

## Don't Forget to Say Thank You.

It costs nothing to say "thank you," and yet the dividends it pays are enormous. Those two words tell the recipient you recognize what he/she has done, and that you appreciate his/her effort. We have all been in a situation where we have done something – even if it's our job to do it – and not received a simple " thank you" for completing an activity/task. Saying "thanks" (and meaning it) fosters a positive working relationship, and will likely lead to future requests being handled expediently and happily.

## Don't Over Promise and Under Deliver.

While we all want to put our best foot forward, covering up our mistakes and shortcomings is never productive. I have found that being candid about my shortcomings and limitations serves everyone best. It avoids falling deeper into a hole. People have varying talents and skillsets, and I have yet to meet the person who has not made a mistake or likewise has made the correct decision every time. Though we expect ourselves and other professionals to be polished and skilled, we must also recognize that we are still human.

While I may not be labeled an optimist, I make sincere attempts to look on the lighter, brighter and humorous side of things. If I can find something in a situation to make me laugh, or someone else can point out something humorous about the situation, it helps maintain proper perspective.

## Help Others Maintain Important Business Relationships.

In the legal profession, insurers and lawyers rely upon experts, reinsurers, vendors, mediators, etc. We cannot forget to facilitate and foster those relationships. This includes respecting and honoring requests for information, carefully considering their suggestions, and ensuring that invoices are paid in a timely fashion. As defense counsel, we encounter mediators, judges

and experts many times over, and it is crucial that we deal with them honestly, respectfully and timely. Losing the availability, support and respect of a mediator, expert, court reporter or vendor makes future exchanges far more difficult.

## Set Purposeful Deadlines and Be Flexible When Necessary.

Counsel understand that insurers must be kept informed of the progress of a case and the importance of early evaluation. However, form should not take the place of substance. Attorneys should be reporting to clients when meaningful and valuable information becomes known, not simply reporting for the sake of doing so. In Arizona, cases are placed on a case management plan/scheduling order. Parties are given timelines to complete certain tasks, activities and discovery. Layering additional deadlines on top of Court deadlines, particularly if they are inconsistent with Court deadlines, are unnecessary.

Litigation is a fluid and dynamic process. Even the best made plans may need adjustment to accommodate scheduling conflicts, witness unavailability, and unexpected professional and personal events. These happen to everyone, not just ourselves.

## Be a Problem Solver, not a Problem Generator.

Before I take action or make a request, I ask myself whether the actions and requests are designed to resolve an issue, advance a meaningful purpose, or whether they are simply generating additional indiscriminate issues and problems. Hopefully, the measures we take in working with others is to move things in a positive, forward direction that leads to resolution.

## Simple Nuts, Bolts and Screws to Tighten.

Not to be forgotten are some practical investigative tips that help defense counsel help you and your insured in defending the case. Failure to recognize these important tips can lead to difficulties in building a defense, or fighting allegations of spoliation.

A. Obtain and preserve photos/video-recordings of the incident/crash site/accident scene. Many times, the parties involved and witnesses to the incident have recorded videos and photos on their mobile phones. They also have text messages they sent or received concerning the event. Get them!

B. Be sure to preserve the actual item or object at issue – the chair, tool, equipment, bottle, pipe, tire, etc. – even if you have 50 photos of the object. The insured or claimant – whoever has possession of the item – should immediately be told not to discard the item in question.

C. Take photos, then take more photos. You can never capture too many photos of the incident, scene and vehicles in question, only too few. And preserve the photos *in original JPG or MPEG format*. PDF format is too difficult for experts to work with.

D. Be sure to obtain and share correct and complete contact information of the insured and known witnesses – names, email addresses, mobile phone numbers, physical addresses.

E. Preserve the actual audio-recorded statement of any witness and party, even if the statement has been transcribed or summarized. This is particularly true of a witness and claimant. It is nearly impossible to deny making a statement when it can be readily played back.

ABOUT THE AUTHOR **WILLIAM SCHRANK**

Bill Schrank dedicates his practice to defending corporations, businesses and other entities in tort litigation. His philosophy is to be purposeful and meaningful in action, and respectful of all parties involved.

602.263.1766 | wschrank@jshfirm.com

# WHEN TO CHALLENGE AN EXPERT'S QUALIFICATIONS: IMPLICATIONS OF RASOR

AUTHOR: **Cory Tyszka** EMAIL: **ctyszka@jshfirm.com** BIO: **jshfirm.com/ctyszka**

In *Rasor v. Northwest Hospital*, LLC, 243 Ariz. 160 (2017), the Arizona Supreme Court resolved a split of authority among the court of appeals when it held that a defendant may move for summary judgment based on a proposed expert's lack of requisite qualifications under A.R.S. § 12-2604 without first challenging the sufficiency of the expert affidavit under § 12-2603. This ruling was generally seen as very favorable to the healthcare liability defense bar. On closer examination, however, *Rasor* may not be the boon it first appeared to be.

## Legal Landscape

In most cases, Arizona law requires that a plaintiff prove his or her medical negligence claims through expert testimony. A.R.S. § 12-2603 requires a medical negligence plaintiff to serve with his or her initial disclosure statement a preliminary expert opinion affidavit supporting the plaintiff's claims that the defendant healthcare provider fell below the standard of care, and that such breach caused plaintiff's injuries. This is sometimes referred to as an "affidavit of merit" because it requires plaintiffs to make a preliminary showing that they will be able to produce an expert to support their claims at trial. This requirement allows courts to dispose of meritless cases before a defendant is required to invest significant time and expense in defense of a case that the plaintiff will be unable to prove at trial. Section 12-2603 provides that a plaintiff whose preliminary expert affidavit is successfully challenged shall be given a reasonable time to cure the deficiency. A plaintiff may disclose a different expert at the time of testifying expert disclosures.

As a companion statute, § 12-2604 sets forth the requirements for standard of care experts: a retained expert's specialty must mirror that of the defendant to the extent that the care and treatment at issue falls within that specialty. More specifically, in the year preceding the incident underlying the lawsuit, the retained expert must have spent a majority of his or her professional time in the active clinical practice or accredited instruction of the same specialty of the defendant.

Before *Rasor*, there was a lack of clarity as to: 1) whether a defendant was required to challenge an expert's qualifications at the preliminary affidavit stage before challenging a disclosed testifying expert's qualifications, 2) whether a plaintiff would be entitled to substitute experts, and 3) whether a dismissal would be on the merits such that the case could not be refiled.

## *Rasor v. Northwest Hospital, LLC*

In *Rasor*, the plaintiff developed a pressure ulcer over her tailbone while in a medically-induced coma in the ICU. The wound worsened, allegedly resulting in permanent residual damage. The plaintiff alleged that the ICU nursing staff fell below the standard of care by failing to properly prevent and care for the wound, which caused the wound and subsequent injuries.

In support of her claims, the plaintiff served a preliminary expert affidavit from a certified wound care nurse. The defendant did not challenge the wound care nurse's qualifications at that time. After the plaintiff disclosed the same wound care nurse as her testifying expert, she filed a preemptive motion asking the court

> IN THE YEAR PRECEDING THE INCIDENT UNDERLYING THE LAWSUIT, THE RETAINED EXPERT MUST HAVE SPENT A MAJORITY OF HIS OR HER PROFESSIONAL TIME IN THE ACTIVE CLINICAL PRACTICE OR ACCREDITED INSTRUCTION OF THE SAME SPECIALTY OF THE DEFENDANT

to find that the wound care nurse was qualified to testify to the standard of care applicable to the ICU nurse. Shortly thereafter, the defendant filed a motion for summary judgment, arguing that the wound care nurse was not qualified under § 12-2604 because the care and treatment at issue was administered by ICU nurses and, therefore, the plaintiff could not prove her claims. At oral argument on the plaintiff's preemptive motion, the trial court ruled that the wound care nurse was qualified to testify about the standard of care for wounds but expressed concern about whether the nurse could testify as to causation. The trial court later granted the defendant's motion for summary judgment without explanation.

The court of appeals held that the wound care nurse did not meet the requirements set forth in § 12-2604 because the specialty at issue was ICU nursing, and not wound care, notwithstanding that the injury involved the development and worsening of a pressure wound. However, the court of appeals also held that the plaintiff should have been permitted an opportunity to find and substitute a new expert who would qualify under the statute, in part because the defendant had not challenged the sufficiency of the wound care nurse's qualifications until after the testifying expert disclosure deadline had passed.

The Arizona Supreme Court agreed with the court of appeals that the wound care nurse was not qualified to testify about the standard of care applicable to an ICU nurse. However, the Court disagreed that the defendant was required to have challenged the sufficiency of the wound care nurse's qualifications at the preliminary affidavit stage. The Court further disagreed that § 12-2603 automatically permitted a plaintiff to substitute experts at any stage of the litigation. The Court explained that the plain language of §§ 12-2603 and -2604 "do not require that a defendant challenge a preliminary expert affidavit as a precondition for summary judgment . . . . [n]or do they state that the 'cure' provision of § 12-2603(F) applies other than in the context of a challenge to the preliminary expert affidavit." The Court further explained that a plaintiff who cannot oppose a motion for summary judgment challenging an expert's qualifications under § 12-2604 may file a Rule 56(d) affidavit and motion for relief requesting time to find a substitute expert. The Court provided guidance that, after a hearing, the trial court may deny the requested relief and grant summary judgment, or it may defer consideration of the summary judgment motion to allow the plaintiff time to find a qualified expert. The Court further advised that the trial court "may consider both the good faith or lack thereof of the plaintiff in proposing [an unqualified expert], as well as the defendant's waiting to challenge the proposed expert until [a] later stage of litigation . . . if the qualifications were plainly inadequate in the affidavit."

## Implications

Two questions arise from *Rasor*: (1) when is the right time to challenge an expert's qualifications, and (2) how will a trial court rule?

Section 12-2603 is clear that a plaintiff is automatically entitled to a reasonable amount of time to find a qualified expert when the expert's qualifications are challenged at the preliminary affidavit stage.

But what happens when a defendant challenges the expert's qualifications after the testifying expert disclosure deadline has passed? If discovery is ongoing and no trial is set, then a court may find there is no prejudice from allowing the plaintiff a reasonable amount of time to find a substitute expert. As for considering the conduct of the parties, it is unclear whether that will help the defendant. If the testifying expert is different from the preliminary expert, then the defendant would have grounds to argue that the plaintiff did not act in good faith if the testifying expert is clearly unqualified. If, however, the testifying expert, is the same as the preliminary expert, and it was – or should have been – clear to a plaintiff that the proposed expert is plainly unqualified, then it likely would be equally clear to the defendant, assuming the expert's CV was provided with the preliminary affidavit. In such cases, the parties' conduct loses significance.

If trial is set and the defendant waits until the dispositive motion deadline (ie: approximately 90 days before trial) to challenge the expert's qualifications, then the court might grant the motion on the ground that discovery is closed and there is inadequate time to allow the plaintiff to find a substitute expert. However, the court could also find that the defendant's conduct in waiting until the dispositive motion deadline was not in good faith. In that case, the court could exercise its discretion to continue trial and allow the plaintiff an opportunity to substitute. Such a delay would undoubtedly protract the litigation, giving rise to an argument that the defendant would be prejudiced by such a

delay, but the plaintiff would likely argue that the delay was self-imposed by defendant for waiting until the deadline to file the motion.

A defendant could wait until trial to challenge an expert's qualifications on cross-examination. This is risky because the court could find that the defendant waived its objections to the expert's lack of qualifications. The defendant's only recourse at that point would be to challenge the weight and credibility that the jury should afford the expert. On the other hand, the matching-specialties requirement of § 12-2604 is a substantive requirement for plaintiff to establish the necessary elements of proof, and no court has addressed the issue of whether that substantive requirement can be waived.

## Conclusion

In order to determine the best course of action for challenging an expert's qualifications, the defendant must consider the strengths and weaknesses of the case, the strengths and weaknesses of the plaintiff's expert (especially when compared with the strengths and weaknesses of the defendant's expert), the availability of qualified experts, and the defendant's willingness to risk a late-stage challenge. For example, in a strongly defensible case, it may be worth proceeding with an unqualified expert and plan to challenge the expert's credibility in cross-examination rather than risk the possibility that the plaintiff could find a better expert if the court allows substitution. That may also be the type of case in which it would be worth moving for directed verdict after establishing the expert's lack of qualifications in cross-examination. But if the plaintiff's expert is strong and there is a limited pool of qualified experts due to the specialty at issue, an early challenge to the expert's qualifications may be the best approach.

In sum, although *Rasor* clarified that a defendant need not challenge a preliminary expert affidavit before moving for summary judgment on the grounds that the disclosed testifying expert is not qualified, it did not limit the court's discretion to allow a plaintiff to substitute experts. Thus, the defendant will need to consider a number of factors specific to the case at hand to determine the best approach to challenging the sufficiency of a plaintiff's expert.

## ABOUT THE AUTHOR **CORY TYSZKA**

Cory Tyszka focuses her practice in the areas of medical malpractice and health care liability defense, products liability, and wrongful death and personal injury defense.

602.263.1739 | ctyszka@jshfirm.com

JSH FIRM ANNOUNCEMENT

## Donald Myles Elected FDCC 2018-2019 President

Don Myles has been elected the 2018-2019 President of the Federation of Defense & Corporate Counsel (FDCC). Don has served in several leadership positions within the FDCC, including Secretary/Treasurer, Vice President, Chairman of the Professional Liability Committee, and Chair of the Extra-Contractual Liability Committee. In 2013, the FDCC presented Don with the Joseph R. Olshan Award, which is given to a committee chair whose work has made the most outstanding contribution to the advancement of the FDCC's goals.

# JSH GIVES BACK

## JSH Charity Committee Coordinates Back-to-School Drive for Mitchell Elementary School

In preparation for the 2018-2019 school year, the JSH Charity Committee stocked the "lending closets" at Mitchell Elementary School with $2,000 worth of back-to-school clothing and toiletries. The school serves more than 550 students in pre-K through 5th grade. Thanks to the very generous donations from JSH employees, the Charity Committee donated two truck-loads of essentials, including: 63 uniform polos; 78 skorts, pants and shorts; 49 pairs of sneakers; 346 pairs of socks and under garments; and 185 essential toiletries such as toothpaste, toothbrush, shampoo, soap, deodorant, combs, hand sanitizer and baby wipes. Pictured left to right with some of the donations are Maddy Garcia (JSH Charity Committee), Taylor Fierros (JSH Charity Committee), Angela Moore (Mitchell Elementary School Coordinator), and Anna Walp (JSH Charity Committee).

## Cory Tyszka Participates in Arizona Legal Center's Community Service Day

JSH Associate Cory Tyszka served as an attorney mentor for the first-annual Community Service Day hosted by the Arizona Legal Center (ALC). Along with third-year ASU law student Anthony Eulano (pictured), Cory worked with first-year law students to provide legal advice and guidance to clients in a variety of practice areas at the ALC. A total of 142 students and 21 volunteer attorneys participated in the event. A 501(c)(3) tax-exempt organization, the ALC provides legal services to the community at no or low cost in order to ensure access to justice for all. JSH partner Dave Cohen is also actively involved in the organization.

## 2018 Fiesta Bowl Running of the Bills Duck Race

As a sponsor of the 2018 Fiesta Bowl Running of the Bills Duck Race, JSH adopted 250 rubber ducks for the annual fundraiser. By "adopting a duck," participants had the chance to win one of three prizes. More than 15,000 rubber ducks floated down the Scottsdale Waterfront Canal in Old Town in March. JSH associate Chelsey Golightly has been actively involved in the Fiesta Bowl for many years, and serves as co-chair of Team Hospitality for the Cactus Bowl, Assistant Chair of Media Operations, and Assistant Chair for the Oasis Cactus Bowl Pregame Party. The Fiesta Bowl organization continues to enhance nonprofit organizations across Arizona, and has contributed $2.5 million during the 2017-2018 season alone and $10 million in the last seven years.

# JSH GIVES BACK

## Tour de Ren Cycle Team

JSH cycled for a cause, namely for the kids at Phoenix Children's Hospital. The Second Annual "Tour de Ren" was hosted by Hines, the building management company for the Renaissance Square Towers, where JSH is located. As an event sponsor, JSH employees joined 40 other Renaissance Square tenants for a day of cycling on stationary bikes in an effort to support initiatives to cure and treat Cerebral Palsy, among other diagnoses. Phoenix Children's Hospital (PCH) is one of the largest children's hospitals in the country and provides the most comprehensive pediatric care in the state.






## Los Abogados Annual Golf Tournament

JSH sponsored Los Abogados' annual golf tournament fundraiser, benefitting Los Abogados' Honorable Valdemar A. Cordova scholarship for Latino law students at Arizona State University Sandra Day O'Connor College of Law. The firm also donated our foursome of golf to student members of the ASU Chicano/Latino Law Student Association. JSH partner Ashley Villaverde Halvorson is the 2018-2019 Chair of Los Abogados, and has been an active member since 2010.

LOS ABOGADOS
Hispanic Bar Association

## West Point Parents Club of Arizona All Academies Golf Tournament

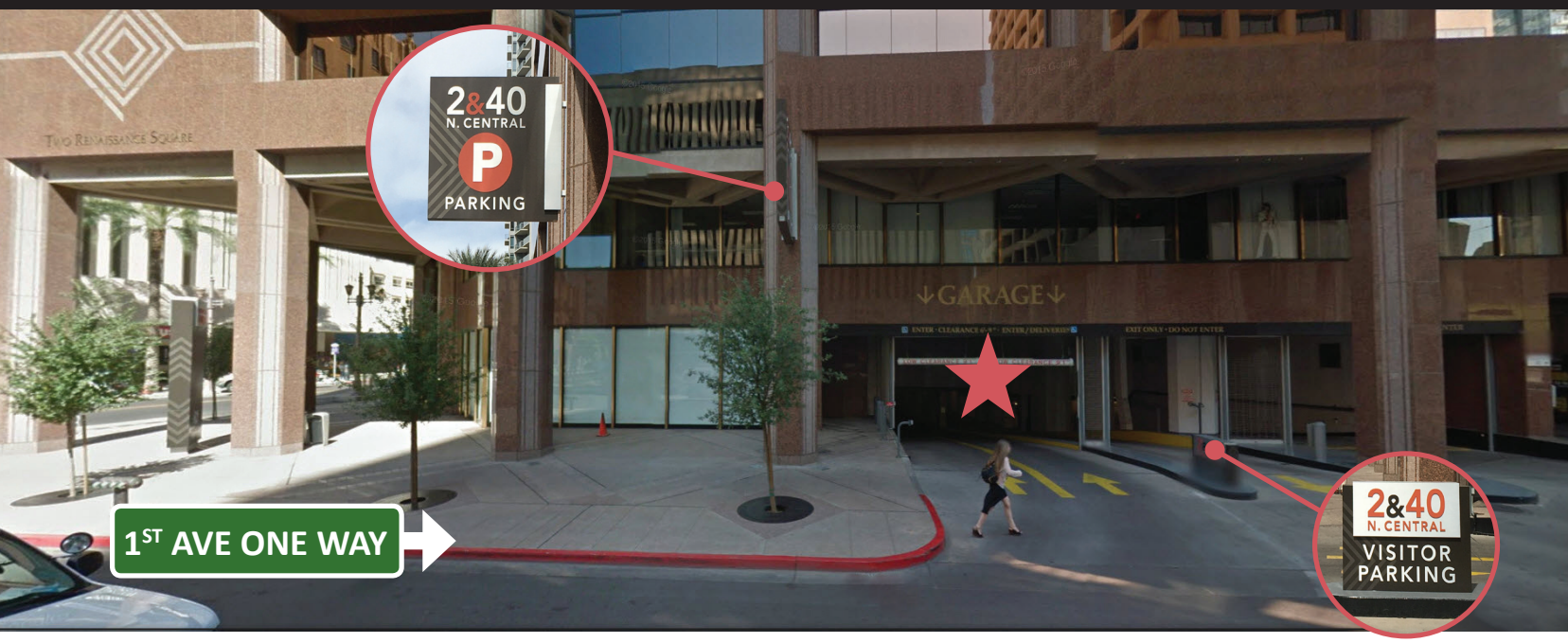
Presented by the West Point Parents Club of Arizona, the All Academies Golf Tournament is an annual fundraiser benefitting the activities and efforts of the Parents Club. This year's tournament was hosted at Falcon Dunes, the golf course at Luke Air Force Base. JSH partner and General Counsel Jim Osborne is a father of a West Point graduate. The Arizona West Point Parents Club is a non-profit organization dedicated to promoting the well-being and continued success of the United States Service Academies; and to enhance and maintain the image of these academies in the state of Arizona by publicly recognizing the significant accomplishments of cadets.

## 4th Annual Mesilla Valley Transportation Golf Tournament

Mesilla Valley Transportation partnered with the Las Cruces Public Schools Foundation to create the Mesilla Valley Transportation Teacher Classroom Supplies Mini-grant Endowment Fund. The Fund raises money to support 10 to 20 Las Cruces Public School teachers every month with $100 classroom supply vouchers. Proceeds from the golf tournament go to the Mesilla Valley Transportation Teacher Classroom Supplies Mini-grant Endowment Fund. JSH sponsored three holes at the 4th annual tournament hosted at Red Hawk Golf Club.

JONES, SKELTON & HOCHULI, P.L.C.

40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004 | 602.263.1700
jshfirm.com




# DIRECTIONS TO JSH

The firm is located on the 27th floor of Two Renaissance Square Tower, on the south east corner of 1st Avenue and Adams Street. The entrance to our underground parking garage is on the east side of 1st Avenue, immediately south of Adams Street. Traveling south on 1st Avenue (one way street), cross Adams Street and take an immediate left into our underground parking garage (see red star above). Using one of the first three lanes to dispense a parking ticket, visitors may park on any level and in any space not marked Reserved. Upon parking, take the elevator from the garage to the building lobby (L). Remember to bring your parking ticket to our receptionist on the 27th floor for parking validation. If you have an oversized vehicle that will not fit in the underground parking garage (maximum clearance is 6'9"), you will need to use the metered parking spaces on Adams Street. Visit www.phoenix.gov/streets/parking-meters/map for details and locations.

# ATTORNEY DIRECTORY

| Name | Title | Email | Phone | Link to Biography |
|---|---|---|---|---|
| Justin Ackerman | Associate | jackerman@jshfirm.com | 602.263.1740 | jshfirm.com/jackerman |
| Donn Alexander | Partner | dalexander@jshfirm.com | 602.235.7152 | jshfirm.com/dalexander |
| Samuel Arrowsmith | Associate | sarrowsmith@jshfirm.com | 602.263.1784 | jshfirm.com/sarrowsmith |
| Jonathan Barnes, Jr. | Associate | jbarnes@jshfirm.com | 602.263.4437 | jshfirm.com/jbarnes |
| Robert Berk | Partner | rberk@jshfirm.com | 602.263.1781 | jshfirm.com/rberk |
| Brandi Blair | Partner | bblair@jshfirm.com | 602.263.1786 | jshfirm.com/bblair |
| Jon Brinkman | Associate | jbrinkman@jshfirm.com | 602.263.7351 | jshfirm.com/jbrinkman |
| Kevin Broerman | Partner | kbroerman@jshfirm.com | 602.263.7313 | jshfrrm.com/kbroerman |
| Stephen Bullington | Partner | sbullington@jshfirm.com | 602.263.1796 | jshfirm.com/sbullington |
| Charles Callahan | Partner | ccallahan@jshfirm.com | 602.263.7392 | jshfirm.com/ccallahan |
| F. Richard Cannata, Jr. | Partner | rcannata@jshfirm.com | 602.263.7332 | jshfirm.com/rcannata |
| William Caravetta | Partner | wcaravetta@jshfirm.com | 602.263.7389 | jshfirm.com/wcaravetta |
| Cristina Chait | Partner | cchait@jshfirm.com | 602.263.7391 | jshfirm.com/cchait |
| Andrew Clark | Associate | aclark@jshfirm.com | 602.263.1771 | jshfirm.com/aclark |
| David Cohen | Partner | dcohen@jshfirm.com | 602.263.7372 | jshfirm.com/dcohen |
| Keith Collett | Associate | kcollett@jshfirm.com | 602.263.1754 | jshfirm.com/kcollett |
| Jefferson Collins | Partner | jcollins@jshfirm.com | 602.263.7346 | jshfirm.com/jcollins |
| Douglas Cullins | Partner | dcullins@jshfirm.com | 602.263.7386 | jshfirm.com/dcullins |
| James Curran | Partner | jcurran@jshfirm.com | 602.263.7366 | jshfirm.com/jcurran |
| A. Blake DeLong | Partner | bdelong@jshfirm.com | 602.263.7399 | jshfirm.com/bdelong |
| John DiCaro | Partner | jdicaro@jshfirm.com | 602.263.1777 | jshfirm.com/jdicaro |
| Kathleen Elder | Partner | kelder@jshfirm.com | 602.235.7118 | jshfirm.com/kelder |
| Diana Elston | Associate | delston@jshfirm.com | 602.263.4413 | jshfirm.com/delston |
| James Evans | Of Counsel | jevans@jshfirm.com | 602.263.1765 | jshfirm.com/jevans |
| Gregory Folger | Partner | gfolger@jshfirm.com | 602.263.1720 | jshfirm.com/gfolger |
| Brad Frandsen | Associate | bfrandsen@jshfirm.com | 602.263.1768 | jshfirm.com/bfrandsen |
| Sanford Gerber | Partner | sgerber@jshfirm.com | 602.263.1779 | jshfirm.com/sgerber |
| Elizabeth Gilbert | Associate | egilbert@jshfirm.com | 602.263.1710 | jshfirm.com/egilbert |
| Eileen Dennis GilBride | Partner | egilbride@jshfirm.com | 602.263.4430 | jshfirm.com/egilbride |
| Chelsey Golightly | Associate | cgolightly@jshfirm.com | 602.263.1732 | jshfirm.com/cgolightly |
| Patrick Gorman | Associate | pgorman@jshfirm.com | 602.263.1761 | jshfirm.com/pgorman |
| Derek Graffious | Associate | dgraffious@jshfirm.com | 602.263.1748 | jshfirm.com/dgraffious |
| John Gregory | Associate | jgregory@jshfirm.com | 602.263.7343 | jshfirm.com/jgregory |
| Joel Habberstad | Associate | jhabberstad@jshfirm.com | 602.263.1753 | jshfirm.com/jhabberstad |
| Ashley Villaverde Halvorson | Partner | ahalvorson@jshfirm.com | 602.263.1793 | jshfirm.com/ahalvorson |
| Michael Halvorson | Partner | mhalvorson@jshfirm.com | 602.263.7371 | jshfirm.com/mhalvorson |
| Michael Hensley | Partner | mhensley@jshfirm.com | 602.263.1775 | jshfirm.com/mhensley |
| Christopher Heo | Associate | cheo@jshfirm.com | 602.263.7310 | jshfirm.com/cheo |
| Edward Hochuli | Of Counsel | ehochuli@jshfirm.com | 602.263.1719 | jshfirm.com/ehochuli |
| William Holm | Partner | bholm@jshfirm.com | 602.263.1749 | jshfirm.com/wholm |
| Jeremy Johnson | Partner | jjohnson@jshfirm.com | 602.263.4453 | jshfirm.com/jjohnson |
| Daniel King | Partner | dking@jshfirm.com | 602.263.4441 | jshfirm.com/dking |
| Alexander LaCroix | Associate | alacroix@jshfirm.com | 602.263.7302 | jshfirm.com/alacroix |
| Gordon Lewis | Partner | glewis@jshfirm.com | 602.263.7341 | jshfirm.com/glewis |

JONES, SKELTON & HOCHULI, P.L.C.
JSHFIRM.COM

CELEBRATING 35 YEARS 1983-2018

| Name | Title | Email | Phone | Link to Biography |
|---|---|---|---|---|
| John Lierman | Associate | jlierman@jshfirm.com | 602.263.1750 | jshfirm.com/jlierman |
| Gary Linder | Partner | glinder@jshfirm.com | 602.263.1722 | jshfirm.com/glinder |
| Alexander Lindvall | Associate | alindvall@jshfirm.com | 602.263.7341 | jshfirm.com/alindvall |
| Michael Ludwig | Partner | mludwig@jshfirm.com | 602.263.7342 | jshfirm.com/mludwig |
| Nicolas Martino | Associate | nmartino@jshfirm.com | 602.263.1795 | jshfirm.com/nmartino |
| John Masterson | Partner | jmasterson@jshfirm.com | 602.263.7330 | jshfirm.com/jmasterson |
| Ryan McCarthy | Partner | rmccarthy@jshfirm.com | 602.263.1789 | jshfirm.com/rmccarthy |
| A. Melvin McDonald | Partner | mmcdonald@jshfirm.com | 602.263.1747 | jshfirm.com/mmcdonald |
| Brendan Melander | Associate | bmelander@jshfirm.com | 602.263.1788 | jshfirm.com/bmelander |
| Michele Molinario | Partner | mmolinario@jshfirm.com | 602.263.1746 | jshfirm.com/mmolinario |
| Sean Moore | Associate | smoore@jshfirm.com | 602.263.1778 | jshfirm.com/smoore |
| Courtney Moran | Associate | cmoran@jshfirm.com | 602.263.1744 | jshfirm.com/cmoran |
| Kenneth Moskow | Associate | kmoskow@jshfirm.com | 602.263.1722 | jshfirm.com/kmoskow |
| Donald Myles | Partner | dmyles@jshfirm.com | 602.263.1743 | jshfirm.com/dmyles |
| James Osborne | Partner | josborne@jshfirm.com | 602.263.7337 | jshfirm.com/josborne |
| Kimberly Page | Associate | kpage@jshfirm.com | 602.263.1780 | jshfirm.com/kpage |
| Ravi Patel | Associate | rpatel@jshfirm.com | 602.263.1738 | jshfirm.com/rpatel |
| R. Christopher Pierce | Partner | cpierce@jshfirm.com | 602.263.1707 | jshfirm.com/cpierce |
| Ryan Pont | Associate | rpont@jshfirm.com | 602.263.7303 | jshfirm.com/rpont |
| Joseph Popolizio | Partner | jpopolizio@jshfirm.com | 602.263.1741 | jshfirm.com/jpopolizio |
| David Potts | Associate | dpotts@jshfirm.com | 602.263.1708 | jshfirm.com/dpotts |
| Jonah Rappazzo | Associate | jrappazzo@jshfirm.com | 602.263.1799 | jshfirm.com/jrappazzo |
| Brian Ripple | Associate | bripple@jshfirm.com | 602.263.7365 | jshfirm.com/bripple |
| Jay Rosenthal | Partner | jrosenthal@jshfirm.com | 602.263.1723 | jshfirm.com/jrosenthal |
| William Schrank | Partner | wschrank@jshfirm.com | 602.263.1766 | jshfirm.com/wschrank |
| Russell Skelton | Partner | rskelton@jshfirm.com | 602.263.1716 | jshfirm.com/rskelton |
| Josh Snell | Partner | jsnell@jshfirm.com | 602.263.1790 | jshfirm.com/jsnell |
| Jacob Speckhard | Associate | jspeckhard@jshfirm.com | 602.263.1791 | jshfirm.com/jspeckhard |
| Clarice Spicker | Associate | cspicker@jshfirm.com | 602.263.1706 | jshfirm.com/cspicker |
| Erica Spurlock | Associate | espurlock@jshfirm.com | 602.263.7304 | jshfirm.com/espurlock |
| Phillip Stanfield | Partner | pstanfield@jshfirm.com | 602.263.1745 | jshfirm.com/pstanfield |
| Georgia Staton | Partner | gstaton@jshfirm.com | 602.263.1752 | jshfirm.com/gstaton |
| Erik Stone | Partner | estone@jshfirm.com | 602.263.7309 | jshfirm.com/estone |
| David Stout | Partner | dstout@jshfirm.com | 602.263.7384 | jshfirm.com/dstout |
| Christopher Stuart | Of Counsel | cstuart@jshfirm.com | 602.263.1730 | jshfirm.com/cstuart |
| Alexix Terríquez | Associate | aterriquez@jshfirm.com | 602.263.7301 | .jshfirm.com/aterriquez |
| Linda Tivorsak | Associate | ltivorsak@jshfirm.com | 602.263.1725 | jshfirm.com/ltivorsak |
| Cory Tyszka | Associate | ctyszka@jshfirm.com | 602.263.1739 | jshfirm.com/ctyszka |
| Laura Van Buren | Associate | lvanburen@jshfirm.com | 602.263.1737 | jshfirm.com/lvanburen |
| Lori Voepel | Partner | lvoepel@jshfirm.com | 602.263.7312 | jshfirm.com/lvoepel |
| Alexis Wood | Associate | awood@jshfirm.com | 602.263.1734 | jshfirm.com/awood |
| Mark Zukowski | Partner | mzukowski@jshfirm.com | 602.263.1759 | jshfirm.com/mzukowski |

JONES, SKELTON & HOCHULI, P.L.C.
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004




Published 2018
Jones, Skelton & Hochuli, PLC
40 North Central Avenue
Suite 2700
Phoenix, Arizona 85004
*jshfirm.com*

**Stay Connected! Visit our website at jshfirm.com and follow us on social media.**

linkedin.com/company/jshfirm  facebook.com/jshfirm  @jshfirm