

TB
LAW

NEWSLETTER

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T&B appreciates
the value of its
growing diversity

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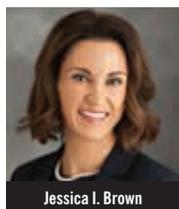
JODI R. BOHR joined the firm in December 2019 as a Shareholder. Jodi practices primarily in the area of employment law, including representing businesses in avoiding and resolving employment disputes. Jodi counsels clients on a wide array of state and federal employment laws, conducting workplace investigations, performance management issues,



Jodi R. Bohr

and other human resources matters. She advocates for her clients in federal and state courts as well as before administrative agencies, including the Department of Labor, the Equal Employment Opportunity Commission, the Arizona Civil Rights Division, the Industrial Commission of Arizona, the Office of Special Counsel, and the Occupational Health & Safety Administration. During her time off, Jodi enjoys reading, hiking, spending time with family, and watching her two kids play basketball.

JESSICA I. BROWN joined the firm in September 2019 as an Associate. Jessica practices commercial, civil, and employment litigation. Hailing from



Jessica I. Brown

the East Coast, Jessica graduated *summa cum laude* from Mary Baldwin University, a liberal arts college nestled in the Shenandoah Mountains of Virginia. While in college, Jessica developed a love for literature, creative writing, and all things outdoors. She published several essays in literary magazines and was inducted into Phi Beta Kappa. Jessica attended law school at George Mason University and served as an editor of the Civil Rights Law Journal. Following law school, Jessica practiced at Paul Hastings, LLP in Washington, D.C., with a focus on labor and employment litigation. Jessica relocated to Arizona with her family in 2015 and took the Arizona bar exam in 2018. In her free time, she enjoys playing card games with her family, riding bikes with friends, and reading good books.

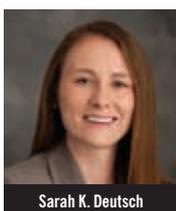
MOVING UP

T&B Promotes 3 to Shareholder



Timothy C. Bode

TIMOTHY C. BODE was promoted to Shareholder in January 2020. Tim practices civil and commercial litigation with an emphasis in personal injury, contract disputes, real estate, restrictive covenants, and landlord-tenant disputes. Tim assists individual and corporate clients with both simple and complex matters, providing pre-litigation services in addition to filing, prosecuting, and defending lawsuits. Tim has successfully prosecuted and defended numerous trials on behalf of his clients. Tim is an Arizona native and attended law school in Chicago prior to joining the firm in August 2014.



Sarah K. Deutsch

SARAH K. DEUTSCH was promoted to Shareholder in November 2019. Sarah's practice focuses on civil and commercial litigation, particularly in the areas of securities and investments, financial fraud, and expungements. She has experience representing both investors and investment professionals and firms in bringing and defending actions before state and federal courts, the Financial Industry Regulatory Authority, the Securities and Exchange Commission, the Arizona Corporation Commission Securities Division, and the American Arbitration Association. Sarah also handles commercial real estate disputes, business disputes, and internet and business defamation.



Ashley Zimmerman Marsh

ASHLEY ZIMMERMAN MARSH was promoted to Shareholder in November 2019. Ashley concentrates her practice in the areas of Land Use and Zoning. Ashley represents property owners, developers, and homebuilders across the Valley in each step of the land entitlement process, including pre-development due diligence, administrative approvals, legislative actions, and post-entitlement issues. Ashley is actively engaged in the Phoenix real estate community through her involvement in NAIOP Arizona's Developing Leaders Steering Committee and ULI's Partnership Forum. An Arizona native, Ashley received her Juris Doctor from the University of Arizona, James E. Rogers College of Law, in 2013 and her Bachelor's degree in Broadcast Journalism from the University of Southern California, Annenberg School for Communication and Journalism, in 2009.

Still the 'Greatest Show on Grass'

For another consecutive year, Tiffany & Bosco sponsored the Thunderbird charities through its participation in the 2020 Waste Management Phoenix Open. This year, the weather was perfect and fun times were had by all in the Tiffany & Bosco tent suite on the 18th green of the TPC Scottsdale. The competition was equally exciting, with champion Webb Simpson shooting back-to-back birdies on the 17th and 18th holes, first to tie leader Tony Finau in regulation, and then to win the resulting one-hole playoff.

Tiffany & Bosco is proud to be a part of this event every year and to give back through its sponsorship. Equally important to Tiffany & Bosco, the whole event does the seemingly impossible by repurposing and reusing 100% of the waste generated by the over 500,000 fans who attend each year. This makes the "Greatest Show on Grass" also the "Greenest."

ANNOUNCEMENTS



RECOGNITION

FIRM ATTORNEYS RECOGNIZED AS 'BEST LAWYERS'

The Best Lawyers in America is a listing of outstanding attorneys who have attained a high degree of peer recognition and professional achievement. The 2020 listing recognized: Michael A. Bosco (Litigation-Banking and Finance; Mortgage Banking Foreclosure Law); Mark S. Bosco (Real Estate Law); David L. Case (Litigation-Trusts and Estates; Tax Law; Trusts and Estates); James A. Fassold (Litigation-Trusts and Estates); Alisa J. Gray (Litigation-Trusts and Estates); Richard G. Himelrick (Litigation-Securities); John A. Hink (Real Estate Law); Christopher R. Kaup (Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law; Litigation-Bankruptcy); Leonard J. Mark (Family Law); Robert D. Mitchell (Commercial Litigation; Litigation-Securities); James P. O'Sullivan (Closely Held Companies and Family Business Law); Robert A. Royal (Business Organizations (including LLCs and Partnerships)); and Michael E. Tiffany (Finance).

USFN DIAMOND AWARD

The USFN Diamond Award of Excellence is an annual achievement earned by USFN member firms to recognize their professionalism, industry participation, and philanthropic involvement in their communities.



Since its inception in 1993, Tiffany & Bosco, P.A. Financial Services

has earned the Diamond Award of Excellence for 26 consecutive years.

T&B Financial Services is a proven leader in its industry. During the past year, its staff attended additional education programs and regular training sessions to improve services for its clients. Additionally, its associates served as panelists at industry conferences to further inform colleagues of important topics related to its trade.

Spring 2020 Community Involvement

Tiffany & Bosco is committed to being a leader in the community and striving to make a positive impact through a wide spectrum of programs and initiatives.

MAGGIE'S PLACE

In August 2019, the firm's Staff Committee provided attorneys and staff with the opportunity to make baby blankets, which were donated to Maggie's Place. Participation led to 12 handmade blankets, with additional blanket-making events scheduled for the near future. Founded in 2000, Maggie's Place provides life-changing programs and services for pregnant and parenting women and their children by offering a warm and welcoming community, a safe place to live and learn, and ongoing services to help them become self-sufficient.

ARIZONA HELPING HANDS

In September 2019, the firm joined forces with Arizona Helping Hands to collect diapers, baby wipes, clothing, and gift cards to benefit foster children in our community. A nonprofit organization formed in 1998, Arizona Helping Hands has served tens of thousands of children by providing essential items to boys and girls in foster care throughout Arizona. The firm raised \$550 in donations, which were used to purchase cribs and bedding for those children. In addition, 15 large boxes filled with necessities such as diapers and wipes

were donated to the organization.

THE SALVATION ARMY

In October 2019, the firm partnered with The Salvation Army in support of its Hope for the Homeless Hygiene Drive, collecting blankets and hygiene items for those in need in our community. Attorneys and staff donated \$442, as well as five large boxes filled with hygiene products. Since its local Arizona founding in 1893, The Salvation Army Phoenix Metro has brought help and healing to the hungry and hurting.

JAYDIE LYNN KING FOUNDATION

Finally, in December 2019, the firm teamed up with the Jaydie Lynn King Foundation and, in the true holiday spirit, provided ten families with gifts, including clothing, grocery gift cards, other gift cards, and essential household items. Items from each family's "wish list" were placed on ornaments distributed to employees of the firm, who then purchased the items as gifts. The firm gave more than 340 gifts and contributed a total of \$2,815 in gift cards. Additionally, the staff assisted the Foundation with wrapping gifts for the other 94 families that the Foundation adopted during the holiday season. The Jaydie Lynn King Foundation is committed to fundraising and supporting children currently in treatment at the Phoenix Children's Hospital Center for Cancer and Blood Disorders.

ANNOUNCEMENTS

PROFESSIONAL AND PERSONAL ACHIEVEMENT



Ashley L. Case

ASHLEY L. CASE and **JUSTIN P. NELSON** have each been elected to serve a three-year term on the board of directors of the Estate Planning Probate and Trust section of the Maricopa County Bar Association. For the 2020-2021 term, Ashley will serve as Vice-Chair and Justin will serve as Treasurer.



Justin P. Nelson

LANCE R. BROBERG was elected to the 2020 Board of Directors for the Arizona Foundation for Legal Services & Education – the Arizona Bar Foundation. The Foundation’s mission is to prepare Arizona youth for civic responsibility and provide access to justice for Arizonans most in need. Lance has worked with the Foundation for nearly 25 years via the High School Mock Trial Program—originally as a participant, then as a coach, and now as a case author and regional coordinator.



Lance R. Broberg

JAMES A. FASSOLD presented a workshop, “Beyond Burnout: Time Management and Work-Life Balance,” to The Florence Immigrant and Refugee Rights Project. In addition, *AzBusiness Magazine* has named Jim to its list of the Top 100 Lawyers in Arizona for 2020.



James A. Fassold

WILLIAM M. FISCHBACH has been appointed Chairman of the Board for Goodwill of Central and Northern Arizona (GCNA). GCNA funds its mission through its thrift retail operations. In 2019, GCNA provided over 175,000



William M. Fischbach

services to Arizonans looking to improve their lives through training and employment services. Additionally, the organization kept over 200 million pounds of materials from going directly into local landfills through their resale, recycling, and salvage operations.



Alisa J. Gray

ALISA J. GRAY and **JAMES A. FASSOLD** presented the following three webinars at the State Bar of Arizona: “Taming Your Inbox,” “Mindful Movement for Stress Management,” and “Time Management: Getting Things Done.”

ROSARY A. HERNANDEZ has been appointed National Director for the Defense Research Institute (DRI). DRI is the largest professional organization in the country exclusively representing defense bar attorneys. Rosary has been a member of DRI for fifteen years. Before her appointment as a National Director, she served on seventeen DRI committees, task forces, and subcommittees, including serving as chair of DRI’s Diversity and Inclusion Committee.



Rosary A. Hernandez

MAY LU presented the seminar “Ready, Set, Go!—Choosing the Right Business Entity” to the Arizona Association of Defense Counsel on November 13, 2019.



May Lu



Robert D. Mitchell

ROBERT D. MITCHELL and his wife Lisa Mitchell established an endowed scholarship fund at the ASU Sandra Day O’Connor College of Law—the Robert D. Mitchell Endowed Scholarship. The endowment will provide tuition funding for one law student each year, and is intended to promote trial advocacy.

JAMES P. O’SULLIVAN was invited to assist the Arizona Supreme Court Task Force on the Delivery of Legal Services in exploring regulation of legal entities in which non-lawyers have a financial interest. Jim also recently presented on business law issues to active military personnel and veterans participating in the “Boots to Business” Program at Luke Air Force Base.



James P. O'Sullivan

MARCOS A. TAPIA assumed the role of President of Arizona’s Hispanic Bar Association, Los Abogados in 2020. Marcos was elected President after serving as Vice President in 2019, and Communications Director in 2018.



Marcos A. Tapia

Several Tiffany & Bosco attorneys participated in the Bar Leadership Institute’s workshop: “The Path to Lawyer Well-Being.” **ALISA J. GRAY** led a meditation and gave a seminar on “Managing Stress with Mindfulness.” **JAMES A. FASSOLD** presented on “Beyond Good and Email: The Art and Science of Productivity.” **MAY LU** led a panel on “The Relationship You Need to Get Right: Mentoring and Sponsorship.”

{ FIND AN ATTORNEY }

See the directory on the back page of this newsletter or visit us online at tblaw.com.

TAX LAW

A Helpful Reinvestment

Opportunity zones can spur community growth, while deferring or avoiding capital gains taxes

BY TODD T. LENCZYCKI

With the 2017 Tax Cuts and Jobs Act, Congress enacted new rules allowing capital gains to be deferred from current taxation, and in some cases, avoid taxation



Todd T. Lenczycki

altogether, through qualified reinvestment in opportunity zones. Opportunity zones encourage investment in communities needing economic growth and assistance, and can be utilized by any taxpayer with current capital gains.

WHAT ARE OPPORTUNITY ZONES?

The purpose of opportunity zones is to allow economically-challenged census tracts to tap into the nearly \$3.8 trillion of unrealized capital gains in order to spur economic development. Accordingly, every state governor has designated particular zip codes that are eligible for opportunity-zone investment and benefits. Opportunity zones represent a win-win proposition, with blighted areas receiving much-needed capital from investors, and investors receiving substantial tax incentives for making investments in those areas.

THREE TAX INCENTIVES FOR REINVESTING CAPITAL GAINS

Opportunity zones create three powerful tax incentives for investors:

1. A realized capital gain from other investments that is reinvested into an opportunity zone through an opportunity fund defers the recognition of that gain from this year until the sale of the opportunity zone investment or 2026, whichever comes first;

2. Capital gains that are reinvested into an opportunity zone through an

opportunity fund can be reduced as a result of a step up in income-tax basis in the new property if held in the opportunity zone investment for specified periods of time. If an opportunity zone investment is held for at least 5 years, the income-tax basis is stepped up by 10%. If an opportunity zone investment is held for a total of 7 years (until 2026), the income-tax basis is stepped up by 15%. An increase in the income tax basis of an asset, in effect, will reduce the amount of gain and therefore a person's capital gains tax; and

3. The best incentive by far comes from holding an opportunity zone investment for at least 10 years. In addition to the step ups in basis on the original investment amounts, if an investment is held for 10 years or more, all gains earned on the opportunity zone investment (i.e., appreciation after acquisition) are tax free. For example, if an initial opportunity zone investment of \$25,000 appreciates to \$65,000 in value over 10 years, the \$40,000 of gain is entirely tax free so long as the

requirements for the 10-year threshold are satisfied.

WHAT CONSTITUTES AS A QUALIFIED INVESTMENT?

Simply buying land or investing in a business located in an opportunity zone does not provide the beneficial tax treatment. Rather, there are numerous Treasury Department regulations to follow and related requirements that must be met in order to obtain the beneficial opportunity zone status. Among other requirements, the investment must have community impact and the taxpayer must make improvements to the subject property. Additionally, the time frames for an investment to qualify are very tight, sometimes expiring in as little as 180 days. But the process is navigable and many opportunity zone funds are readily available to manage reinvestment of capital gains. And of course, any investment risk must be carefully weighed against the corresponding tax benefits.

In summary, if you are facing a large capital gains tax this year, reinvesting your capital gains into an opportunity zone fund may be a way of reducing or eliminating some of your tax bill. And if socially conscientious investing is one of your goals, investing in areas where great community need exists is rewarded with the opportunity zone incentives. But before implementing any tax planning strategy, you should consult with your personal attorney or CPA, particularly because there are many more specific requirements and rules that are not discussed in this overview of opportunity zones.



TOMERT/DREAMTIME

GET IN THE ZONE

The attorneys at Tiffany & Bosco are available to consult on opportunity zones and the other tax-related topics discussed in this article.



A WORLD of Experience

*T&B appreciates the value of its
growing diversity*

COMPILED BY TARA M. PATTERSON

Tiffany & Bosco, P.A. sees the value that comes from its attorneys and staff reflecting the diverse communities they serve. Diversity at the firm brings different perspectives to the table, cultivates new ideas and problem-solving strategies, and ultimately results in better overall service to our clients. To illustrate how diversity impacts the practice of law, we asked a number of the firm's attorneys to open up about their diverse experiences.



Alisa J. Gray



May Lu

Alisa J. Gray

In 1957, my mother left war-torn Seoul for Birmingham, Alabama to finish college. There, she met my father, who was from a small town close to Montgomery. They married and I was born. During the 1960s, we lived in Scottsdale. Nobody knew where Korea was. Children sometimes teased my sisters and me for the shape of our eyes and our grandmother's traditional dress. But mostly, I blended into the white culture as best I could.

In 1970, we moved to North Carolina. In high school, I was denied a job on a tobacco farm because I was half Korean. At school, we were teased about our eyes and appearance, and the weird

smells in our kitchen from my mother's cooking. I wanted to be just a typical kid, but I always knew I did not fit the mold.

Eventually, in the 1980s, I returned to Arizona where I worked and went to ASU, first to finish my undergraduate degree and then, a few years later, to attend law school. These days, I do not get any negative comments about being part Asian. In fact, Korean culture is very popular. K-Pop and K-Dramas, and Kimchee on everything!

Whenever I visit Korea, most people do not recognize that I am of that land, even though my attorney grandfather was a popular member of Parliament and a leader of the opposition party. He championed land reform and promoted

reconciliation. For years after his death, mourners would journey to his gravesite to pay their respects. In 1994, I was able to join in. I was the only biracial person among hundreds.

Moving between these cultures has not always been easy. However, at this time in my life, I am grateful to have been exposed to people from different countries, different cultures, and different lifestyles. These experiences have enhanced my ability to empathize with and appreciate people from different backgrounds. I try to see things from other points of view and look for solutions that may not be typical or expected, which can help me solve problems and find solutions. I believe these traits have helped me to be a better lawyer.

KNOW US

May Lu

I am a first-generation Chinese-American—my father left China after having gone through re-education at rural labor camps under Mao Tse-Tung's policies and my mother survived a sinking Vietnamese fishing boat to obtain refugee status.

I grew up with one culture at home but had to assimilate into another culture outside of the home. For the first five years of my life, I only spoke Mandarin and Fujianese and had to learn English as

my second language. To ensure that my brother and I would receive the quality of education that they had not, my parents rented an apartment in the best public school district even though there were only a handful of Asian students. My parents also opened up a Chinese buffet restaurant nearby, where they worked seven days a week and I spent most of my free time helping out by cleaning the dishes and peeling vegetables in between doing homework.

As an Asian female attorney, I believe

that increasing diversity and inclusion in all areas, including the legal profession, can help reduce the barriers that cannot be broken down by education and hard work alone. For this reason, I am honored to be the Immediate Past President of the Arizona Asian American Bar Association and a liaison to the Arizona Collaborative Bar, as well as an alumna of the Bar Leadership Institute. These positions provide me with a voice to encourage diverse attorneys to take on leadership roles and advocate for equity.



Marcos A. Tapia

I am passionate about issues surrounding diversity, education, and advocacy. I was born in Jalisco, Mexico and came to the United States with my family as an undocumented immigrant at the age of five.

Growing up, I often helped my mother at work cleaning homes and spent many days working in the fields with my father, who only reached a sixth-grade education in Mexico. I credit that experience for my appreciation for hard work, drive, and determination. As a result, I developed an affinity for entrepreneurship and became the first person in my family to graduate from college. In fact, while in my senior year of college, I became a U.S. citizen.

In law school, I spoke to high school students regarding my educational path. I also became the President of the Chicano/Latino Law Student Association, graduated third in my class in Pro Bono Service, received the Dean's Award for Outstanding Performance, and was a graduate of the Hispanic Leadership Institute. Recently I graduated from Valley Leadership Class 39.

Currently, I represent individuals and entities in an array of business/contract-related litigation while serving as the President of Los Abogados, Arizona's Hispanic Bar Association, and actively working with Fuerza Local, Local First Arizona's Spanish programming arm, teaching basic contracts courses to small business owners and entrepreneurs.

Shama Thathi

I am a first-generation American of Indian descent. Growing up, I did not comprehend the difficult decisions my parents made to create opportunities for our family. My father arrived in the U.S. at a young age, and although he was unfamiliar with the language, he worked hard to take advantage of the opportunities he found here. Shortly after my parents were married, my mother immigrated to the U.S. from India at age 20.

My parents became entrepreneurs and found success owning small businesses in Arizona. Because neither of my parents had the opportunity to attend college, one of my career objectives was to expand our family businesses using the knowledge I attained through higher education. After college and during law school, I helped manage my family's businesses—several gas stations and convenience stores. Through that experience, I learned the vital role that attorneys play in guiding businesses through their most important stages, which led me to pursue a career as a business transaction attorney.

My viewpoints, not just as a woman of color, but as a bicultural daughter of immigrants, with my hands-on experiences in managing family businesses, have given me a unique perspective. Diversity of thought and life experiences is paramount in law, and my unique perspective is a valued asset, allowing me to better advise businesses and their owners.

James P. O'Sullivan

I received the State Bar of Arizona's 2019 Diversity and Inclusion Leadership Award for my efforts to promote a more diverse and inclusive legal community. My nomination was championed by two of my diverse attorney mentees—both direct beneficiaries of my daily commitment to mentoring. I “walk the walk” of my belief that diversity in life experience and in thought—and equal opportunities for all—are essential to a fair and impartial legal system. I have prioritized mentoring of diverse attorneys, teaching not only substantive legal skills but also the importance of professionalism.

I am actively involved in the

State Bar's Leadership Institute, a highly successful program enhancing the leadership skills of a diverse and inclusive group of attorneys. Additionally, I serve on a State Bar Task Force charged with establishing a robust cross-mentoring program among senior attorneys and diverse,

less experienced lawyers.

My life experiences deeply influence my values and commitments. Growing up in Los Angeles and attending law school in San Francisco exposed me to the cultural melting pot that is California and guided my beliefs regarding the value of diversity and inclusion.

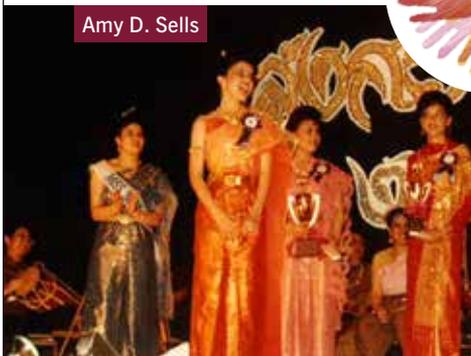
Each of my grandparents emigrated from Ireland, seeking the seemingly boundless opportunities offered by America. During the Great Depression, my paternal grandfather was lucky to find a job as a skilled blacksmith with the New York City Subway. My grandfather held that job until his retirement decades later, instilling in me the significance of hard work and dedication to an occupation.



James P. O'Sullivan



Amy D. Sells



Amy D. Sells

My mother and three older sisters are Thai natives. So, like other Asian-Americans, we led a dual lifestyle of assimilating to American culture outside the home while maintaining Thai traditions within the home.

Although our “otherness” sometimes left me wishing I was like all the other kids, I am grateful that our mother kept us grounded in Thai culture and connected with the local Thai community. Growing up, I learned and performed Thai classical dance, and I was even crowned Miss Songkran at the St. Louis Songkran Thai New Year's festival! I admire the richness of my heritage. I hope to instill that same cultural pride in my children, teaching them the value of diversity and inclusion in every aspect of our lives.

Women Lawyers Forum



Women Lawyers Forum

Recognizing the value of providing a leadership and support network for its women lawyers, Tiffany & Bosco created the Women Lawyers Forum (WOLF), which meets regularly to promote professional dialogue among its members (both women and men are invited to join). Due to the success of WOLF, Tiffany & Bosco recently won the 2020 Maricopa County Chapter All in For Women Award, a Special Honor recognized by the Arizona Women Lawyers Association.

WOLF brings to the forefront issues that challenge women in the professional field. Discussions have included overcoming the “imposter syndrome,” lawyer wellbeing, workplace sexual harassment, crafting a client pitch,

the path to becoming a shareholder, and setting financial goals. In addition to its regular meetings, WOLF has teamed up with women's groups at other local firms and also hosts social networking events—most recently, a self-defense class attended by clients and other professionals.

Since its establishment in August 2016, WOLF has seen a positive, measurable impact on Tiffany & Bosco's retention, promotion, and recruitment of its women lawyers. The percentage of female attorneys at the firm has increased from 25% to 37%, seven women received promotions to shareholder, and each of the women attorneys who have recently joined the firm expressed that Tiffany & Bosco's WOLF contributed favorably to her decision.

COMPLIANCE

Data Ready

Electronically stored information—what the law requires & how to preserve it, Part I

BY GAYA SHANMUGANATHA

Do you suspect that you are about to be sued? Do you anticipate that you will be filing a lawsuit? Have you already been sued or filed a lawsuit?

If the answer to any of these questions is “yes,” then you have an affirmative obligation to preserve all information that is relevant to the lawsuit.



Gaya Shanmuganatha

This article, the first in a three-part series, will examine what the law requires of you when litigation is anticipated or has been initiated, as well as the steps you should take to preserve relevant information.

As more seasoned colleagues have told me, “back in the day,” people were not overly concerned about conducting the kind of thorough investigations necessary to ensure that relevant information from all sources was identified, preserved, collected, reviewed, and produced. In the past, all salient information was contained in physical, hard copies of documents. But in today’s digital world, it is virtually impossible to engage in any litigation or investigation without dealing with Electronically Stored Information (ESI). And failure to preserve, collect, and produce ESI may subject parties to monetary sanctions, adverse inference instructions, dismissal, or even default judgments.

WHEN DOES THE DUTY TO PRESERVE ARISE?

Generally, your duty to preserve relevant information is triggered when you *reasonably anticipate* litigation and, at the latest, when you are notified that a lawsuit has been filed. When a party should “reasonably anticipate”

litigation is a very fact-specific inquiry. That inquiry requires you to evaluate the totality of the circumstances and exercise prudent judgment in determining when a litigation hold letter—a letter that notifies the key players that they should preserve relevant evidence regarding the matter—should be issued. Because there is not a consistent approach to the preservation obligation across state or federal jurisdictions, you must be attentive to where your case is being adjudicated, including what a particular court or judge might require, in order to fully understand your ESI obligations in each case. For example, the United States District Court for the District of Arizona is involved in a Mandatory Initial Discovery Pilot project, which heightens the parties’ ESI obligations and required disclosures.

WHAT ARE YOU REQUIRED TO PRESERVE?

You are required to preserve documents that are reasonable and proportional to the needs of a particular case. You are not required to preserve every scrap of paper, piece of information, document, or communication. You are required only to preserve evidence that is reasonably accessible (meaning you are not

required to pull information from your back-up tapes, etc.) and calculated to be relevant to the case based on the size (amount in controversy) and importance of the case. The next article in this series will discuss the steps you should take to identify what information should be preserved, as well as how you can comply with applicable investigation and preservation requirements.

WHAT SHOULD YOU DO AFTER THE DUTY TO PRESERVE ARISES?

First, you should cease any regular document retention/destruction policies that could lead to the destruction of information relevant to a case. This is especially important in cases where you will need to conduct an investigation before you are able to undertake a targeted preservation effort.

Second, your counsel should send a written litigation hold letter that: (1) identifies the persons or entities subject to the legal hold, the subject matter of the lawsuit, and the information that is relevant and subject to preservation; and (2) advises (a) that relevant information cannot be destroyed, removed, or altered, and (b) how the information should be preserved. It is important to note that the legal hold process is a *process*—you will generally start with a broad legal hold and, as you conduct your investigation, the items/persons subject to a preservation obligation could be narrowed.

Third, the duty to preserve does not end with the issuance of a litigation hold. Leading ESI cases—such as *Zubalake v. UBS Warburg LLC*, a Southern District of New York case—make it clear that you and your counsel have an obligation to periodically follow up and ensure that recipients of the legal hold are continuing to comply with it.

ESI obligations are complex.

Contact our attorneys for assistance with creating and implementing a document retention policy, drafting and enforcing a litigation hold letter, overseeing the preservation, collection, review, and production of ESI, or with any of your other discovery or litigation needs.



LEGAL MATTERS

Navigating Interstate Discovery

Issuance and service of an interstate subpoena

BY MICHAEL A. WRAPP

Issuing and serving an interstate subpoena can occasionally be an arduous task. But attorneys can accomplish that task through a combination of persistence, research, resourcefulness, and communication with counsel, court staff, and process servers in the relevant locale.

The first step is determining whether the foreign state in question has adopted the Uniform Interstate Depositions and Discovery Act (UIDDA). UIDDA is intended to simplify the procedures by which courts in adopting states can issue subpoenas related to litigation taking place in another adopting state. States that have not adopted UIDDA typically utilize interstate subpoena procedures that are less uniform and often far more complex.

Generally, UIDDA permits a party to submit a foreign subpoena, issued by the court in which the underlying litigation is pending, to the clerk of the court in the county where the party wishes to serve an interstate subpoena. The clerk must then issue a domesticated subpoena for service that incorporates the terms used in the foreign subpoena. States that have adopted UIDDA, including Arizona, typically have statutes in place that feature language to that effect.

Even when a state has adopted UIDDA, however, domesticating a subpoena for service is rarely as simple as presenting a foreign subpoena to the clerk of the relevant court. Despite the intended purpose of UIDDA, procedures typically are not entirely uniform from one adopting state to the next. And even among states that have adopted UIDDA,



MOTORTION/DREAMSTIME

differences in procedure are typical at both the state and county levels. For instance, while some states require the opening of a new civil matter to domesticate a foreign subpoena, others do not. Similarly, states may differ with regard to whether they require the hiring of local counsel when domesticating a foreign subpoena for service. When in doubt, it is usually best to err on the side of hiring local counsel, particularly when a dispute may arise from the subpoena in question or when enforcing compliance with the subpoena is a potential issue. Ultimately, regardless of whether a state has adopted UIDDA, additional research is necessary to become familiar with the precise details of the state's and county's interstate subpoena procedures.

After determining UIDDA adoption, the next step is to locate the specific statutes or rules governing the state's policies and procedures with regard to interstate subpoenas. When state statutes do not provide sufficient procedural clarity, it may be helpful to consult the website of the court for the county where the subpoena will ultimately be domesticated and served. Often, however, calling the clerk of the court is the best way to proceed. After all, the clerk's office will ultimately be the entity that determines whether a foreign subpoena is domesticated

for service. It may also be helpful to consult a local process server for practical insights regarding the issuance and service of interstate subpoenas. Some process servers even offer a streamlined service through which they assist customers with every step of the interstate subpoena issuance and service process in exchange for a flat fee.

Occasionally, no combination of the efforts set forth above will provide a desired level of certainty as to how to issue and serve an interstate subpoena in a particular state or county. Statutes may be unclear, information on county websites may be severely limited, and the clerk's office employees may not always be knowledgeable. In those instances, it may be prudent to make an educated attempt at a proper submission to the clerk of the relevant court and then adjust any required future submissions as necessary. Even when the process is not as clear or smooth as desired, following the steps set forth above should ultimately enable those seeking to issue and serve an interstate subpoena to accomplish their goals.

START THE PROCESS

If you need assistance with issuance and service of an interstate subpoena, please contact the attorneys at Tiffany & Bosco.



Michael A. Wrapp

Minimum Salary Increased for Exempt Employees



ANDRII YALANSKYI/DREAMSTIME

BY PAMELA L. KINGSLEY

Big changes for salary-based exempt (from overtime) employment relationships went into effect on January 1, 2020.

The minimum standard salary level for exempt executive, administrative, and professional employees increased from \$455 a week (\$23,660 annually) to \$684 a week (\$35,568 annually). Nondiscretionary bonuses and incentive payments (including commissions) that are paid at least annually can be used to satisfy up to 10% of the standard salary level—even with a final catch-up payment after the year has ended.

The total annual minimum went

from \$100,000 to \$107,432 for the “highly compensated employees” (with at least \$684 a week paid on a salary or fee basis). Additionally, special salary levels were adopted for workers in U.S. territories and in the motion picture producing industry.

The final rule, FAQs, and other guidance materials are available from the Department of Labor, with its fact sheet “Final Rule to Update the Regulations Defining and Delimiting the Exemptions for Executive, Administrative, and Professional Employees,” as a fine starting point. The fact sheet is accessible at www.dol.gov/agencies/whd/overtime/2019/fact-sheet.

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