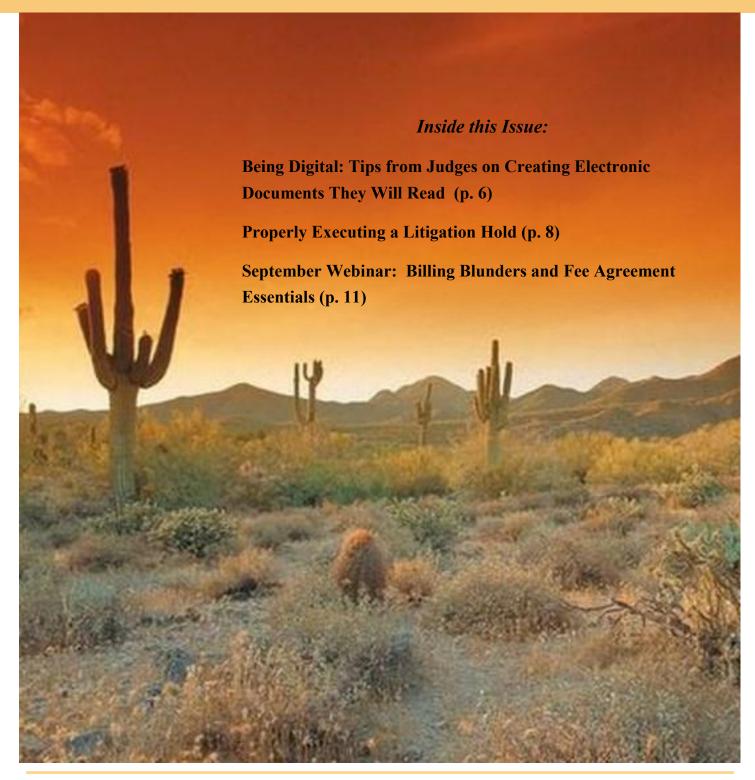
THE EDIGEST

Vol. 8, Issue 8

ARIZONA PARALEGAL ASSOCIATION

An Affiliate of the National Association of Legal Assistants, Inc.

September 2017





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Annual Holiday CLE Luncheon & Charity Drive

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THE EDIGEST

The Digest is the official publication of the Arizona Paralegal Association. It is published monthly on the first of each month and e-mailed to our members. Articles, columns, and editorials appearing in The Digest express the views of the authors and should not be construed as the opinions of the Arizona Paralegal Association or its Board of Directors.

GIVE US YOUR OPINION

The Digest welcomes letters to the editor or opinion pieces for publication. Letters and opinion pieces should be typed and preferably submitted electronically. Opinion pieces are limited to 1,500 words and letters to 700 words. Submissions are reviewed and printed at the discretion of the Editor of The Digest and the APA Board of Directors. Editors reserve the right to reject submissions or condense for clarity, style and space considerations. Letters must be signed to verify authorship, but names will be withheld upon request. Authors of opinion pieces will have their names published.

Letters and opinion pieces should be submitted to: Tanya Massahos (480) 415-0541;

TO ADVERTISE IN THE DIGEST

Advertising rates and information are available from Irene Winterburn, CP (602) 798-5426; winterburni@ballardspahr.com.

SERVING ON THE NEWSLETTER COMMITTEE

Please contact Tanya Massahos (480) 415-0541; Newsletter@azparalegal.org

THE ARIZONA PARALEGAL ASSOCIATION

The Arizona Paralegal Association ("APA") was formed in 1977 and is a nonprofit professional corporation for paralegals. The APA became an affiliate association of the National Association of Legal Assistants, Inc. in 1988. The members are paralegals employed by Arizona law firms, freelance paralegals, paralegals employed in corporations or government agencies, students enrolled in paralegal training programs and other persons interested in supporting the APA and paralegal profession.

The APA was organized to elevate and maintain high professional standards and ethics of the legal profession; provide and promote continuing legal education to paralegals; maintain open communications and working relationships between APA and its members and representatives of local and state bar associations; and further the interests of paralegals by gathering, receiving, studying and disseminating information concerning paralegals.



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ARIZONA Paralegal Association Announcements

Upcoming CLE's and Events

Check out our online events calendar for CLE Seminars and other events:

http://www.azparalegal.org/events

Upcoming APA Board Meetings

Tuesday, October 10, 5:30 p.m., Ballard Spahr 1 E. Washington St., Suite 2300 Phoenix, AZ 85004

Monday, November 6, 5:30 p.m.

Monday, December 4, 5:30 p.m.



Anyone is welcome to attend these meetings. We'd love to have you!



ARIZONA Paralegal Association Member News



Jeanette Bloss Filomena Eickstaedt Debbie Shuta

Tara Day
Phonecia Helms
Christine Vega

FROM THE MEMBERSHIP CHAIR

Karen Hall Flaaen membership@azparalegal.org

Have you visited our website? <u>Azparalegal.org</u> is a great member resource and contains everything you need to know about the APA and more. Stored on our website are:

- •Audio files from our past webinars
- •Handouts from the 2017 Annual Conference
- •Details on our upcoming webinars
- •Archives of eDigests dating as far back as 2013
- •Summary of the APA's history
- •Listing of board members
- •Interesting legal news articles

Maybe the most valuable assets on the website are our member directory and member networking forum. Members can post questions and receive feedback on issues such as, where to turn when trying to serve an out-of-state subpoena. By posting a question, the website community can help connect you to the right resource. In addition, the member directory is a great place to reconnect with former coworkers. The directory allows you to search for friends by name. Azparalegal.org is definitely worth a look, if you haven't already checked it out. Login, update your profile and include a photo. Your member profile is as valuable as your LinkedIn page. We are 266 members strong and growing, so there is a wealth of education and experience at your fingertips.

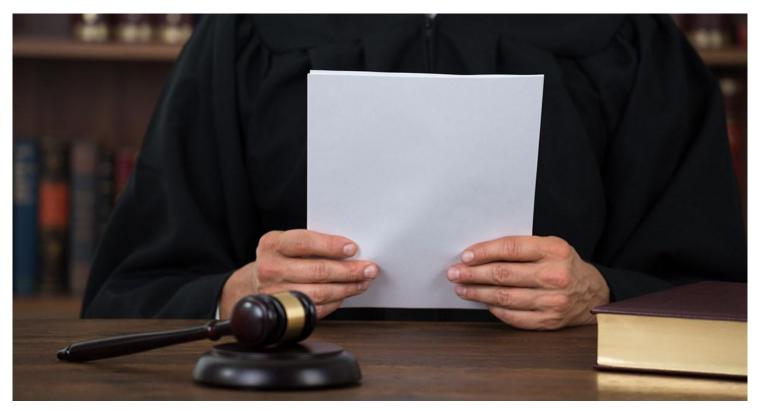
MEMBERS ONLY LINKS:

WHAT'S ON OUR MEMBERS-ONLY PAGES?

Job Bank
Member Directory
Member Networking Forum
Newsletters
Recorded Webinars
APA Documents

MEMBERS:
To login to the Members Only content, log in at top of page.

YOU CAN ALSO JOIN US ON FACEBOOK, TWITTER, GOOGLE+ AND LINKEDIN:



Being Digital: Tips from Judges on Creating Electronic Documents They Will Read

Judges use mobile devices (iPhones, iPads, tablets, etc.) to read electronic documents both because mobile devices allow work to be done just about anywhere, and (similarly) because of the ease with which electronic documents can be accessed and navigated by their readers. However, in order for judges to access and review electronic documents with relative ease, it is crucial for attorneys to name, format, and organize electronic documents properly.

I spoke to several state and federal appellate and trial court judges (and their clerks) about how they access and read documents electronically. They offered helpful guidance for lawyers seeking to ensure electronic documents are easy to read and access on mobile devices.

Identify Documents and Communications.

Documents filed and sent electronically do not have a cover or title page that appears in an email message or attachment. Therefore, attorneys must "signal" the contents of documents and communications with proper naming.

• Name Documents and Exhibits. Consider a judge opening GoodReader or another software reader in order to review a Motion and multiple exhibits.

She does not want to open each exhibit in order to know its contents. Name a document by identifying its subject matter (e.g. "Exhibit A-Affidavit of John Smith").

Likewise, make sure the subject line of an email to a judge lists the full case name and number, and, if possible, the reason for the communication. Judges and clerks have scores of cases, and certainly do not know your particular case the way that you do. One judge with whom I spoke mentioned that when she reviews scores of emails, especially on a mobile device with more limited viewing space, a poorly drafted subject line consumes unnecessary time and attention. In other words, don't force a judge to waste time figuring out what she is reading.

Make Documents More Readable on a Device.

Navigating documents on an electronic screen is different than flipping through a paper document.

<u>Use footnotes sparingly</u>. As others¹ have pointed out, some courts convert all citations in filings (including legal citations and cites to the record) to

(Continued on page 7)

hyperlinks so that judges can access authority directly by clicking on those case hyperlinks. Placing citations in footnotes forces the reader to scroll down a page in an electronic document in order to access that citation. This can interrupt the flow of reading a document.

• Consider "Scientific Numbering" Rather than Hierarchical Organization. Using "Part I, Section A, Subsection 1" to organize a brief may work in a paper document when the judge can discern that an "A" probably corresponds to "Part I" rather than "Part V." However, when navigating a smaller screen without the benefit of having that "feel," a judge may be better served by "scientific numbering," such as "Part 1, Section 1.1, Subsection 1.1.1."

Optimize Your Documents.

- Make Documents Searchable. Most jurisdictions not only require that a document be filed in Portable Document Format (PDF), but also that the filed document be text-searchable. Several judges and their clerks pointed out that despite the rule, a number of filed documents were not textsearchable. Similarly, ensure that whenever possible documents are "text-based PDFs" (e.g. saved as a PDF directly from a word processing program) rather than "image-based PDFs" (created by scanning). Although most court rules require text-based PDFs for all documents that can be saved electronically, judges report that some documents are still filed as image-based PDFs. An image-based PDF may have formatting problems, can be difficult to read, and typically requires additional processing (the application of optical character recognition or "OCR") in order to be searchable.
- Reduce File Size. An unnecessarily large file can be unwieldy to manage on a mobile device, even if it is not too large to be accepted by an electronic court filing system. Creating text-based PDF documents as described above mitigates most if not all excessive PDF size problems. However, if a document must be scanned, determine the lowest acceptable resolution for your scanner (typically

- 300 dpi), or utilize your PDF program's "Reduce File Size" feature.
- Connect Your Documents. Moving within a document (from one section to another) or from one document to another (for example, from the body of a brief to a case cited therein) takes nothing more than a mouse click or the press of a finger or a stylus. Consider adding those features to your documents for the benefit of judges, subject to the applicable rules of your jurisdiction.
 - Bookmarks. Some court rules allow the body
 of a PDF document to contain bookmarks.
 Bookmarks, as the name suggests, organize a
 PDF document like exhibit dividers do in a
 paper document. By clicking on a bookmark in
 a PDF document, you can "jump" to that
 section. This feature is especially helpful in
 larger documents.
 - <u>Hyperlinks</u>. Placing hyperlinks in a document can allow a judge to "jump" to a case, other authority, an exhibit, or perhaps even a page in the record.

Conclusion

Electronic documents offer many advantages over paper documents. However, lawyers must understand how to create and organize their court submissions and communications in order to enable those benefits. Judges will appreciate your efforts.



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¹ Ward, Raymond P. "How U.S. 5th Circuit Judges Read Briefs" Louisiana Civil Appeals, October 8, 2013, last accessed August 2, 2017, http://raymondpward.typepad.com/la-appellate/2013/10/how-us-5th-circuit-judges-read-briefs.html

² Volokh, Eugene, "Writing Briefs When Judges Read on iPads," The Volokh Conspiracy, January 17, 2014, last accessed August 2, 2017, http://volokh.com/2014/01/17/writing-briefs-judges-read-ipads/.



Properly Executing a Litigation Hold

Written Notice. Hold notice is usually written; oral notices are normally not defensible. It is important to consider whether the notice needs to be produced in other languages, as it can be argued the notice is not legible to the custodian of data included in the hold. Have two to three key people, including your eDiscovery lead, review the hold notice for clarity and correctness. State all subject matter clearly. Oftentimes it is a good idea to keep a template of your notice for future use, recognizing the importance to tailor the notice for relevant ESI.

Distribution. To have a defensible distribution of the notice, it is important to remember to keep and distribute it to a current and relevant list of recipients. Distribution to overly-broad groups like the entire organization can lead to non-compliance or misunderstanding, and employees may ignore it. Some courts have ruled broad distribution is "inadequate" for notice of legal hold. Use reliable and verifiable distribution methods such as email or printed notices and certified mail notices.

Response from Custodians. It is best practice to require recipients to confirm receipt and understanding. Use email call-to-action buttons

(button with link to confirm with user IP address that email was received and read) or other software tools like MailChimp email campaigns and buttons to confirm receipt. Simple "read" receipts are not ideal as many users can choose whether the read receipt sends back to the sender. Follow up with anyone who does not confirm receipt or seems confused, so minimal mistakes occur and the evidence is properly safeguarded. It's a good idea follow up regularly throughout the life of the matter and document each follow-up.

Follow-up Interviews with Custodians. Follow-up interviews are necessary to confirm each custodian has received and read the hold notice. During the interviews you can ensure they understand the hold and that they agree to abide by hold instructions. Answer any questions the custodians may have about compliance with the hold notice. As always, it is smart to document all these processes during each interview.

Periodic Reminders. Reminders of the notice and compliance with the notice can be very important, and it is best practice to send the reminders bi-weekly or

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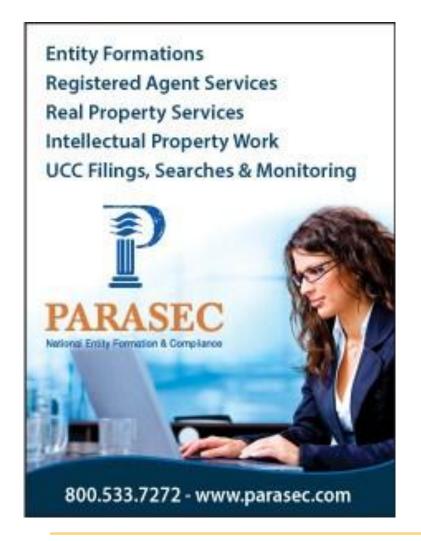
monthly. Some case law requires the litigation attorney to take "affirmative action" in monitoring the litigation holds. Document actions, including, distribution dates, recipients, interviews, and verification.

Release Notice. Releasing custodians from a litigation hold is just as important as notifying of the hold itself, as it lets companies return to a normal document retention schedule, allows individual parties to use the device or data without fear of spoliation, and ensures custodians do not become overly burdened in their day-to-day business proceedings. Litigation hold plans should say who is authorized to release the hold and under what conditions. Holding ESI that is outside the regular retention plan risks it being subject to holds in other cases. Litigation holds require corporate resources to implement and maintain, so it is important to allow the ESI to be deleted or archived based on normal ESI retention

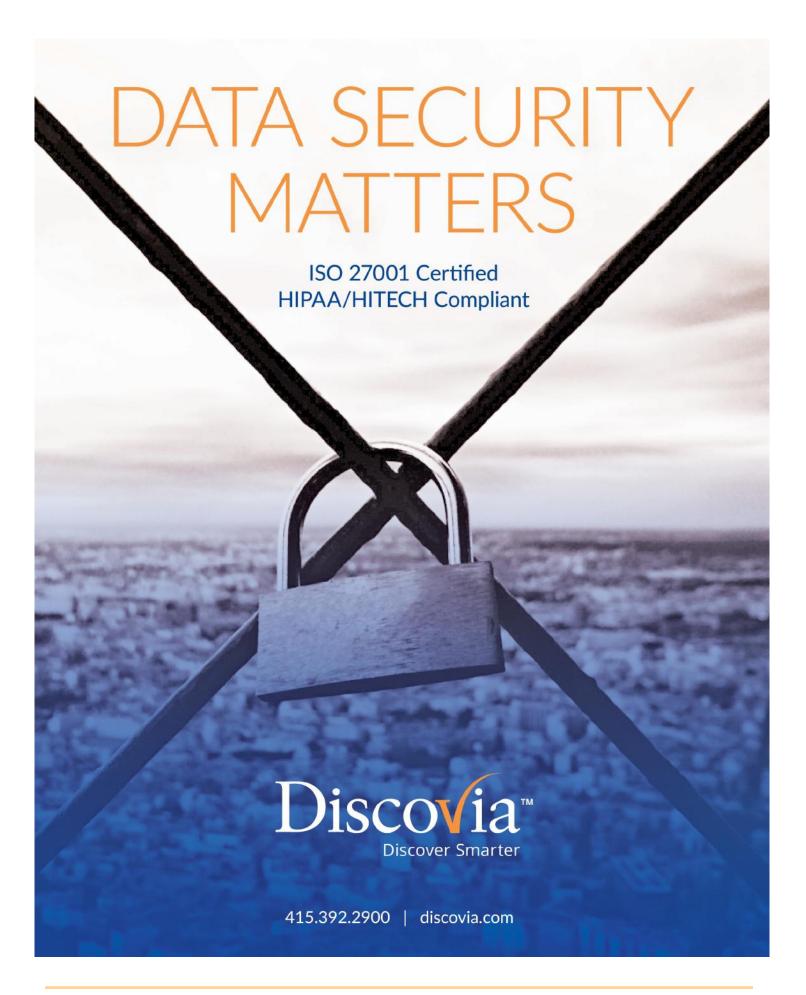
schedules as soon as possible to simplify operations and conserve resources of the custodian and/or client.

Tracking Reports. Best Practice is to use a reliable and consistent method like a complex Excel chart with manual input or an automated application for tracking all litigation holds across all matters for a client. Tracking reports defend hold processes to ensure ironclad notice. The reports should include responses and those not responding to the notice. Also, this includes all people under hold order for a specific matter and all holds for which an individual person is under.

Thanks to SkylineOmega for this information. To learn more about SkylineOmega, visit www.skylineomega.com.







BILLING BLUNDERS AND FEE AGREEMENT ESSENTIALS

Speaker:



Lynda C. Shely, Esq. Ethics Lawyer, Speaker, Consultant



APA WEBINAR Wednesday, September 13, 2017 12:00-1:00 p.m.

COST: APA Members \$25 (or use your free 2017 webinar coupon); All others \$30

This webinar qualifies for 1 hour Ethics CLE credit

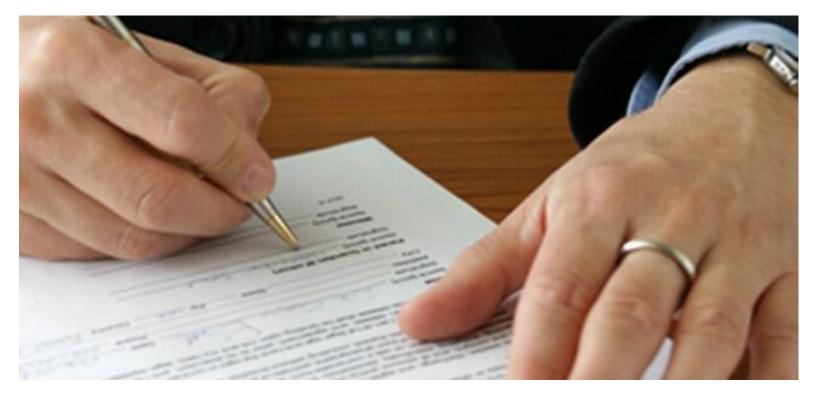
Ethical and practical considerations for all firms – even those that think they do not need to track hourly time! Lynda will review what clauses are mandatory for all fee agreements in Arizona, as well as clauses that will help with client communications and expectations. Billing tips will go over the five things to never do in a time entry, why block billing is prohibited in Arizona, how to get paid faster, and common mistakes made in client invoices.

Lynda C. Shely, of The Shely Firm, PC, Scottsdale, Arizona, provides ethics advice to over 1500 law firms in Arizona and the District of Columbia on a variety of topics including conflicts of interest, fees and billing, trust account procedures, lawyer transitions, multi-jurisdictional practice, ancillary businesses, and ethics requirements for law firm advertising/marketing. She also assists lawyers in responding to initial Bar charges, performs law office risk management reviews, and trains law firm staff in ethics requirements. Lynda serves as an expert witness and frequently presents continuing legal education programs around the country. Prior to opening her own firm, she was the Director of Lawyer Ethics for the State Bar of Arizona. Prior to moving to Arizona, Prior to moving to Arizona, Lynda was an intellectual property/antitrust associate with Morgan, Lewis & Bockius in Washington, DC. Lynda received her BA from Franklin & Marshall College in Lancaster, PA and her JD from Catholic University in Washington, DC.

Lynda was the 2015-2016 President of the Association of Professional Responsibility Lawyers. She serves on several State Bar of Arizona Committees, and as a liaison to the ABA Standing Committee on Ethics and Professional Responsibility. She is an Arizona Delegate in the ABA House of Delegates. Lynda has received several awards for her contributions to the legal profession, including the 2007 State Bar of Arizona Member of the Year award, the Scottsdale Bar Association's 2010 Award of Excellence, and the 2015 AWLA, Maricopa Chapter, Ruth V. McGregor award. She is a prior chair of the ABA Standing Committee on Client Protection and a past member of the ABA's Professionalism Committee and Center for Professional Responsibility Conference Planning Committee. Lynda was the 2008-2009 President of the Scottsdale Bar Association. She has been an adjunct professor at all three Arizona law schools, teaching professional responsibility.

Click Here to Register: http://azparalegal.org/event-2588123

LAST DAY TO REGISTER: FRIDAY, September 8, 2017, at 5:00 P.M.



Why Employers Should care about Form I-9 Changes

If they don't already, U.S. employers must view Form I-9, Employment Eligibility Verification, as more than just a form. Changes to the form reflect changes in law, regulation, policy and technology. Employers must monitor Form I-9 developments and learn to read between the lines. After several years without changes, the United States Citizenship and Immigration Services (USCIS) has rolled out two new versions of Form I-9 since November 14, 2016, with the most recent version taking effect on September 18, 2017.

The recent releases of the Form I-9 coincide with an increase in a focus on employer enforcement activity and policies. The Form I-9 and the associated fines for violations and non-compliance were static since 2013. Thus, while many of the Form I-9 changes can be correctly characterized as technical and non-substantive, employers should not minimize the implications of frequent changes and governmental investments in technology enhancements.

With the introduction of a revised Form I-9 in November 2016, USCIS launched a "smart" and

online fillable version billed as "user friendly." USCIS views these enhancements as creating a readily accessible form, with an accompanying online guidance handbook, M-274. This, in turn, raises the compliance expectations for all U.S. employers.

The November 2016 Form I-9 changes were preceded by substantial increases in the range of fines related to Form I-9 violations. In August 2016, the fine for a first I-9 non-compliance violation increased from a range of \$110 to \$1,100, to a range of \$216 to \$2,156. The potential employer impact of such penalty increases is exponential, as violations are assessed per error or omission, not per Form I-9. A single Form I-9 can easily contain multiple violations, each of which can result in a fine.

Form I-9 violations fall under the purview of Immigration and Customs Enforcement (ICE). In addition to the prospect of multiple fines per Form I-9, discussed above, ICE can assess fines based upon the percentage of I-9s that have substantive or uncorrected technical errors. For

(Continued on page 13)

example, ICE can assess enhanced penalties of \$2,156 per Form I-9 if the company audit fail rate exceeds 50%. This potential penalty applies even if the violation rate is attributable to a single type of mistake, made uniformly on the majority of the employer's forms. In determining penalty amounts within the allowed ranges, ICE considers five factors: the size of the business, good faith effort to comply, seriousness of violation, whether the violation involved unauthorized workers, and history of previous violations.

Employers must be ready to produce their Form I-9s in response to an ICE Notice of Inspection within a three-day response timeline. Unprepared employers will find this three day production timeline to be very burdensome, disruptive and, potentially, costly.

The second and most recent of the two Form I-9 editions, dated July 17, 2017, is mandatory as of September 18, 2017. As of that date, all prior Form I-9 versions are invalid and cannot be used to confirm employment eligibility for new hires, re-hires, and Form I-9 re-verification. This does not invalidate Form I-9s on file for existing employees. The requirements as to when an employer must complete a Form I-9 have not changed. Similarly, this does not change the requirements for Form I-9 retention. Employers must continue to retain and store any previously completed Form I-9 for three years after the date of hire, or for one year after employment is terminated, whichever is later.

The July 17, 2017 Form I-9 edition contains few substantive changes. The instructions reflect the new name of former Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices—now the Immigrant and Employee Rights Section. Additionally, USCIS added the consular Report of Birth Abroad as a List C document on the Form I-9 list of acceptable documents. The USCIS also combined the certifications of report of birth issued by the Department of State as one

item on List C and renumbered the list accordingly.

Employers must strike a careful balance and adhere to, but not exceed or overreach the Form I-9 requirements. These steps, often occur when employers fear enforcement, can result in other violations falling under unfair immigration related employment practices and discrimination. Employers must accept the documents on the form's lists of acceptable documents, under the applicable instructions, if they are unexpired and reasonably appear to be genuine. Employers cannot refuse to accept a document due to a future expiration date, nor can they insist on presentation of a specific type of document or otherwise limit the document options set out in the approved lists.

Although the trend toward employer enforcement extends back to earlier administrations, the Trump administration brings a renewed and reinvigorated enforcement approach, including enforcementrelated hiring and an increased budget for the Department of Homeland Security. Employers must prepare for Form I-9 audits and tougher compliance reviews by taking steps such as: conducting self-audits, properly calendaring employment authorization expiration dates for Form I-9 reverifications, systematizing Form I-9 retention and purging timing, and investing in on-going training and review of existing practices, procedures and technology options. Viewing the Form I-9 as far more than a simple, administrative, formality can avoid financial liability and related disruptions.

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To learn more about Ms. LaRocca, Ms. Delott and Steptoe & Johnson please visit: www.steptoe.com.

Annual Holiday CLE Luncheon & Charity Drive



Featured Speaker:

Rick R. DeBruhl

Communications Director, State Bar of Arizona, ESPN Broadcaster, and former

"Driving Communications to Victory— Tools to Finding Success"

Wednesday, December 6, 2017

Register online at:

http://azparalegal.org/event-2588012

APA Members: \$35

Non-Members, Guests: \$50

*Attendees (with APA name tags) will have FREE same-day access to the Museum from 10 a.m. to 9:00 p.m.

Location:

Phoenix Art Museum
Singer Hall
1625 N. Central Ave.
Phoenix, AZ 85004

*Free Wi-Fi

Mr. DeBruhl is the Chief Communications Officer of the State Bar of Arizona, and known to many as a former Anchor with NBC affiliate, 12 News Kirkly Phoenix. With a career that started in radio and now finds him covering auto racing for ESP II, he's learned the art of storytelling.

What is the chief complaint about lawyers? Lack of communication. You will learn tips and techniques for better communications and teamwork in the legal field through the story of alexander Rossi, an Indy 500 rookie who had never driven in the race, but beat drivers and teams with decades of experience.

How did he do it? Communications and teamwork.

Not only will Rick take you through Alexander Rossi's amazing victory, but he can help you use the same tools to find success in your career.



The Arizona Paralegal Association Presents its:

Annual Holiday Charity Drive



Developed in 2012, the Packages For Hope program seeks to aid veterans who are in transition, homeless, or at risk of becoming homeless. Packages From Home works directly with the Arizona Department of Veterans Affairs (VA), Buckeye Outreach for Social Services (B.O.S.S.), and other local veterans outreach experts to provide food and hygiene items to veterans who are in need.

How to help:

<u>Cash Donations</u>: Their budget ranges from about \$1000 to \$4000 per week for postage. It drops a bit in the summer and goes up quite a bit as we approach the holiday season. It also depends on the availability of donated items, and most importantly, donated postage funds.

Wish List Donations: Bring any of the following items to our Annual Holiday CLE Luncheon on December 6, 2017, and we'll deliver to Packages from Home:

Food Items:

Single Drink Mix

Tabasco Sauce (2oz bottles)

Pop Tarts

PB Cracker packs (6 crackers to a pack)

Saltines (4 sleeves to a box)

Sunflower Seeds

Beef jerky (name brand packages)

Peanut butter (small plastic jars)

Jams and jellies (small packages)

Tea bags (individually wrapped)

Hot chocolate

***They are always in great need of food gift cards for our homeless and at-risk veterans. Please help us provide them with a hot meal by donating gift cards to places like Subway, McDonalds, Chipotle, or your favorite place to eat when you're out and about.

Packages From Home

5643 N. 52nd Avenue Glendale, AZ 85301

623.934.3274

http://www.packagesfromhome.org/

Hygiene Items:

- 1. Toilet Paper
- 2. Dental floss/dental picks
- 3. Baby wipes (60-70 per pack)
- 4. Corn Huskers brand lotion

Military Canine Items:

- 1. Canine ear cleaner
- 2. Eye wash
- 3. Canine bath wipes
- 4. Grooming tools (brushes, combs, nail clippers)
- 5. Paw pad cream
- 6. Canine shampoo (mild, not heavily-fragranced, with an oatmeal base for dry/sensitive skin)
- 7. 4-6 ft. leashes and collars strong enough for a 70+ pound dog
- 8. Durable toys (such as Kong or Dogzilla)
- 9. Antiseptic spray
- 10. Collapsible dog water bowls
- One-pound bags of dry, grain-free dog food, made in the USA
- 12. Milk-Bone brand and high-protein dog treats, made in the USA

***For the health and safety of our military, please check expiration dates prior to donating. Items donated should not expire within the 3-month period following donation.



ABA House urges changes affecting undocumented immigrants, among other policy decisions

NEW YORK, Aug. 15, 2017 -- The American Bar Association House of Delegates, which determines association-wide policy, adopted policies over two days that urges Congress to add courthouses to the "sensitive locations" list for immigration enforcement and licensing groups to admit to the bar undocumented law school graduates under certain circumstances.

The action by the House — made up of 601 delegates from state, local and other bar associations and legal groups from across the country — met in New York on Aug. 14-15 at the close of the ABA Annual Meeting, which began Aug. 10.

Resolution 108, proposed by the ABA Law Student Division and embraced by the ABA Young Lawyers Division, recommends that state courts with authority to regulate admission to the bar admit undocumented law school graduates if they are "seeking legal status." The resolution passed by voice vote with modest opposition.

Resolution 10C urges Congress to amend Section 287 of the Immigration and Nationality Act to expand and codify Department of Homeland Security guidelines regarding immigration enforcement. It would specifically add courthouses to the government's "sensitive locations" list.

Under current U.S. Immigration and Customs Enforcement policy, a handful of locations, such as schools, healthcare facilities, places of worship and religious ceremonies, and public demonstrations, are off-limits to agents. Proponents of the resolution cited examples across the country where individuals avoided courthouses because of fears that ICE had been notified of their pending presence and their undocumented status. They argued that without designating courthouses as "sensitive locations," the effect would be to chill participation of undocumented victims and defendants from the justice process as well as to deter other witnesses from testifying.

In one case cited, a domestic violence victim refused to testify when she learned that ICE agents were present and looking for her, and the defendant walked free.

In Resolution 10B, the House reaffirmed the ABA's opposition of a half century to mandatory minimum sentences because it limits a judge's flexibility to consider circumstances and has a disparate impact on African Americans, whom proponents say are more likely to be charged with offenses with sentences in this category.

(Continued on page 17)

The House considered resolutions in these areas over its two-day meeting:

- Juvenile justice: The House approved several resolutions related to the juvenile justice system. Drawing from the ABA Criminal Justice Standards, Resolution 112A seeks to address the predicament faced by juveniles caught in child welfare and criminal justice systems at the same time. Resolution 112C urges governments to adopt policies that favor release on recognizance, advocating that pre-trial detention should not be occur solely on the ability to pay; and Resolution 112E would prohibit the use of solitary confinement for those under 18 years old.
- states, the House approved Resolution 118 that urges governments to allow courts to issue gun violence restraining orders, including *ex parte* orders. Proponents called the resolution a "modest, common-sense reform" that would help families and others prevent suicides and other acts of violence through temporary restraining orders. Opponents raised First and Fourth Amendment issues as well as the one-sided nature of an *ex parte* proceeding. The resolution passed on a voice vote with modest opposition.
- Records expungement: Two different resolutions would affect those exonerated from a charge as well as those found guilty of minor offenses.

 Resolution 112F urges governments to allow individuals to petition to expunge all criminal records pertaining to charges of arrests that did not end in a conviction. Resolution 112G urges that convictions for minor violations for certain crimes related to homelessness be eligible to be expunged.
- Federal courts: In passing Resolution 104, the
 House reaffirmed its opposition to restructuring
 the U.S. Court of Appeals for the Ninth Circuit,
 one of 13 in the federal appellate system.
 Legislation has been proposed in Congress to split
 up the circuit, but there is strong opposition in the
 legal community. Speakers said the large majority
 of the 29 appellate judges on the court also oppose

- the split, as have bar groups in the western states and others.
- Gideon issues: Resolution 106 urges Congress to give the U.S. Department of Justice more powers to ensure compliance with the 1963 U.S. Supreme Court decision in *Gideon v. Wainwright*, which gave defendants in most criminal cases the Sixth Amendment right to counsel. Proponents said the promise of Gideon has been broken as many defendants are provided counsel who prove ineffective. Resolution 115 supports the appointment of counsel at federal government expense to represent all indigent persons in immigration removal proceedings.

All resolutions and their disposition can be found at https://www.americanbar.org/news/
reporter resources/annual-meeting-2017/house-of-delegates-resolutions.html. Only proposals adopted by the House constitute association policy.

With more than 400,000 members, the American Bar Association is one of the largest voluntary professional membership organizations in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law. View our privacy statement online. Follow the latest ABA news at www.americanbar.org/news and on Twitter www.americanbar.org/news and on Twitter





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Your U.S. District Court's Local Civil Rules Can Give Insight into How It Implements Federal Rules

When you are litigating in a U.S. district court, one of the first things you should look at to determine the court's approach to discovery and other pretrial issues is its local rules. In *Rockwell Med., Inc. v. Richmond Bros, Inc.*, (17-10757 (E.D. Mich. Apr. 14, 2017), the plaintiff moved for a preliminary injunction to compel the defendants to supplement their responses to requests for production and for leave to conduct expedited discovery. The plaintiff sought the production of five documents from the defendants as well as four depositions on an emergent basis. The magistrate judge denied the motion. The plaintiff appealed.

The district judge, under the clearly erroneous standard set forth in 28 U.S.C. § 636(b)(1)(A), affirmed the magistrate judge's decision. The district judge looked to Rule 26(b)(1) of the Federal Rules of Civil Procedure, which limits discovery based on the needs of the case. The district judge found that when weighing proportionality, the burden and expense of the discovery request "immensely and doubtlessly

outweigh its likely benefit." Furthermore, the district judge found that, even if all other proportionality

factors listed in Rule 26(b)(1) favored the plaintiff, the requests for five "documents" as defined by the plaintiff (better described as categories of documents), was still exceedingly broad.

It pays to know your court's local rules, as well as the amended Federal Rules of Civil Procedure, and to make your discovery requests in compliance with those rules.

The district judge also considered the duplicative nature of the requests, which sought both originals and all copies of documents. The district judge found that, even ignoring Rule 34(b)(2)(E)(iii) which states that "a party need not produce the same electronically

(Continued on page 20)

stored information in more than one form," the requests were unduly burdensome. The district judge compared the breadth of the plaintiff's requests with the procedures contemplated in the Eastern District of Michigan's Model ESI Order (https://www.mied.uscourts.gov/PDFFIles/ ModelESIDiscoveryOrderAndRule26fChecklist.pdf):

"[R]equests for production of ESI and related responses should be reasonably targeted, clear, and as specific as practicable. Where the discovery request is potentially burdensome to the responding party, the parties should consider options such as staging discovery and sampling, in an attempt to reduce the costs of production. If the discovery request seeks marginally relevant information, the requesting party should expect some cost shifting to be imposed by the Court in the absence of an agreement between the parties."

Compared with the model order, the plaintiff's requests were found to be overly broad, repetitive, costly, and irrelevant. Consequently, although some requests made by the plaintiff were consistent with the model rule, the request in its entirety was not.

Thus, it pays to know your court's local rules, as well as the amended Federal Rules of Civil Procedure, and to make your discovery requests in compliance with those rules.



Article reprinted with permission of the authors, Angela S. Fetcher, and Briana Lathon. Ms. Fletcher is a Member and Ms. Lathon is a Summer Associate at Stoll Keenon Ogden PLLC in Louisville, Kentucky. To learn more about Stoll Keenon, visit www.skofirm.com.









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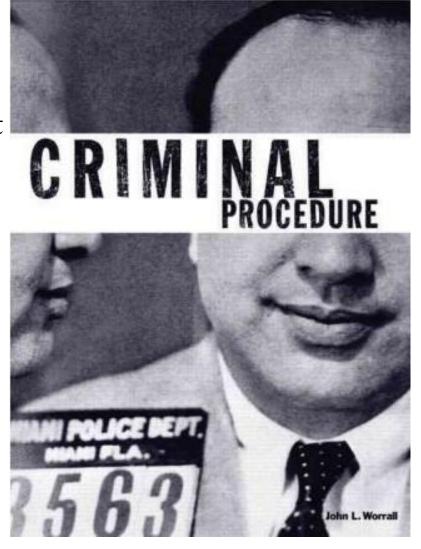
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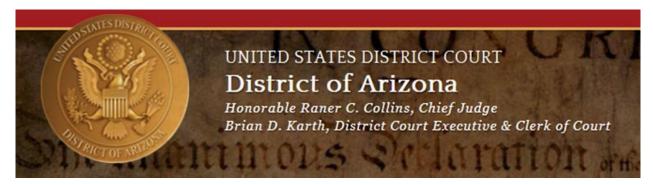
Robert J. McWhirter is a nationally and internationally known speaker and author on trial advocacy, immigration law, and the history of the bill of rights. He is a Certified Specialist in Criminal Law with the State Bar of Arizona and first chair qualified to defend capital cases by the Arizona Supreme Court.

Mr. McWhirter is the author of several books published by The American Bar Association: BILLS, QUILLS, AND STILLS: AN ANNOTATED, ILLUSTRATED, AND ILLUMINATED HISTORY OF THE BILL OF RIGHTS (ABA Press 2015); THE CRIMINAL LAWYER'S GUIDE TO IMMIGRATION LAW: QUESTIONS AND ANSWERS, 2nd Ed. 2006; and, THE CITIZENSHIP FLOWCHART, 2007. Mr. McWhirter has served on the American Bar Association Criminal Justice Section and on the Standard Committee writing the CRIMINAL JUSTICE STANDARDS.

Mr. McWhirter has extensively taught in Latin America on comparative criminal procedure and trail advocacy in Venezuela, Colombia, Mexico, Nicaragua, Ecuador, and Uruguay. He has been a visiting professor at the Catholic University of Chile and the University of Chile. In 2010-2011, Mr. McWhirter served in El Salvador administering an \$11 million USAID project to reform the justice system where he successfully developed and oversaw programs and trainings for the Salvadoran courts, police, prosecutors, and public defenders. Mr. McWhirter still travels to Latin America, most recently in August 2013 on a lecture tour as a speaker grant recipient for the United States State Department and in Uruguay training prosecutors.

In 2009, Mr. McWhirter was named a Southwest Super Lawyer, a rare instance for a public defender. Mr. McWhirter is also the 2009 recipient of the Phoenix Saint Thomas More Award and the immediate past president of Arizona Attorney's for Criminal Justice. Mr. McWhirter is the supervising criminal attorney at the ASU Alumni Law Group, a teaching law firm.

Last day to register: Friday, October 6, 2017



NEWS FROM THE U.S. DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Effective September 1, 2017

Change in Procedure for the Filing of the Consent to Exercise of Jurisdiction by a United States Magistrate Judge/District Judge Option Form (Electronic Filing Now Required)

Pursuant to LRCiv 3.7(b), when an action is assigned to a Magistrate Judge, each party must execute and file within fourteen (14) days of its appearance either a written consent to the exercise of authority by the Magistrate Judge under 28 U.S.C. § 636(c), or a written election to have the action reassigned to a District Judge. Each party must indicate his or her consent or election on the form provided by the Clerk.

Effective September 1, 2017, attorneys and pro se parties who have been given permission to file electronically, will be required to e-file the consent or election form using the appropriate restricted event located in the Other Documents category: Consent/Election Form LRCiv 3.7(b). Previously, all parties were required to submit the completed form in paper format.

Entries made in ECF using this event are unavailable for viewing. There is no Notice of Electronic Filing ("NEF") generated to counsel of record or the judge assigned to the case. Only designated court staff will be able to view these documents



Arizona Supreme Court Confirms Proposition 206 (Paid Sick Time law) Does Not Violate the Arizona Constitution

The Arizona Supreme Court issued an opinion on August 2, 2017, holding that Proposition 206 (Paid Sick Time law) does not violate the Arizona Constitution. The opinion discusses the constitutionality of the paid sick time law under the Revenue Source Rule (Ariz. Const. art. 9, §23), the Separate Amendment Rule (art. 21§1), and the Single Subject Rule (art. 4, pt. 2, §13). The opinion is informative, but does not change anything for the Arizona employers. The law remains effective and enforceable. To read the Arizona Supreme Court Opinion, visit: http://www.azcourts.gov/Portals/0/OpinionFiles/Supreme/2017/CV-16-0314-SA%20Opinion.pdf.



When:

Friday, September 15, 2017

Registration and Breakfast:

7:30 a.m. - 8:15 a.m.

Seminar:

8:15 a.m. - 5:00 p.m.

Where:

Hacienda del Sol Guest Ranch Resort 5501 N Hacienda del Sol Rd Tucson, AZ 85718 Phone: (520) 299-1501

Subject to availability, rooms are available at special rates. See the website for details.

Contact: 2017 Seminar Chair

Tammy L. Dahl, ACP Mesch Clark Rothschild 259 N. Meyer Avenue Tucson, Arizona 85701

Phone: (520) 624-8886

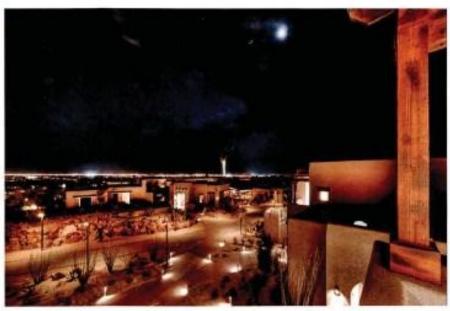
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Digital Evidence in the Business Setting Scott Greene, Evidence Solutions, Inc.

A Brief Primer of International Law: Litigation in and Around Mexico Michael Mandig, Esq., Waterfall, Economidis, Caldwell, Hanshaw & Villamana, PC

DUI Law Update
Matthew L. Rabb, Esq., Rabb & Rabb, PLLC

The Passion of Juvenile Court

Honorable Peter W. Hochuli, Pima County Superior Court

Ins & Outs of Child Support in 2017—Tools for Obtaining and Enforcing Child Support Ronald N. Allen, Esq., Allen Law Office

Law Firms and Social Media—The Do's and Don'ts (Ethics)
Isaac D. Rothschild, Esq., Mesch Clark Rothschild

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 - · Vendor Fair



Tucson Paralegal Association's 38th Annual Seminar When: Friday, September 15, 2017—7:30 a.m.—5:00 p.m.

Registration: 7:30 a.m.—8:15 a.m.// Seminar: 8:15 a.m.—5:00 p.m.

Where: Hacienda del Sol Guest Ranch Resort, 5501 N. Hacienda del Sol Rd., Tucson, AZ 85718

REGISTRATION FEES:*	Early Bird Rate Ends August 15th	Standard Rate After August 15th **Additional \$50.00 for at the door registrations
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Student members with current student ID	\$100.00	\$149.00
Student non-members with current student ID	\$169.00♦	\$209.00♦

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	A link to seminar materials will be will not be provided.	emailed to all registrants one week prior to the seminar. Printed materials

Cancellation: The registration fee, less a \$25.00 processing fee, will be refunded if written cancellation notice is received by 5:00 p.m. on September 8, 2017. No refunds will be issued for cancellations received after 5:00 p.m. on September 8, 2017.

Vol. 13, No. 9

September 2017

Individual Subpoenas

Attorneys and legal support staff periodically ask the Clerk's Office if individual civil subpoenas (particularly "blank" subpoenas) can be copied and used for multiple witnesses. The Clerk's position, based on an informal opinion from the Attorney General's office, is that the statutes and civil rules intend for one original subpoena per recipient. An original subpoena issued by the Clerk is not intended to be copied and reissued to multiple witnesses or to list multiple witnesses on one subpoena. With some statutory exceptions for specific agencies, only the Clerk or the State Bar on the Clerk's behalf may issue an original subpoena in Arizona. To make copies of an original blank subpoena and serve them on different parties would circumvent the rules and statutes that specify the Clerk as the entity authorized to issue subpoenas. Arizona's rules do not provide for attorneys issuing their own subpoenas. If a case requires subpoenaing 20 witnesses, this protocol requires the Clerk to issue 20 subpoenas—one for each witness. Civil Rule 45(a)(1)(D) requires that all subpoenas substantially comply with the format approved by the Arizona Supreme Court in Rule 84, Form 9, Form of Subpoena.

Mental Health Annex

The superior court has a new, third location for the court's mental health calendar, called the ANNEX. The ANNEX is located in a separate building in close proximity to the Arizona State Hospital. The ANNEX calendar is intended to provide relief to the mental health calendar held at the Desert Vista facility in Mesa. The ANNEX calendar started as a part-time calendar in July, with matters heard on Tuesday and Friday each week and will continue to build over time. The ANNEX project is led by the court's Probate and Mental Health department.

AzCourtHelp.org Virtual Legal Resource Center - More Than a Website

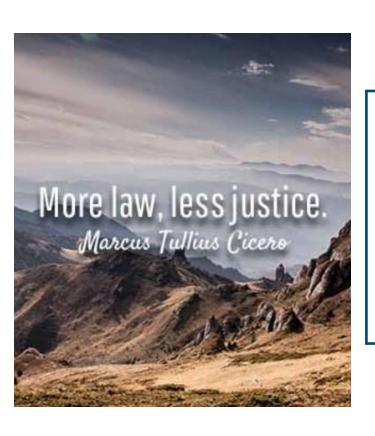
Arizona's Supreme Court recently announced national recognition given to AzCourtHelp.org, a collaborative resource for Arizona's courts, which launched in January 2017. The website received an award for making the best use of technology to improve court services and access to the public.

AzCourtHelp.org offers free assistance to people who have legal questions or need assistance resolving disputes. The virtual legal resource center is especially helpful to self-represented litigants who would otherwise not have access to legal resources in their area. Even basic information such as what court to visit for a particular issue can be confusing to the public. The website addresses legal questions ranging from divorce and custody to landlord/tenant issues, civil disputes, and criminal charges. During normal business hours, there is an online chat feature staffed by court employees and law librarians. Live webinars on popular topics are available each month at AzCourtHelp.org/public-events. One popular feature is virtual tours, allowing users to see what a courthouse looks like, as well as courtrooms, parking areas, and more. Accessibility features allow text to be read aloud or translated and users with visual impairments can adjust text size or contrast. For more information, see the Supreme Court's announcement online at

 $\frac{https://www.azcourts.gov/Portals/201/Press\%20Releases/2017Releases/071717AzCourtHelpAwardsJuly2017.pdf}{\#zoom=100.}$

We're Closed

The heat will still be here Monday but you won't find us. The Clerk's offices are closed September 4 for Labor Day. If you need to file, use electronic filing if available or use one of the Clerk's external filing depository boxes. The 24-hour filing depository boxes are available for Criminal, Family Court, Tax, and Probate filings and for some Civil filings. The boxes are not for any Juvenile filings or for Civil filings that must be eFiled. Find the box locations online at http://www.clerkofcourt.maricopa.gov/alternative_filing.asp.



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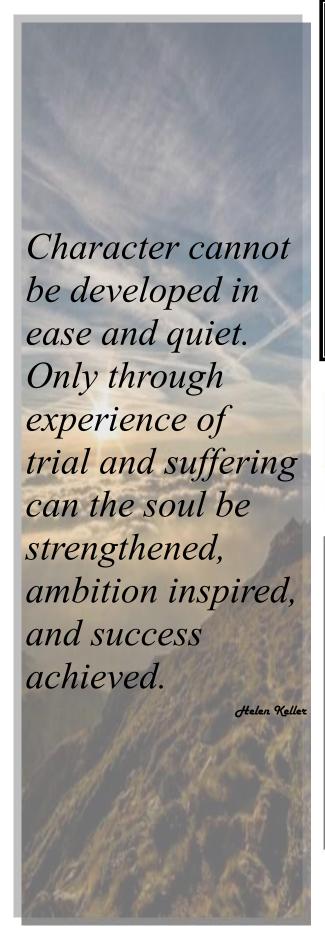
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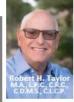
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Attention APA Members

It is the policy of the Arizona Paralegal Association that Job Bank information only be provided to members of the APA. Please honor this policy by not giving this information to others but, instead, let them know how they can join!

NALA NOTES

Submitted by: Teresa Romero

NALA's 2017 Annual Meeting was held July 19-21, 2017. The APA's Membership Chair, Karen Flaaen, and I had the privilege of attending this event and want to recap significant events of the meeting in this month's NALA Notes.

The meeting was held in Orlando, Florida, and was hosted by the Paralegal Association of Florida among other neighboring affiliates. The PAF, along with several other affiliate associations, including the Arizona Paralegal Association, participated in the "Affiliates Reception" on the evening of July 19, where NALA affiliates networked and exchanged some very cool mementos and great ideas that we can use in our organization.

As always, NALA focused on outstanding education selections. Sessions included the essential skills classes to prepare for the CP exam, as well as the following list of varied classes:

- IRS Collections-Dealing with Liens, Levies & Seizures
- IRS Negotiated Settlement Program Secrets to Success
- Learning About Evidence
- Letting Go of Paper
- Motivation by Chocolate
- Not Your Typical Newsletter- Communicating with Members in the Digital Age
- Practicing Paralegal's Professional Responsibilities
- Questioning Techniques for Depositions
- Raising Capital and Crowdfunding
- Revamping Your Firm for Success
- The Basics of Trusts
- The Paralegal's Professional Responsibilities Role-Playing Workshop
- The Paralegal's Role in Litigation
- The Secret to Understanding Objections
- Trap Doors Real Estate Transfers

In addition, the Nebraska Paralegal Association presented "Not Your Typical Newsletter- Communicating with Members in the Digital Age" during the Associated Affiliates Meeting on Day One of the conference.



The 2018 Conference & Expo will be July 11 - 13, 2018 in St. Louis, MO.

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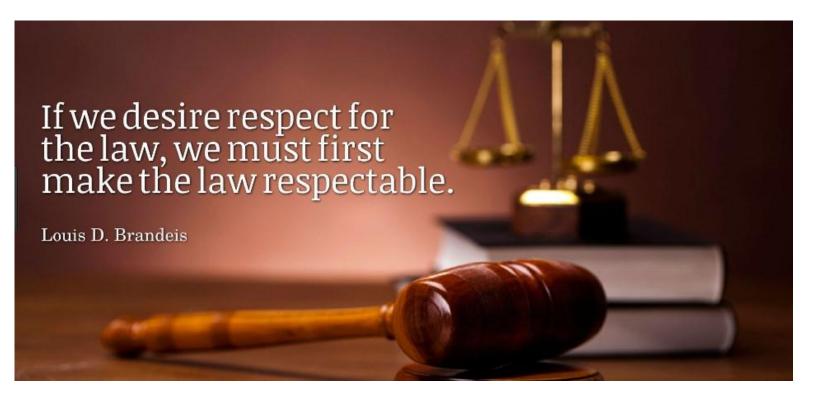
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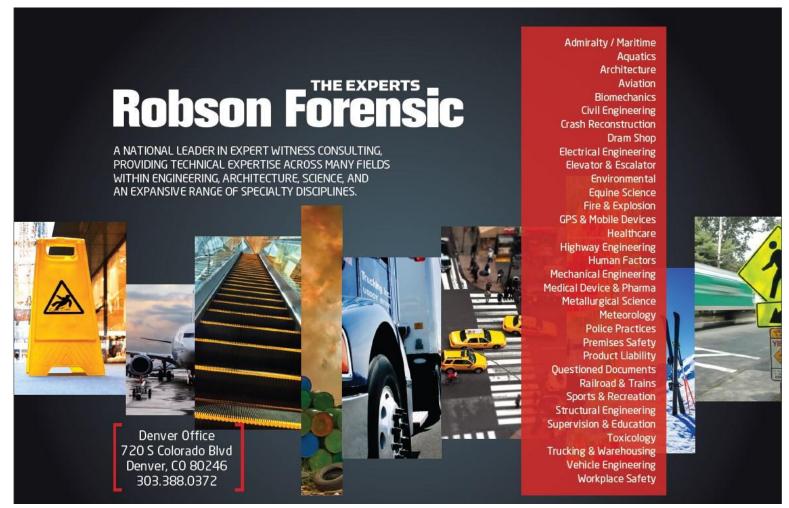


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