



Federal Bar Association

William D. Browning Tucson Chapter



2024 Bench & Bar

Please join us at the Arizona Inn for a discussion luncheon with distinguished members of the bench in the District of Arizona. Speakers include: the Hon. Jennifer G. Zipps, the Hon. Michael A. Ambri, the Hon. Angela M. Martinez, and the Hon. Scott Gan.

Up to 1.5 hours ETHICS CLE credit available.

PRICING WITH LUNCH INCLUDED:

FBA Members \$60; Non-members \$70; Federal Judges & Federal Law Clerks \$45.

When: Wednesday, October 23, 2024
Time: 12:00 PM
Where: The Arizona Inn,
2200 E. Elm Street,
Tucson, AZ 85719



REGISTER

Chief Judge Jennifer G.
Zipps

State of the District





Senior Judge G. Murray Snow

Nominated by President George
W. Bush and confirmed on June
20, 2008

Became Chief Judge on
September 4, 2018





Chief Judge Jennifer G. Zipps, United States District of Arizona

- Judge Zipps was appointed to serve as a United States Magistrate for the U.S. District Court in Tucson, Arizona on April 4, 2005. On October 5, 2011, Judge Zipps received her commission as a United States District Judge. She became the Chief Judge of the District of Arizona on October 21, 2024.

Flagstaff Courthouse

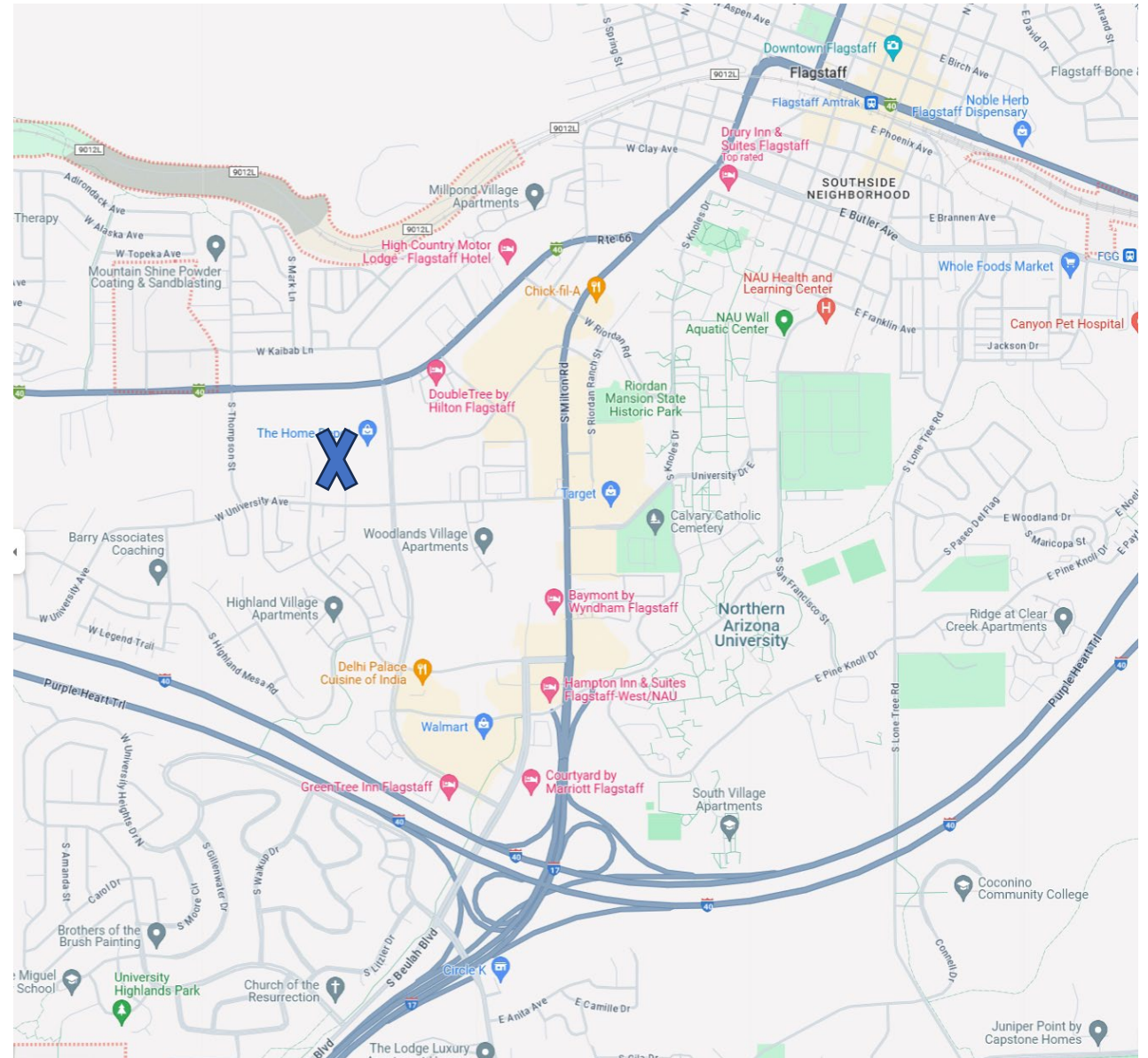


Photo: Easterly Government
Properties, Inc.

W Route 66 & Thompson Street

Groundbreaking: TBD

Anticipated Finish date: April 2026

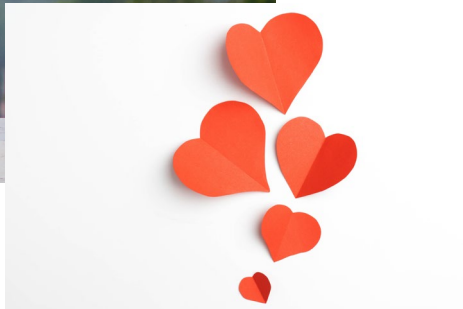


Senior District Judge
James A. Soto



District Judge
Angela M. Martinez





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AUGUST 2, 2024	
CLERK US DISTRICT COURT DISTRICT OF ARIZONA	
BY <u>/s/ M. Everette</u> DEPUTY	

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

In the matter of

THE APPOINTMENT OF A MERIT
SELECTION PANEL IN RE: ONE FULL-
TIME UNITED STATES MAGISTRATE
JUDGE POSITION IN THE DISTRICT
OF ARIZONA, TUCSON, ARIZONA

GENERAL ORDER 24-10

In accordance with the authority conferred by Title 28 U.S.C. § 631, et seq., and further authority granted and action taken by the Judicial Conference of the United States,

IT IS ORDERED the following persons are hereby appointed as the Merit Selection Panel for the purpose of accepting and screening applications, holding oral interviews as they deem necessary, and selecting individuals to recommend to the Court for one full-time United States Magistrate Judge position for the District of Arizona in Tucson, Arizona.

Hon. John Pelander, Chair - Lawyer

Jamiel Allen –Lawyer

Stephanie Boreale – Non-Lawyer

Amy Hernandez – Lawyer

Guillermo Mendoza – Non-Lawyer

Bob Miskell – Lawyer

Dr. Crystal Soltero – Non-Lawyer

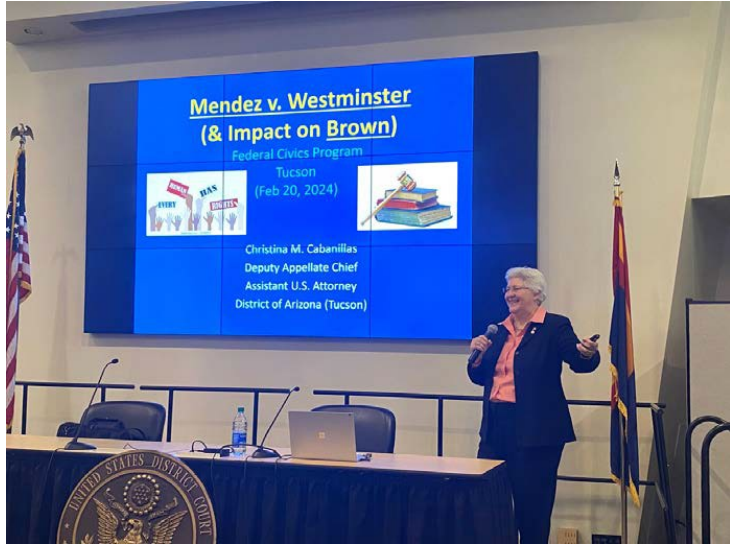
Charlie Spector –Lawyer

The Civics Committee in Tucson is led by Magistrate Judge Maria Aguilera and includes numerous judges and lawyer volunteers.



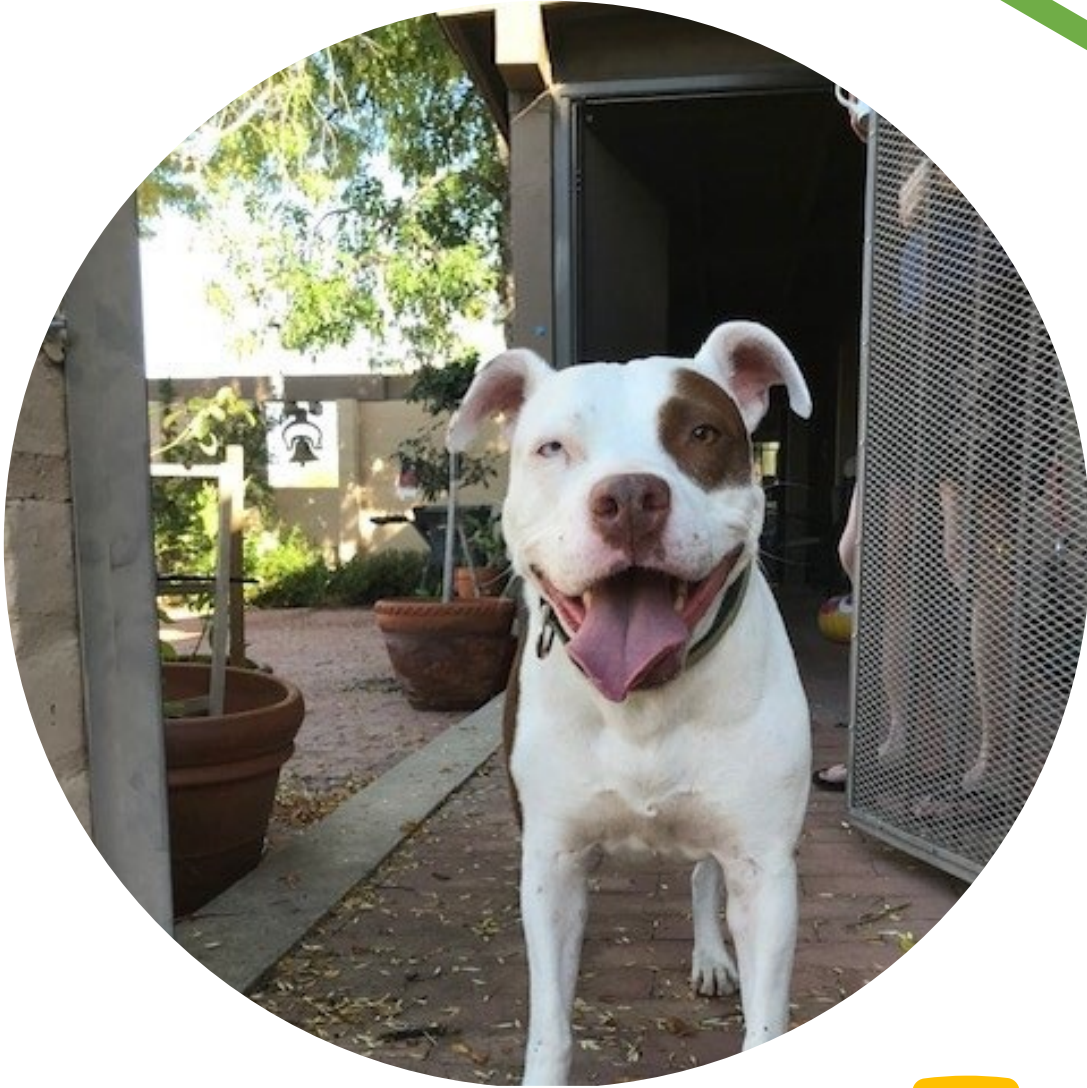


Tohono O'dham High School



Magistrate Judge Michael A. Ambri





Bandit

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Honorable Scott H. Gan







District of Arizona Lawyer Representatives Tucson

Jill H. Perrella, Co-Chair, Snell & Wilmer, LLP

Sivan Korn, Co-Chair, Lewis Roca Rothgerber Christie, LLP

Sarah Precup, United States Attorney's Office

Jessica Turk, Law Office Jessica Turk

Alex Winkelman, Mesch Clark Rothschild

Elena Kay, Federal Public Defenders Office

Joseph Kroeger, Snell & Wilmer

Each year, the judges of the United States District Court and the United States Bankruptcy Court in Arizona select five lawyers to serve as the District's Ninth Circuit Representatives. There are a total of 15 lawyer representatives in Arizona. The Lawyer Reps serve staggered three-year terms.

DISTRICT JUDGES & MAGISTRATE JUDGES

HON. ANGELA M. MARTINEZ

FBA Bench and Bar
October 23, 2024



In the **Tucson Division**, there are currently five active district judges, five senior district judges, six magistrate judges and one magistrate judge on recall.

District judges operate in 94 districts across the country. **Arizona is one of the largest and busiest districts in the United States**, especially due to number of criminal cases. **In 2023, 5,666 new criminal matters were filed in the District of Arizona.**

As of September 2024, the District of Arizona has 3,484 pending criminal cases (2,158 in Tucson) and 3,638 pending civil cases (541 in Tucson).

District Judges

Article III of the Constitution governs the creation of district judges. They are nominated by the President, confirmed by the Senate, and serve lifetime appointments.

Magistrate Judges

Judicial officers established by federal law and appointed by the district judges to handle a variety of judicial proceedings. They serve eight-year renewable terms.

The scope of magistrate judge authority is governed by 28 U.S.C. § 636, Fed. R. Civ. P. 72, and LRCiv 72.1, 72.2, and 73.1.

Mediation and Settlement

Magistrate judges play a crucial role in facilitating settlement in civil matters through the mediation program.





Magistrate judges must meet specified eligibility criteria, including at least **five years as a member of the bar in good standing**. A merit selection panel vets candidates and a majority vote of the district judges determines who is selected for an appointment.

Application and Interview Tips

- Track CLEs (Last 10 years)
- Track Publications/Articles
- Track Awards
- Track Volunteer Services
- Track Trials, Administrative Hearings, Appeals
- Do mock interviews with people who (really) intimidate you and you respect

DISTRICT OF ARIZONA	
Application for United States Magistrate Judge	
Please answer all questions. If a question is not applicable, indicate this by typing AN/A". Applications must be received by the Clerk of Court no later than the date listed in the public notice for the vacancy in which you are applying.	
Duty Station for which you are applying: ☐ Phoenix ☐ Tucson	
GENERAL	
1. Full name:	Click or tap here to enter text.
2. All other names by which you have been known:	Click or tap here to enter text. Click or tap here to enter text.
3. Mailing address:	Click or tap here to enter text.
City	Click or tap here to enter text. State Zip
Cell Phone	Click or tap here to enter text. Email Address
4. Residential address:	Click or tap here to enter text.
City	Click or tap here to enter text. State Zip
Home Phone	Click or tap here to enter text.
5. Place of birth:	Click or tap here to enter text. Date of birth:
6. Length of residence in state:	Click or tap here to enter text.
7. If you are a naturalized citizen, state the date and place of naturalization.	Click or tap here to enter text.
8. Military service:	
Branch	Click or tap here to enter text. Dates
Rank or Rate at Discharge	Click or tap here to enter text. Type of Discharge
If still a reserve or national guard member, give service, branch, unit, and present rank. Click or tap here to enter text.	
9. Are you related by blood or marriage to any judges of this court?	☐ Yes ☐ No If yes, give name(s) and relationship. Click or tap here to enter text.
HEALTH	
10. What is the present state of your health?	Click or tap here to enter text.
11. Do you have any mental or physical impairment would affect your ability to perform the duties of a magistrate judge with or without reasonable accommodation?	Click or tap here to enter text.
THE DISTRICT COURT IS AN EQUAL OPPORTUNITY EMPLOYER	

Merit Selection Panel

District Judges appoint **Merit Selection Panel** members whose purpose is to accept and screen applicants and interview.

The panel is tasked with recommending five (typically) individuals to the District Court for consideration.

It traditionally consists of both lawyers and non-lawyers.

District Court Interviews

Again, do mock interviews with people who (really, really) intimidate you and you respect.

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AUGUST 2, 2024

CLERK US DISTRICT COURT
DISTRICT OF ARIZONA

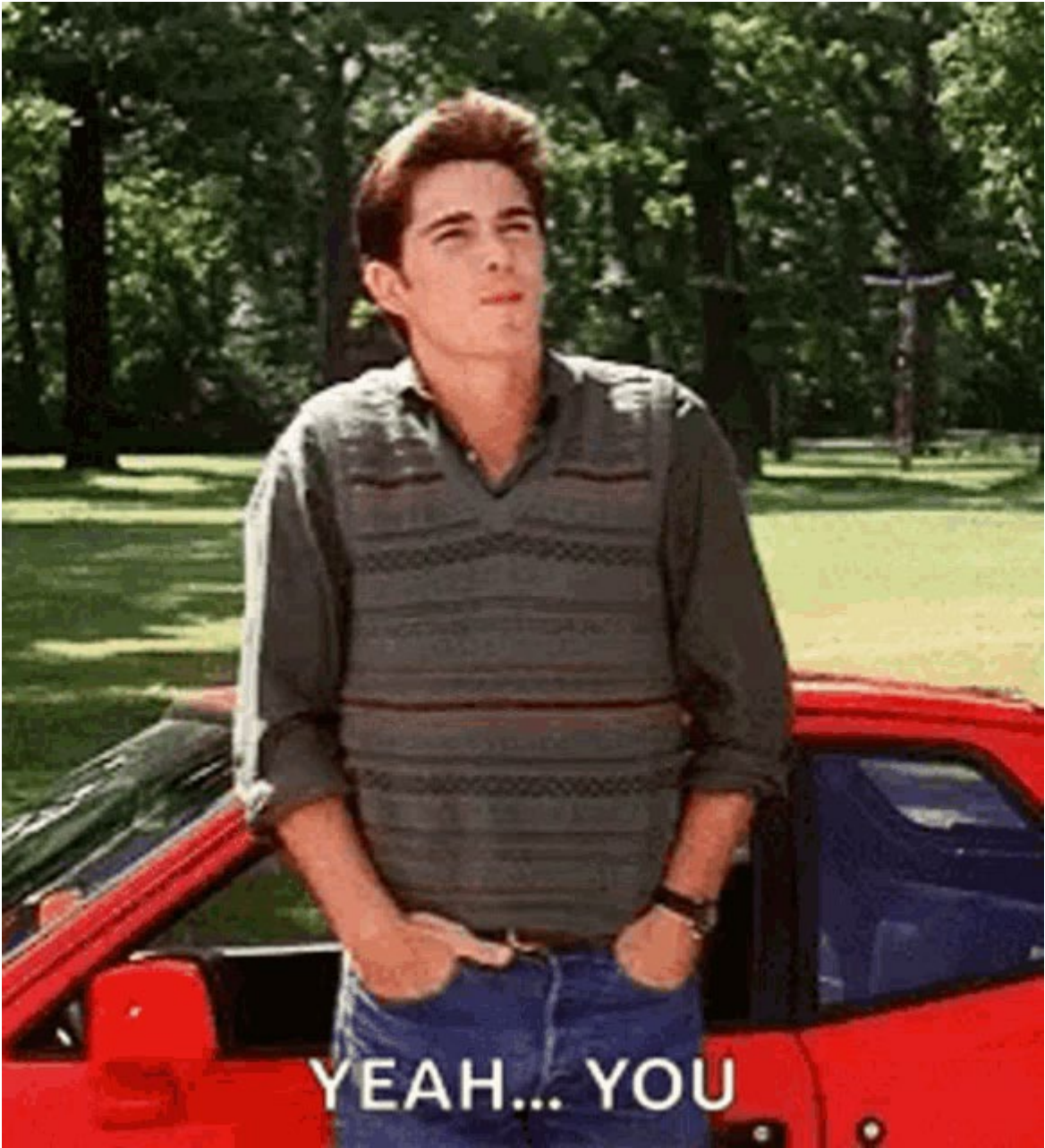
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Jamiel Allen –Lawyer
Stephanie Boreale – Non-Lawyer
Amy Hernandez – Lawyer
Guillermo Mendoza – Non-Lawyer
Bob Miskell – Lawyer
Dr. Crystal Soltero – Non-Lawyer
Charlie Spector –Lawyer





Application &
Vetting Process

for

District Court
Judgeship



What are the steps?

1. Home State Senators announce they are accepting applications
2. Apply
3. Home State Senators establish Merit Selection Committees
4. Merit Selection Committees recommend candidates
5. Senators will respectfully recommend candidates for consideration to the President
6. White House Office of Legal Counsel Vet and Interview
7. Presidential Nomination
8. FBI, DOJ Office of Legal Policy, and American Bar Association Vet
9. Blue Slips and Senate Judiciary Committee Hearing (SJQs)
10. Questions for the Record (QFRs)
11. Committee Vote
12. Senate Confirmation Vote (simple majority)
13. Presidential Appointment!



10 Settlement Conference Dos and Don'ts

Fulfilling Your Duties
as Advocate, Counselor, and Officer of the Court

FBA-Tucson, Bench and Bar

October 23, 2024

Rules Commonly Implicated

- Fed. R. Civ. P. 1 (just, speedy, inexpensive determination of the action)
- ER 1.2 (division of authority: client decides whether to settle)
- ER 1.3 (reasonable diligence and promptness)
- ER 1.4 (communicate with client so client can make informed decisions)
- ER 1.8 (multiple clients: informed consent in writing signed by clients)
- ER 2.1 (exercise independent professional judgment and give candid advice)
- ER 3.2 (expedite litigation in the interests of the client)
- ER 3.3 (candor toward the tribunal)
- ER 3.4 (fairness to opposing party and counsel)
- ER 4.1 (lawyer shall not knowingly make a false statement of material fact)
- ER 8.4 (no dishonesty, fraud, deceit, misrepresentation, prejudice to justice)

1. Do Consider A Settlement Conference

- No Mediator Fees \$\$\$\$
- Talk With A Judge
- Neutral Discussion/Evaluation Of The Case
- Federal Court Familiarity
- “Day In Court”
- Scheduling Flexibility
- MJ Is Assigned Only For Settlement Purposes
- Remote vs. In-Person
- Early Settlement Conference Program

2. Be Prepared (Like For Trial)

- Know The Case (Legal And Factual Issues, Elements, Burdens, Evidence)
- Know The Client's Goals. What Does The Client Want From The Case?
- Best Outcome In Litigation. What Needs To Happen?
- Worst Outcome In Litigation. Risk Tolerance?
- Fees/Costs Through Trial
- What Obstacles To Settlement?
- Creative Solutions Not Available At Trial?
- Bring The Right People
- Liens

Barnes-Boers v. TRU 2005 REI, LLC, No. CIV. 2:13-1827, 2014 WL 1775491, at *1 (E.D. Cal. May 2, 2014) (awarding fees and costs against attorney who did not have “command of these facts and law at the settlement conference”)

3. Don't Neglect Damages

- What Damages Claimed
- What Damages Legally Recoverable
- Damages Defenses
- Offsets
- Who Needs To Prove What
- Comparables (Non-Economic Damages)
 - Arizona Verdicts and Settlements
 - Westlaw Verdicts and Settlements
 - LexisNexis Verdicts and Settlements

4. Prepare The Client

- Settlement Conference Process
- Strengths And Weaknesses Of The Case
- Litigation Timeline (And What's Left To Be Done)
- Expenses Through Trial (And Beyond)
- Expectations

5. Use The Settlement Judge

- How Can The Judge Best Help With This Case?
- Client Issues
- Creative Solutions
- Position Statement (see Order From Settlement Judge)
- Pre-Settlement Conference Telephone Call(s)
- *Ex Parte* Communications Are OK
- Be Candid

6. Don't Wait

- Attorneys' Fees Can Eclipse The Value Of The Case
- Plan For Settlement Conference From The Start
- Rule 26(f) Planning Meeting (Or Before)
- What Discovery Is Needed For Meaningful Negotiations?
- What Legal Issues Need To Be Resolved?
- Dispositive Motions Before Or After?
- Informal Discovery
- Disclosures
- Client's Decision Whether To Settle But See *Matter of Fee*, 182 Ariz. 597, 601, 898 P.2d 975, 979 (1995) (discouraging “tactic” of “driving wedge” between counsel and client over fees)

7. Inform The Other Side

- Your Positions, Legal Theories, Evidence
- Other Side May Need Time To Research, Evaluate
- Rule 26(a)(1) Disclosures – Can Do More Than The Minimum
- Rule 26(f) Conference
- Exchange Position Statements?

8. Have An Open Mind

“If a settlement is possible, it is imperative that both plaintiff and defendant arrive at a settlement conference with an open mind and a genuine willingness to meaningfully discuss the strengths and weaknesses of each party’s case.”

Pitman v. Brinker Int'l, Inc., 216 F.R.D. 481, 485 (D. Ariz. 2003) (amended on reconsideration in part sub nom., *Pitman v. Brinker Int'l*, No. CV02-1886PHX DGC, 2003 WL 23353478 (D. Ariz. Oct. 3, 2003))

- Listen
- Stay With The Process

9. Be Careful: Misrepresentation vs. Puffery

Knowing Misrepresentation Or Omission Of Material Information

vs.

Opinion Not Objectively Verifiable

(Not Reasonably Expected That The Other Side Would Rely On It)

- Context Is Key
- What Is OK In One Situation May Not Be In Another

Misrepresentation vs. Puffery

- *Matter of Fee*, 182 Ariz. 597, 601, 898 P.2d 975, 979 (1995) (counsel who failed to disclose additional fee agreement “should have either disclosed the complete arrangement or politely declined any discussion of fees”)
- *Statewide Grievance Committee v. Gillis*, 36 Conn. L. Rptr. 464, 2004 WL 423905, *3 (Conn. Super. Ct. 2004) (statement that plaintiff “could not participate in any activity which requires the slightest bit of physical exertion” found to be “less than totally candid” but amounted to “imprecision and exaggeration”)
- *Cedar Island Imp. Ass’n., Inc. v. Drake Assocs., Inc.*, No. CV075002871, 2009 WL 415991, at *3 (Conn. Super. Ct. Jan. 28, 2009) (no violation in failure to disclose dispute between client and subcontractor where dispute was never raised)

Misrepresentation vs. Puffery

- *Virzi v. Grand Trunk Warehouse & Cold Storage Co.*, 571 F. Supp. 507, 512 (E.D. Mich. 1983) (failure to disclose death of plaintiff warranted vacating settlement even though the issue never came up in negotiations where plaintiff's counsel knew opposing party believed plaintiff would make an excellent witness at trial)
- *Kath v. W. Media, Inc.*, 684 P.2d 98, 102 (Wyo. 1984) (vacating settlement due to failure to disclose letter that contradicted witness's deposition testimony)
- *Statewide Grievance Comm. v. Kennelly*, No. CV040833515S, 2005 WL 758055, at *2 (Conn. Super. Ct. Feb. 25, 2005) (reprimanding lawyer for failure to correct inaccurate statement of amount left on client's insurance coverage)

10. Be A Problem Solver

- Focus On Interests, Not Positions
- Separate The Person From The Problem
- Try To Find Mutual Benefit
- Be Patient

Continuing Legal Education
CERTIFICATE OF ATTENDANCE

2024 BENCH & BAR SEMINAR

PRESENTED BY:



Federal Bar Association

William D. Browning Tucson Chapter

WEDNESDAY, OCTOBER 23, 2024

12:00-1:30 PM

The Arizona Inn

2200 E. Elm Street, Tucson, AZ 85719

By signing below I certify that I attended the Tucson Chapter of the FBA's 2024 Bench and Bar Seminar on October 23, 2024, at The Arizona Inn and am entitled to claim 1.5 hours of Ethics Continuing Legal Education credit.

Date

Signature

Attorney Name and Bar Number (Please Print)

KEEP THIS CERTIFICATE IN YOUR FILE.
THIS IS NOT AN OFFICIAL DOCUMENT. DO NOT SEND THIS CERTIFICATE TO THE STATE BAR OF ARIZONA.