

## Public Service Text Messages May Spell T-R-O-U-B-L-E

State and local governments, colleges, and school districts routinely communicate important information to constituents, parents, and students by texting public service messages using cellular phone numbers. However well-intentioned this practice is, the sender now faces increased liability and penalties under an expanded interpretation of the Telephone Consumer Protection Act (TCPA). The TCPA restricts calls and texts sent by an automatic telephone dialing system to a cellular phone number without the consent of the called party. Although the TCPA exempts calls in the case of an emergency, it does not

define an emergency beyond being a call “made necessary in any situation affecting the health and safety of consumers.”

Last year, with an expansive interpretation of the TCPA, the Federal Communications Commission (FCC) broadened the burden and risk to senders of text messages using an autodial system. The new interpretation of



the TCPA includes the following:

- The FCC does not distinguish between telemarketing and public information, such as school closures or special events.
- Consent must come from the called party, not the intended recipient of the call. Having the wrong number is no excuse. However, there is a one-call exception for non-marketing calls made to a number reassigned to a different person. If the called person says the number is reassigned or even if the person does not answer the phone, then all subsequent calls to that number violate the TCPA.
- Consumers may revoke their consent to receive calls and text messages at any time. To ensure compliance with FCC rules, the sender should have a reliable system tracking consumers who revoke consent to make sure

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## Infrastructure Projects Gain Edge through Fed Reimbursement for Attorney Fees

The federal government has recognized that embedding experienced condemnation attorneys with an infrastructure design team as early as possible in the design process typically results in cost savings through timely advice and litigation avoidance.

To that end, the government provides funds to reimburse the agency for its attorneys’ fees incurred for activities such as: assistance with Intergovernmental Agreements (IGAs) and other agreements, such as those with railroads or utilities; prior

rights; right-of-way and acquisition issues; title issues; design review; and litigation avoidance strategies.

The practice of embedding experienced condemnation attorneys with project design teams is common in some jurisdictions but is relatively novel in Arizona, perhaps because of the perceived upfront costs. The availability of federal funding to offset those costs should help mitigate those concerns. Experience has shown that early attorney involvement helps keep a project on time and

on budget. While any project would potentially benefit from early attorney involvement, those utilizing federal funds should, as a rule, include a line item in their budgets for reimbursable attorney services.

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*Chris focuses his practice on eminent domain and condemnation litigation.*



## Whitneys Donate Sculpture to City of Glendale

**Dick Whitney** and his wife **Linda** have donated to the City of Glendale a corten steel sculpture by Michael Anderson, an internationally known sculptor based in Scottsdale. This gift is in memory of Dick's grandparents, Maude and Clarence Whitney, who—with their eight children—settled in Glendale in 1910 at Lateral 19 and Northern Avenue. They moved from Michigan to Arizona to enjoy the advantages of irrigation

over dry farming. All of the children graduated from Glendale Union High School; most stayed in Glendale and owned various businesses there. Glendale city staff members have recommended acceptance and installation by the city council; Glendale is expected to install the piece in front of the main library on West Brown Street.

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## Firm Participates in Heart Walk 2016

In March, more than 30 Gust Rosenfeld employees and attorneys supported the American Heart Association by participating in its Heart Walk 5K.

The GR team raised more than \$6,800 for heart disease and stroke prevention education through donations including coin challenges, a white elephant silent auction and a \$5 jeans-at-work day. Through education and research, the American Heart Association is working to build healthier lives for all Americans. Gust Rosenfeld is proud to support its efforts.



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## SEC's Enforcement Orders for Bond Issuers Coming Soon

The Securities and Exchange Commission (SEC) recently announced its third and final round of settlements with bond underwriters for alleged misstatements and omissions in municipal bond offerings under the SEC's Municipalities Continuing Disclosure Cooperation (MCDC) Initiative. Now that the SEC has completed its review of the underwriters, the SEC has announced it is turning its attention to issuers of tax-exempt bonds.

Many bond issuers self-reported inaccurate statements in prior disclosure documents by the SEC's deadline of December 1, 2014, under MCDC. It is not anticipated that the SEC will impose civil penalties against bond issuers who self-reported, but will instead

likely issue cease and desist orders and require the adoption of continuing disclosure compliance procedures to avoid such violations in the future. Even without the likelihood of monetary damages, bond issuers should be on notice that they may receive an inquiry from the SEC regarding prior bond issues. If contacted by the SEC, bond issuers should contact bond counsel for assistance with their timely response to the SEC.

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*Jim practices in the area of public finance.*

# NEW FACES



**Patrick J. Farrell**

Pat Farrell's dynamic real estate practice encompasses business law, probate and estate planning. For more than 35 years, Pat has been representing businesses of all sizes throughout Southern Arizona as a commercial and transactional lawyer. He also provides legal counsel to individuals for estate planning and

probate issues.

Pat advises business owners and individuals on real estate transactions and disputes, commercial dispute litigation, wills, trusts and other estate planning services. He counsels start-ups during formation and advises businesses during acquisitions and sales.

A Tucson native, Pat attended the University of Arizona, where he earned both his undergraduate and law degrees.

Pat is AV® Preeminent™ rated by Martindale-Hubbell®, representing the highest rating in legal ability and ethical standards.



**Susan D. Goodwin**

Susan Goodwin's public law practice encompasses land use, development, open meeting law, conflict of interest, public records, construction law, elections, campaign finance law, annexations, civil rights, code compliance, employment law, community facilities districts

and utility matters.

Since 1978, Susan has represented cities and towns as general counsel through periods of record growth, overcoming the obstacles and complex legal and political issues associated with dramatic growth. Susan works with city and town managers, councils and staff to address a variety of issues confronting Arizona cities and towns.

Susan is the past president of the Arizona City Attorneys Association and chaired the 2015 Arizona City Attorneys Association legal conference. Susan also conducts the annual City Attorneys Fundamentals program.

Susan is listed in Best Lawyers® for her Municipal Law work. She is AV® Preeminent™ rated by Martindale-Hubbell®, representing the highest rating in legal ability and ethical standards.



**Phyllis N. Smiley**

Phyllis Smiley's practice focuses on all aspects of municipal law, including general legal advice, contracts, employment, open meeting law, elections, land use, real estate transactions, telecom and eminent domain. She serves as City/Town Attorney for multiple Arizona cities and towns and provides support for other

municipalities represented by the firm.

Phyllis' litigation experience includes condemnations, quiet title, discrimination, civil rights defense, campaign finance enforcement actions and transaction privilege tax collections. Phyllis is a graduate of the Sandra Day O'Connor College of Law, where she served as the Executive Managing Editor of the Arizona State Law Journal.



## Gust Gives Back

Last October, a group of Gust Rosenfeld employees participated in the Rebuilding Together Valley of the Sun Paint-A-Thon. Every year, thousands of volunteers paint the houses of low-income homeowners who are not physically able to do so.

This year, the GR group painted the house of a 79-year-old woman. The woman, a nurse for 57 years, was extremely grateful.

Painters in the picture from left to right: **Sean O'Brien, Chris McNichol, Christina Noyes, Melinda Braun, David Pennartz, Shelby Lile, Kent Cammack, Michelle Caruso, Jessica Gallegos, Tom Chauncey, Karol Cannizzaro and Linda Swiensi.**



**Trish Stuhan**

Trish Stuhan concentrates her practice on public law, civil litigation, employment law and alternative dispute resolution. She defends clients in diverse litigation matters, including quiet title, breach of contract and condemnation. Her clients, which include municipalities, title insurance companies and private property owners, often face multi-faceted problems that involve several areas of law.

Trish prepares contracts and employee handbooks for businesses. She also trains employees on addressing sexual harassment, discrimination, open meeting law, public records and conflicts of interest. She also represents homeowners' associations and mobile home parks in litigation.

Trish is a graduate of the Sandra Day O'Connor College of Law, where she received a J.D. degree and a certificate in law, science and technology.



**Dustin S. Cammack**

Dustin Cammack's practice focuses primarily on public finance. He works on all types of financing for Arizona cities, counties and special districts. He negotiates and drafts contracts, ordinances, resolutions and offering documents. Dustin also serves as underwriters' counsel, disclosure counsel and bank counsel on municipal financings and loans.

Dustin is a graduate of the J. Reuben Clark Law School at Brigham Young University, where he also obtained his Bachelor of Arts in communications. During law school, Dustin worked as a

judicial extern for Justice Thomas Lee of the Utah Supreme Court. Dustin is fluent in Spanish and Portuguese.



**Todd B. Tuggle**

Todd Tuggle brings extensive experience in a broad range of creditor rights matters. His practice focuses on bankruptcy and debt restructuring, as well as general commercial litigation. He has additional expertise in the areas of general litigation, officers and directors' liability, state court receiverships,

bad faith lending defense and litigation related to Mortgage Electronic Registration Systems (MERS).

During his career, Todd has worked for clients in significant cases in Arizona, including a Chapter 11 restructuring of a company that owned 56 quick-service restaurants in Arizona and New Mexico, where he led critical three-party negotiations between the secured lender, franchisor and debtor. He also represented the controlled liquidation of a lender holding nearly \$1 billion in mortgage-backed securities and commercial property.

Todd clerked for the Honorable Robert Clive Jones of the 9th Circuit Bankruptcy Appellate Panel.

**T-R-O-U-B-L-E** FROM FRONT PAGE

no other texts are sent.

In addition to statutory enforcement remedies, consumers have a private right of action for violations of the TCPA, including class actions. One FCC commissioner cited a report that more than 2,000 TCPA class action lawsuits were filed in 2014 alone. The FCC's intent to protect us from unwanted texts is admirable. However, it now exposes those with a legitimate need to notify constituents, employees and parents to expensive fines and lawsuits when the only practical and timely alternative is texting.

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*Susan focuses her practice on public law and employment law.*

ET·Y·MOL·O·GY  
COR·NER



**'TIS THE SEASON**

No, not that season—the election season, during which candidates (*from Latin referring to white-robed ancient politicians*) dazzle us with bombastic grandiloquence (*both of mixed origin meaning lofty empty speech*) vying for delegates (*most recently from the French "to represent"*) to their party's convention (*from Middle French "to meet"*), all of which will give a citizen (*from Old French for city dweller*) a headache (*no origin required*).

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*Rick, our etymologist, practices in the areas of commercial law and litigation.*

# PERSONAL NOTES



Arizona State University law student **Krizia Verplancke** is an extern with Gust Rosenfeld for the spring semester. Krizia was selected as the firm's diversity legal writing program scholar. The program provides second-year ASU law students with practical experience at a private law firm. In addition to gaining valuable legal experience, the firm also awarded Krizia a \$4,000 scholarship.

**Chas Wirken**, a past president of the State Bar of Arizona, spoke to the students of Benedictine University's Mesa campus about leadership. He also recently successfully represented a pro bono client before the Arizona Supreme Court. The case is now before the U.S. Supreme Court.

The American Land Title Association's Title News recognized a lien priority case, *Weitz v. Heth*, won by **Chas Wirken** and **Scott A. Malm** in the Arizona Supreme Court, as one of the Top 10 recent cases of interest in the title insurance industry.

**Robert D. Haws**, **Susan Segal** and **Jennifer MacLennan** spoke at the Arizona School Boards Association Law Conference in September 2015. Rob also presented at the Arizona School Personnel Administrators Association Fall Conference in November 2015.

In May, **Craig McCarthy** assumes responsibility as president of the Arizona Association of Defense Counsel (AADC), Arizona's civil litigation defense bar.

**Kent E. Cammack** and **Christopher M. McNichol** are presenting on the topic of the current state of Arizona's anti-deficiency laws at the State Bar of Arizona annual convention in June.

**Craig L. Keller** was recently inducted into the Tempe Sister Cities Ring of Honor. He has been active in Tempe Sister Cities since 2003, serving on the Student Exchange Selection Committee for nine years and as Selection Committee Chairperson and a member of the Board of Directors since 2014. The Sister Cities program was started in the United States by President Dwight D. Eisenhower in 1956 seeking to "build world peace, one friendship at a time."

**John L. Hay** served on the faculty of a national Continuing Legal Education series sponsored by the National Business Institute on S corporations and C corporations that was aired on the web in January. John's topics covered bylaws as well as stockholder agreements.

**James W. Kaucher** gave a presentation titled "Is This Really Neverland? Pressure Ulcer Litigation" at the November 2015 quarterly meeting of the Arizona Society for Health Care Risk.

The United States Court of Appeals for the Ninth Circuit affirmed two cases argued by **John J. Kastner, Jr.** John's representation for Graham County in *Miller v. Graham County* and *Lemley v. Graham County* were both affirmed in favor of John's client. In *Ton v. Santa Cruz County*, John represented Santa Cruz County; the jury returned a verdict in his client's favor.

**James W. Kaucher** was part of a three-member panel of presenters during a half-day workshop titled "Master Class on Communication: An Interactive Forum with Practical Strategies, Tips, and Takeaways that Could Literally Save You Millions in Litigation Costs." The workshop was part of the American Conference Institute's sixth annual Forum on Long-Term Care Litigation and Risk Management Strategies, which took place in January in Miami, Florida.

**James W. Kaucher** and **Kelli Williams** gave a presentation in February on the Adult Protective Services Act titled "APSA for Fiduciaries" to the Pinal County Public Fiduciary's Office.

In September, **Barbara U. Rodriguez-Pashkowski** presented at the Arizona Department of Environmental Quality's Kaizen (Japanese for "lean") evaluation of its Underground Storage Tank program. Barbara also presented on a panel at the Condemnation Summit XVII in October. The topic was "NEPA Challenges and their Relevance to Acquisitions and Appraisal Practice." She was also a speaker/trainer for the "Underground Storage Tank Owner/Operator Training," held in November.

# GUST ROSENFELD

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## Gust Rosenfeld Announces Four New Members

Gust Rosenfeld, PLC, announces that four attorneys are newly elected members of the firm. The new members are Patrick J. Farrell, Susan Goodwin, Nicholle Harris and Gary Verburg. Pat became a member in October 2015; Susan, Nicholle and Gary were elected members in January.



The real estate practice of **Patrick J. Farrell** (Tucson office) encompasses business law, probate and estate planning. For more than 35 years, Pat has been representing businesses of all sizes throughout Southern Arizona as a commercial and transactional lawyer. He also provides legal counsel to individuals for estate planning and probate issues.

Pat is AV® Preeminent™ rated by Martindale-Hubbell®, representing the highest rating for legal ability and ethical standards.



**Susan D. Goodwin** (Phoenix office) practices public law, including land use, development, open meeting law, conflict of interest, public records, construction law, elections, campaign finance law, annexations, civil rights, code compliance, employment law, community facilities districts and utility matters.

Susan is listed in Best Lawyers® for her Municipal Law work. She is AV® Preeminent™ rated by Martindale-Hubbell®, representing the highest rating for legal ability and ethical standards.



**Nicholle Harris** (Phoenix office) practices in the area of public law, providing general legal services to municipalities across the state. Her focus includes municipal law in matters relating to the operations of municipalities, including drafting ordinances, resolutions, easements, administrative procedures and policies.



**Gary Verburg** (Phoenix office) focuses his practice in the areas of municipal law, commercial law, civil litigation, administrative law and Federal Indian law. His experience includes contracts, real estate transactions, zoning, elections, resolutions, ordinances and litigation involving federal, state and tribal governments.

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