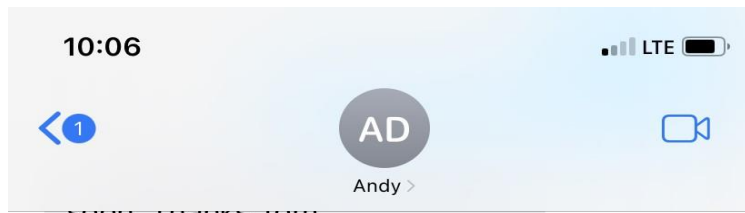


Tips from the bench

- Presented on August 25, 2023
- Commissioner Tom Marquoit, Superior Court of Maricopa County
Tom is currently assigned to the juvenile court, where he hears delinquency matters and private severance petitions. Tom has also served on the probate and mental health bench.
Tom attended American University in Washington, DC for his undergraduate degree, and Villanova School of Law for his law degree. Before joining the bench, he worked as a civil litigator in Philadelphia and as a prosecutor at the Maricopa County Attorney's Office.



SOON. THANKS TOM.

Fri, Mar 31 at 3:29 PM

Tom, we have three dates open: 8/25, 9/29 and 12/15. Will any of these work?



Ok let me get coverage arranged. I'll get back to you soon but I'll make one of those dates happen.

Mon, Apr 3 at 11:15 AM

Put me down for Aug 25

Mon, Apr 3 at 2:31 PM

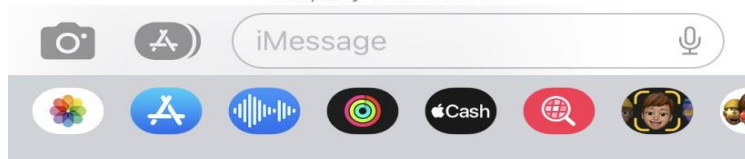
Done. We can work on a topic down the road, or if you have any ideas just let me know. Thanks.

I have zero ideas. What would be of interest?

Mon, Apr 3 at 4:15 PM

How about some of the dumb ass things that lawyers have done in your court room???

Mon, May 15 at 3:25 PM



Topics for the day

- How did I get here?
- What arguments work and what arguments don't?
- How to prepare
- Legal and ethical considerations for courtroom conduct
- Self-improvement

Process for becoming a commissioner

- Have to practice for 5 years.
- Have to fill out large application.
- Have to list references of people you have worked with, worked against, and appeared before.
- Have to include non-attorney references
- Why does your background make you a good candidate?

First day as a
commissioner

- Training is a combination of education and shadowing.
- Often have no background in the practice area.
- Most of the time, have not taken the judicial training course before taking the bench.

Did you know?

- Most people tune out in about 10 minutes according to **“Your Audience Tunes Out After 10 Minutes. Here's How To Keep Their Attention”** (Carmine Gallo, Forbes, February 8, 2019).
- **Ways to keep attention require me to keep you engaged.**



Commissioners

- Range from 1975 to 2011
- Average year of graduating college: 1994
- Average age likely 51
- Oldest is 70
- Youngest is 34

Generation X

- Born between 1965 and 1980.
- 65.1 million – third largest population
- Young adulthood included AIDS, changing world order, and dot com/2008 recessions.
- Boomerang kids.
- Fairly even split politically, tilting right.
- Hit hard by COVID impact to retirement plans

Millennials

- Born between 1981 and 1996.
- 72 million – largest population group in the U.S.
- Young adulthood included war, the great recession, and underemployment.
- Less likely to marry or have children.
- Debt is higher than previous generations.
- Less conservative and more diverse.

- A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment. AZ ST S CT RULE 81 CJC Rule 2.4
- How can a person set aside all of their life experiences?
- Those experiences vary from age, background, etc.

Background matters

- Depending on the judicial officer, they may come from a completely different background, in work experience and in life experience.
- Arguments that failed in the past may be more effective now.
- Arguments that have “always been the case” may be less persuasive.

A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

AZ ST S CT RULE 81 CJC Rule 2.3

- What if the judicial officer has a different opinion about what constitutes bias?
- What if the judicial officer has a different definition of prejudice than the attorneys or the witnesses?

“Unusual” pleadings or complaints

- **Representations to the Court.** By signing a pleading, motion, or other document, the attorney or party certifies that to the best of the person's knowledge, information, and belief formed after reasonable inquiry:
 - (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
 - (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.
 - (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

Ariz. R. Civ. P. 11

What is a “reasonable inquiry”?

- Court applies an objective standard of reasonableness.
- “Rule 11 therefore requires that before signing a pleading, a lawyer possess a good faith belief, formed on the basis of a reasonable investigation, that a colorable claim or defense exists..” James, Cooke & Hobson, Inc. v. Lake Havasu Plumbing & Fire Prot., 177 Ariz. 316, 319, 868 P.2d 329, 332 (Ct. App. 1993).
- An attorney violates Rule 11 when he or she “knew, or should have known by such investigation of fact and law as was reasonable and feasible under all the circumstances, that the claim or defense was insubstantial, groundless, frivolous, or otherwise unjustified.” Boone v. Superior Court, 145 Ariz. 235, 241, 700 P.2d 1335, 1341 (1985).
- An attorney has an obligation to review and reevaluate a client's position as the facts of a case develop and to re-evaluate previous Rule 11 certifications. Standage v. Jaburg & Wilk, P.C., 177 Ariz. 221, 230, 866 P.2d 889, 898 (Ct. App. 1993).

What is a “reasonable inquiry”?

“We will not condone the actions of an attorney who **attempts to hide behind the good faith component** of Rule 11 when he has conducted no formal discovery and has proceeded with complete disregard to whether the claim is well grounded and warranted by law. The good faith component of Rule 11 is not based on whether an attorney subjectively pursues claims in good faith, but instead is judged on an objective standard of **what a professional, competent attorney would do in similar circumstances** to satisfy the requirements of Rule 11.

- Standage v. Jaburg & Wilk, P.C., 177 Ariz. 221, 230, 866 P.2d 889, 898 (Ct. App. 1993).
- What did you do, other than take the client’s word for it?

“Unusual” pleadings or complaints

Rule 11 also requires: (T)he denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

“The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.” Ariz. R. Civ. P. 36(a)(5)(C).

How to avoid a Rule 11 violation

- Keep the conspiracy theories to a minimum.
- Verify the client's contentions before signing a pleading asserting them.
- Explain the consequences of not complying with this to the client.
- Don't file cases that can't comply with the rules!

Pro per litigants

- A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. AZ ST S CT RULE 81 CJC Rule 2.6.
- Balancing that right to be heard is difficult.

Preparation

- Professionalism
- Understanding our duty to others who may only experience court one time.
- Know what you are doing before taking a case.
- Oral motions.

Oral argument

- Don't repeat arguments, highlight them
- Under advisement is equally possible to a ruling now
- Win or lose gracefully

Prepare the client for court

- You can lose!
- Let you do your job and they sit there.

Preparation for settlement conference

- Settlement memo should not be cut and paste.
- Client should know that they will hear bad news. Disagree if you like, but don't debate it back and forth.
- Come there to settle.

Petitioning for attorney fees

- “Contingent fees are subject to regulation by this court. Either a fixed or contingent fee, proper when contracted for, may later turn out to be excessive.” Matter of Swartz, 141 Ariz. 266, 273, 686 P.2d 1236, 1243 (1984).
- Appropriate factors to consider are ”the degree of uncertainty or contingency with respect to liability, amount of damages which may be recovered, or the funds available from which to collect any judgment; 2) the difficulty of the case and the skill required to handle it; 3) the time expended in pursuing it; and, 4) the results obtained.” Id.
- “(T)he determination of whether a fee is unreasonable must be based on the individual facts of each case. (W)e recognize and affirm the probate court's discretion to determine a reasonable fee on a case by case analysis, pursuant to the standards established in ER 1.5(a) and Swartz, as reflected in the probate court's Standards.” Matter of Conservatorship of Fallers, 181 Ariz. 227, 229, 889 P.2d 20, 22 (Ct. App. 1994).

Petitioning for attorney fees

- Average PI settlement fees are 30% - why is that?
- Convincing arguments vs. “less so”

Courtroom etiquette

- Court staff tell us everything.
- Lots of exhibits for an uncontested hearing without using them.
- Talk to each other beforehand, not just moments before the hearing.
- Blaming your staff for errors.

Courtroom etiquette

- Questioning witnesses should be professional.
- Tone should be appropriate for a professional setting.
- Victim's bill of rights: Ariz. Const. art. 2, § 2.1(A)(5).
- Is the victim being treated with respect?
- How does this impact the defendant's right to cross examine?

Courtroom etiquette

- Tone of flings must be professional.
- Manners matter to many of us.
- Respect for opposing counsel and opposing party should be obvious.

How can we do better?