

## Public Asked for Input on Candidates for Superior Court Vacancy

The Maricopa County Commission on Trial Court Appointments is seeking public input on 15 candidates for two openings on the Superior Court in Maricopa County.

The candidates are (MCBA members in bold):

- **John L. Blanchard**
- Scott A. Blaney
- Cassie Bray Woo
- **Nicole M. Brickner**
- **David W. Garbarino**
- **David N. Horowitz**
- **Melissa Iyer Julian**
- Joseph S. Kiefer
- **Julie A. Mata**
- Adele G. Ponce
- Sigmund G. Popko
- Andrew J. Russell
- **Aryeh D. Schwartz**
- **Annielaurie Van Wie**
- Tracey J. Westerhausen

Their applications can be viewed online at the Commission's website, <http://azcourts.gov/jnc>.

The Commission will meet to interview the candidates on July 25, 2018. The meeting will be held in room 345 of the Arizona State Courts Building, 1501 W. Washington, Phoenix, AZ 85007, starting at 8:00 a.m. The interview agenda will be posted on the Commission's website at least 7 days prior to the meeting. Citizens may address the Commission on the day of the meeting or send written comments to [jnc@courts.az.gov](mailto:jnc@courts.az.gov) or to 1501 W. Washington, Suite 221, Phoenix, AZ 85007. It is not necessary to submit multiple copies of written comments, and email is preferred. Comments must be received no later than July 20 to be considered. Anonymous comments cannot be considered.

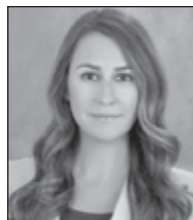
After the interviews, the Commission will recommend at least three nominees for each opening to Governor Doug Ducey, who will appoint the new judges. ■

## Q&A



### LAWYER LIABILITY AND ETHICS

## Ghostwriting—An Ethical Business Model Not Without Some Pitfalls for the Unwary



Jessica L. Beckwith

Limited scope representation has emerged into the legal marketplace in a big way over the last decade with no signs of slowing down. Many legal consumers may have some means for legal representation but cannot afford traditional hourly rates for an attorney from the outset to the conclusion of their legal matter. Further, some legal consumers feel that armed with some level of legal assistance from an attorney, full legal representation is not necessary. (Many attorneys may not agree with this last statement, but it is a mindset that is prevalent among legal consumers.)

Ghostwriting is a form of limited scope representation that some of us may be very familiar with or may do regularly. On the other hand, ghostwriting may sound foreign and even ethically suspect to others. Ghostwriting is generally ethically permissible in Arizona, but it is not in every jurisdiction. Attorneys who practice in multiple jurisdictions need to check the local rules and authorities before engaging in the practice of ghostwriting. Further, the majority of federal courts do not support the practice of ghostwriting.

State Bar of Arizona Ethics Opinion 05-06 held that ghostwriting is an ethical practice. The Opinion described ghostwriting as follows: "The ghostwriting of pleadings and other court submissions is a frequent way for an attorney providing limited scope representation to assist a proper litigant without committing to the entire litigation." The majority of states that have addressed whether ghostwriting is an ethical practice have concluded that it is. However, some states require disclosure to the court in all or certain circumstances. While acknowledging the prohibition on and caveats to allowing ghostwriting, the Arizona Committee on the Rules of Professional Conduct stated, "The Committee concludes that the submission of ghostwritten documents without informing the court or tribunal does not violate ER 3.3(a) (1) [Candor Toward the Tribunal] and ER 8.4(c) [Misconduct – Dishonesty, Fraud, Deceit or Misrepresentation] because the practice is not inherently misleading to the court or tribunal."

As with any client engagement, limited scope or not, it is imperative that the client understands the scope of your representation. This is especially salient when the representation is limited to ghostwriting. The client must understand not only the risks of proceeding pro se, but understand how the case will move forward after the limited scope engagement. Attorneys who represent clients in limited scope engagements are not required to be seers, but it would be prudent to advise the client of what possible outcomes may follow or flow from the scope of the limited engagement.

Another possible issue that has arisen from ghostwriting is opposing attorneys asking the client about being represented. If the client is not expecting these questions from opposing counsel, the client may be anxious or get defensive. However, if the attorney explains to the client at the outset of the representation that ghostwriting is ethically permissible and that the client is not duty-bound to disclose the existence of a ghostwriter or the identity of the ghostwriter to opposing counsel (unless a court inquires, in which case the client will generally be required to make these disclosures and should be advised by the attorney never to make any misrepresentation to the court). This advisal to the client may naturally lead to a discussion of other possible issues with ghostwriting such as whether or not the attorney will speak to opposing counsel as part of the representation. For example, if the client chooses to disclose to opposing counsel the identity of the ghostwriter and opposing counsel then wants to speak with the attorney, will this be included within the scope of the representation?

Unbundling of legal services including limited scope engagements and more specifically ghostwriting allows a greater number of people and entities access to legal representation that may have previously been cost-preclusive. Making sure that these clients are treated the same way as other clients—with proper advisals, engagement agreements, and the like—ensures that this new breed of legal services will not breach any of the attorney's ethical duties. ■

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# Annual Conference



## Hall of Fame Dinner Annual Meeting Bench Bar Conference

SAVE THE DATE

September 13-14, 2018

More information coming

### CORRECTION



Joseph Brophy

The *Maricopa Lawyer* incorrectly identified the author of the June 2018 Lawyer Liability and Ethics article, *Breaking Up Is Hard To Do: When Partners Leave*. The article was written by Joseph A. Brophy from Jennings Haug Cunningham. The *Maricopa Lawyer* regrets this error.