

Arizona Courts' Mental Health Project Contributes to National Guide

A 2019 report found that the majority of people in local jails suffer from mental illness and the rate of serious mental illness is four to six times higher in jail than in the general population. Statistics like these drove the Arizona court system to address mental health in state courts. Recognizing a national need to address the issue, a joint effort of national organizations adapted Arizona's guide into a step-by-step simple implementation guide for other courts. The National Guide allows courts, particularly counties, to identify local partners in their communities to improve outcomes and, where possible, prevent justice system involvement for those with mental illness.

Time has shown that the complexities of working with people who have mental illness and a cooccurring substance abuse issue can strain the resources of all three branches of government in responding. The State Justice Institute awarded grant funds to study national solutions to these issues. Working with the National Center for State Courts, the Conference of Chief Justices, and the Conference of State Court Administrators, a national guide was produced. Leading Change: Improving the Court and Community's Response to Mental Health and Co-Occurring Disorders is a forty-three-page toolkit for starting a lo-

cal program, identifying and gathering the necessary partners, implementing the best practices in the guide, and maintaining the approach over time.

Courts, governments, or other agencies looking to implement a program in their community can find the resource online at <https://tinyurl.com/rbh4m5w>. Arizona's report that contributed to the national guide is online at <https://tinyurl.com/uzdtd78>. Arizona's Administrative Office of the Courts will host a Mental Health Summit in March of 2020 to continue these local and national efforts. ■

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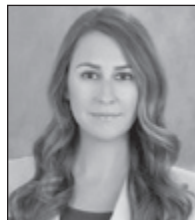
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Q&A



LAWYER LIABILITY AND ETHICS

New Year's Resolution – Giving Up Scorched Earth Litigation Tactics



Jessica Lienau Beckwith

“Scorched earth” litigation tactics are named after a military strategy that aims to destroy anything that might be useful to the enemy. History has provided many examples of success when scorched earth tactics were employed such as General Sherman's

March to the Sea during the American Civil War. However, as attorneys, we must ask ourselves: What is the proper place for scorched earth litigation tactics, if any? As Section 1 to the Preamble to the Arizona Rules of Professional Conduct states, “Whether or not engaging in the practice of law, lawyers should conduct themselves honorably.” Are these litigation tactics honorable?

Scorched earth litigation tactics are hard to define, but most attorneys know them when they see them. Generally, they are tactics that seem to have little thought behind them other than to potentially waste the time and money of the opposing party and they most certainly are not done in good faith. Examples abound in the discovery context (like receiving thousands, yes thousands, of discovery requests in a straight-forward case) but can also include simply the style and manner of communication to opposing counsel.

Attorneys are bound by the Ethical Rules, but clearly some attorneys believe that the Ethical Rules do not preclude scorched earth litigation tactics. For example, a California attorney's conduct recently made national news for the expletive-ridden, and what many would consider threatening (“I know where you live” and threats of water boarding opposing parties at deposition), communications this attorney made to opposing counsel. Many other statements one would be shocked to see in a client file were said, but are not appropriate for print. When questioned about his behavior, the attorney stated that this was part of his “negotiating strategy.” The judge was so shocked and appalled by it that

he called for the attorney to resign from the practice of law (which the attorney would not agree to do).

In the most extreme cases, the courts can and will sanction an attorney for abusive litigation tactics. But how should attorneys respond to a scorched earth style of litigation from opposing counsel? It is often hard to pinpoint the precise Ethical Rule that an attorney who is engaging in abusive litigation tactics is violating. Explaining how and to what extent these tactics are tolerated can be especially hard to explain to a client whose legal bills are mounting as a result. Which raises another important consideration—that you will need to tell your client that regardless of how this conduct is dealt with it will likely protract litigation and raise costs.

Of course there are potential solutions such as requesting court or State Bar intervention. Further, “stonewalling,” as the receiving-attorneys in the recent California case did, is sometimes effective in encouraging an opposing attorney to reconsider the strategy they are using or, as in that case, might trigger an intensification of the conduct.

However, the law is still a profession where one must rely on a reputation. As Section 7 to the Preamble to the Arizona Rules of Professional Conduct states, “Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers.” We, as a profession, must make it clear to attorneys who engage in abusive litigation that such conduct does not meet our approval and are most certainly not honorable. Encourage practitioners who engage in this conduct to do one thing—consider more honorable litigation tactics so that we may all approach one another in good faith. ■

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VISIT THE



MARICOPA COUNTY
JUSTICE MUSEUM
& LEARNING CENTER FOUNDATION

125 W. WASHINGTON

LOCATED ON THE 6TH FLOOR OF THE OLD COURTHOUSE
125 W. Washington, Phoenix

STAFFED FROM NOON-1 P.M., MONDAY-THURSDAY

This unique museum opened in 2012 and is centered around a restored cellblock on the sixth floor of Maricopa County's Historic Courthouse – the Courthouse has been renovated to its 1929 grandeur. While visiting the museum you will get a sense of Maricopa County's legal history, its court cases and important elements of the Rule of Law, including individual rights and liberties guaranteed in the United States and Arizona Constitutions. To our knowledge, it is the only such museum in an active courthouse in the country.

FEBRUARY CALENDAR

Check out maricopabar.org/events and watch your inbox for the latest updates on dates, times, and locations for events and meetings.

Maricopa County is offering **FREE Chimney Cleaning** (\$250 value) and **FREE Retrofit Devices** to homeowners to eliminate smoke pollution from their wood burning fireplaces.

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