



Farewell Mr. Grievance Chair

by Ken Crane
PLEA Vice-President

The meat-grinder, the black hole, the tar pit; these are just a few of the names that I have heard over the years to describe the Grievance camp at the PLEA office. Discipline and grievance issues have always been the cornerstones of what PLEA does to serve its membership and the person that heads up the Grievance camp has always shouldered a heavy load.

The constant stress of dealing with grievance and discipline issues can be an insidious creature that slowly wraps its tentacles around you and pulls you into the black hole unless managed properly. Anyone who is human will tend to take on the problems and issues of those they represent. It can wear and grind on you to the point where the job is running you rather than you running the job. If not kept in check, it can get to the point of wearing you down and spitting you out like a used carcass, thus the term "meat-grinder."

It takes a special person to step into the role of PLEA's Grievance Chair and the membership has been fortunate over the years to have some excellent officers fill the position. A good Grievance Chair, for starters, has to be knowledgeable in the contract (MOU), particularly officers rights, have a good working knowledge of departmental policy, title 13 and 28, as well as city personnel rules. The skill set in their arsenal must include being a good listener, being able to dig below the surface to determine the true problem rather than what appears on the surface, having the courage and tact to tell a member when they are off base, and the mental resolve to do battle with management on a members behalf when warranted. They must manage the cadre of 30 plus PLEA Reps and above all else they must have the heart of a servant leader combined with a passion for serving the membership. Each person who has served as PLEA's Grievance Chair over the years has brought their own unique flavor, personality, and skill set to the job.

When I first got involved with PLEA as a rep sometime around 1994, Terry Sills was the Grievance Chair. Terry was an "old salt" and a cowboy at heart with a passion for rodeo. He had a hard-bitten exterior, knew his stuff and had a reputation for standing up to anyone no matter his or her rank. More importantly, he also had a passion for serving, representing and protecting his members.

Dr. Levi Bolton who now serves as PLEA's lobbyist and expert on Brady issues also served as Grievance Chair over two separate time periods. Levi is known for his brilliant intellect, his ability

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Dave Kothe

to grasp complex legal issues and his bulldog like tenacity in representing members. When Levi went on a tear representing one of his members, people often had to go find a dictionary afterwards to look up some of the words he used.

Michelle Monaco has the distinction of being the only female officer to hold the Grievance Chair position. Due to this, Michelle brought a unique perspective to the table. She learned early in her career what it was like to be "touched" by the department when she was NOI'ed numerous times in her first year on the job. Michelle was the victim of an overzealous, personality driven manager who acted in a vindictive and overreaching manner. A lot of other people would have probably given up and quit. Michelle hung in there and learned early in her police career that being "touched" certainly adds valuable context and perspective to the job. As a result of these past experiences, Michelle could empathize with those she represented because she had walked a mile in their shoes and then some. She learned early the importance of knowing her rights. As a result of these early experiences,

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she became a tenacious advocate for those she represented.

Mark Spencer took the reins after Levi's second tour of duty in the Grievance Chair. As PLEA's immediate past President, almost everyone is aware of Mark's servant leadership attitude. As President, Mark's philosophy: "It's all about the members", wasn't a new concept, it was a carry-over from his days as the Grievance Chair where he had developed a reputation as a serious adversary for those who wronged a member. Mark would go to the wall and then some to defend a member. As a gifted and persuasive communicator, Mark was a master of coming up with analogies that enabled him to take complex hard to understand issues, and explain them in proper context in a clear and precise manner so that anyone could understand the point.

Billy Coleman took command of the Grievance camp when Mark was elected to the President's position. Billy threw himself into his job duties full force and before long was mired in the grievance "tar pit" up to his waist. Billy was a tenacious fighter who never said "no" to anyone who asked for his help. After a couple of years of saying "yes" to everyone, he slowly got pulled towards the grievance "black hole." When Billy eventually figured out he could retire, have enough money to live comfortably, be able to partner with his dad in his contracting and construction business while at the same time having more time to spend with family, the decision to retire became a no brainer. Billy didn't let any grass grow under his feet and retired within a matter of weeks. He was personally attending to about 30 grievance cases prior to his departure. He escaped the grievance meat-grinder. While we were happy for Billy, to say the decision caught us by surprise would be an understatement.

The person probably most surprised was Dave Kothe. Dave was serving as Billy's number two man in the Vice-Grievance position and ultimately took over as the Grievance Chair upon Billy's departure. I remember walking into Dave's office shortly after we all found out Billy would be retiring. Dave had a bit of a shell-shocked look on his face. It was a classic "what the hell" moment and I'm sure the thought of inheriting the grievance kingdom was weighing heavy on his mind. Truth be known, he might have even had some fleeting visions of early retirement himself.

Dave didn't leave. He stepped up to the plate, took the reins, and in classic PLEA tradition, turned in an impeccable performance. Watching Dave work, I could see he had learned from his predecessors. Dave was almost always the first in the office, starting work before anyone else, but he didn't let the job run him, he ran the job. He made it a point to go home on time every day, tried not to carry the burdens of work home with him, and didn't let the job take precedence over his family. Unlike a lot of us who get too absorbed in our work, are slaves to phones, text messaging and e-mail, Dave didn't let the technology of the job take over his life. While most of us in the office thought we were doing something really great by running with smart phones so we could get e-mail, Dave was just fine with a simpler phone that only did text messaging. He was smart enough to figure out that e-mail could wait till the next day, while the rest of us in the office had the pleasure of having our phones buzz at all hours of the night with incoming e-mails.

In fact, when it came to Dave and technology, a lot of us in the office had some entertaining moments. Watching Dave work with a computer was, at times, like watching a monkey trying to work a Rubik's cube. I often joked with Dave about him still being in the age of clay tablets and papyrus. Dave much preferred writing things out longhand on a legal pad to using Microsoft Word. At any given time he would have three legal pads on his desk filled with notes dealing with a variety of cases and issues. On those occasions when Internet connectivity was lost or there were computer network problems, Dave had a laugh on us. While the rest of us were scrambling around trying to figure out how we would get things done without our computers, Dave kept plugging along with his legal pads. It was funny though, watching him try to figure out problems with his printer and e-mail. Bottom line, Dave's occasional challenges with technology didn't hamper his ability to get the job done.

He didn't shy away from difficult tasks or complex investigations but he learned the importance of delegating in order to ensure work was evenly distributed. Dave learned that the job was a marathon not a sprint. In short, he mastered the art of pacing himself in a job that, if not managed properly, will crush you under its weight.

In handling the Grievance camp, Dave possessed a quiet intellect and was slow to anger. Notice I didn't say he never got angry...just slow to anger. On those rare occasions Dave did blow a gasket, it was for good reason. He didn't speak just to hear himself or to impress others. As a result, when Dave did have something to say, it was thought out, well reasoned, and people listened. Dave often brought that unique perspective or angle to the discussion or boardroom that no one else had thought of, and as such, his insights were invaluable.

By the time this article is printed in the RECAP I will have inherited the Grievance camp from Dave. I too have trepidations about stepping into the tar pit. My hope is that I can learn from the past and continue to serve the membership as well and as competently as those who have gone before me.

Dave, from all of us in the office, thanks for your service, dedication and sacrifice in serving the membership. Your care and concern for protecting member's rights was evident by your willingness to take on a stressful and thankless task. You ran the race and finished well. That, in and of itself, is commendable. While I'm sure a lot of us are just a bit jealous that you beat us to the retirement door, we wish you all the best in your future endeavors.

*He stepped up to the plate,
took the reins,
and in classic PLEA tradition,
turned in an
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Thank You Dave!

Fallen Heroes



Phoenix Police Officer
Ignatio Conchos
July 1, 1982

Phoenix Police Officers



Phoenix Police Officer
Danny Tunney
July 26, 1990



Phoenix Police Officer
John Domblisky
July 26, 1990



Phoenix Police Officer
George Cortez
July 27, 2007



K-9
Rosco
July 14, 1984

COMING SOON!

As you know PLEA has great discounted tickets for Southern California Theme Parks and always will! PLEA will soon make it much easier to get these tickets. Instead of always coming directly to the office with cash or check as you do now, you will be able to purchase tickets directly online from the parks. You will still be able to receive corporate discounted prices. This option will allow you to purchase and print tickets right from your home! While we always enjoy your presence in the PLEA office, we also want to make ticket purchasing more convenient for you and your family! The PLEA office staff will ALWAYS be happy to assist with your ticket purchasing needs. **PLEASE NOTE:** each park has different ticket purchasing options. Stay tuned for details of the upcoming changes in ticket purchasing!

Does the 1st Amendment

By Rob Warren

PLEA Representative, Mountain View Precinct

Have you ever wondered how much the First Amendment protects what you say on and off duty? If not, you should. With Facebook, Twitter, blog posts, and personal websites allowing platforms to say what's on our minds, we need to be aware of how it affects us and our job. "But PLEA," you may ask, "If I'm off-duty, in my house, on my personal computer, don't I have the right to say anything I want?" Of course you do and nobody is going to stop you from saying it. Now, how the department reacts to what you say may make you think twice about saying anything at all. Over the past decade or so, there have been significant changes to how courts have ruled when it comes to the extent you, as a police officer, are protected under the First Amendment. There have been numerous court rulings on the amount of protection provided to officer's speech.

You first have to understand the basic questions which courts have been asking for years; the same questions you should be asking yourself. From 1968 to 2006, courts would ask two questions when employees (i.e. officers) have said anything about their employers.

- 1. Did the employee (officer) speak as a citizen regarding a "matter of public concern"?**
- 2. Are the employee's (officer's) free speech rights outweighed by any injury the speech could cause to the employer?**

The case which established these questions is *Pickering v. Board of Education of Township High School District, (1968)*. Pickering was a high school science teacher who wrote a letter to the local newspaper criticizing the school board's allocation of funds between athletics and academics. The school board fired Pickering, saying he questioned the integrity of the school system and he sued claiming the school board violated his First Amendment rights. The court found in favor of Pickering, saying he was speaking as a citizen on a matter of public concern as to how tax money is spent in the school and his concerns were directed at "promoting the efficiency of the public services it performs through its employees." Since the letter did not target any school official Pickering worked with on a daily basis, there was no disruption to the function of the school and though the school board disagreed with his comments, the reputation of the school district was not harmed by those comments.

What does this mean for you? This allows you to speak out about something you agree or disagree with which affects the public as a whole, while not disrupting the function of the department. If Pickering had taken some shots at the school principal or any co-workers, this would have disrupted the work place and affected how the school functioned and, therefore, would not have been protected speech.

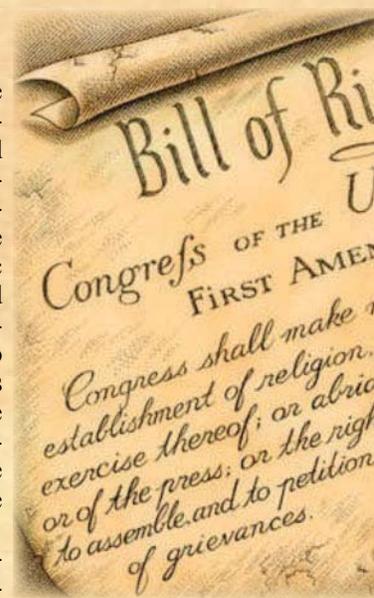
In the related case of *Desrochers v. City of San Bernardino, (2009)*, Desrochers, a Police Sergeant, filed a grievance against a lieutenant stating the lieutenant was incompetent, a bully and recommended the lieutenant take interpersonal skills training. When

the sergeant was then given undesirable work assignments and low level discipline, he claimed he was being retaliated against for exercising his First Amendment rights. The court found the lieutenant's management style and abrasive personality were NOT a matter of public concern and, therefore, NOT protected by the First Amendment. Since the sergeant did not have any complaints as to how the lieutenant performed his duties and the grievance was based on how the sergeant personally felt about the lieutenant, the sergeant did NOT have the right to say whatever he wanted. The court found in favor for the city.

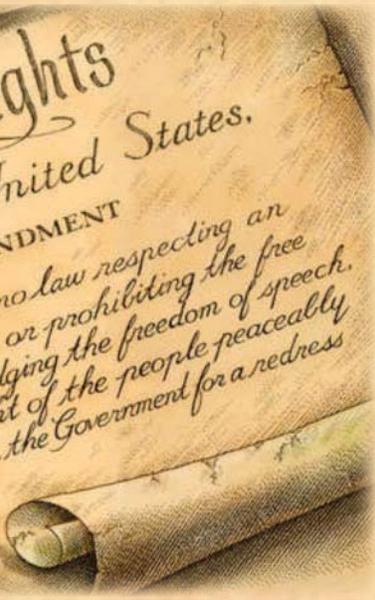
This affects you how? It means having a personality conflict with a supervisor does NOT afford you the opportunity to make an official grievance. Remember, it's NOT a matter of public concern if what you say is motivated by your personal feelings. This also means, going on Facebook and bad mouthing your supervisor leaves you open to potential discipline. Since this is such an important point, I'll repeat it for emphasis. JUST BECAUSE IT'S ONLINE DOES **NOT** MEAN IT'S PROTECTED BY THE FIRST AMENDMENT AND YOU COULD RECEIVE DISCIPLINE FOR WHAT YOU WRITE AND/OR SAY. Many officers across the country have lost their jobs for exactly this reason; don't be the next person to get fired because of Facebook.

This point was addressed in *Curran v. Cousins, (2006)* where Curran, a county Corrections Officer and an outspoken critic of his boss, Sheriff Cousins, posted comments online comparing the Sheriff to Hitler, supervisors to Nazi generals, the correction officers to the Jews who were killed in the holocaust, and another group (including himself) as those who fought back and "attacked" the Nazi's. He also referenced the secret plan to assassinate Hitler in 1944 and, again, compared the Sheriff to Hitler, inferring a similar plot against the Sheriff. Curran was subsequently terminated and (naturally) sued, claiming free speech. The court ruled that an employer did not need to show an actual adverse effect to the work place in order to terminate an employee. Also, an employer did not need to allow the disruption to the work place to unfold before taking action to prevent it. The court believed Curran's comments would have negatively affected how the department functioned and therefore his termination was upheld.

The courts used these two questions until 2006 when one of those big-deal, everybody-really-needs-to-pay-attention-to-this, it-effects-us-all, yes-I'm-talking-to-you type of cases was decided. In *Garcetti v. Ceballos, (2006)*, Ceballos, a Los Angeles County Assistant District Attorney, questioned the truthfulness of an affidavit submitted by a deputy sheriff. Believing the deputy misrepresented facts in a murder case, Ceballos wrote a memorandum explaining this belief and suggested the case be dismissed. Later, Ceballos testified as a defense witness on the validity of the deputy's affidavit. After this, Ceballos, who was asked to



Protect You? It Depends.



transfer to another branch or accept reassignment to misdemeanor cases, was not allowed to work on future murder cases and was denied a promotion. Claiming the memo was free speech and protected under the First Amendment, Ceballos sued his employer. The Supreme Court disagreed with Ceballos and said the memo was written as part of Ceballos' official duties and was NOT free speech; his termination was upheld.

The Garcetti case added a third question to whether an officer's speech falls under the First Amendment...

3. Did the employee (officer) speak as part of their official duties?

Why am I telling you this? Because this is **HUGE!!** Garcetti v. Ceballos said if what you say is part of your official duties as an officer, it is NOT free speech. The court said, writing a memo concerning the legality of an affidavit in reference to a criminal prosecution was a part of Ceballos' official duties which means it is NOT protected by the First Amendment. This was narrowed in several other court cases, including:

Huppert v. City of Pittsburg, CA, (2009). Huppert was an officer who was asked by the FBI to help them with an investigation into possible corruption within his police department. The FBI told Huppert, his cooperation was not part of his official duties and he helped with their investigation, eventually testifying in court. Huppert was given undesirable work assignments, harassed by his supervisors and eventually fired. He sued, claiming (what else) a violation of his First Amendment rights. The court found cooperating with an FBI investigation and testifying in court was part of a police officer's official duties. The FBI, the court said, did not have the authority to decide what were parts of Huppert's official duties and what were not; his termination was upheld.

Nixon v. City of Houston, (2007). Nixon was an officer who was an outspoken critic of his department. One day, a Houston PD police pursuit ended in the death of an innocent citizen. Nixon, while on his way into work and in uniform, stopped at the scene and asked a sergeant on scene if he [the sergeant] wanted Nixon to address the media. The sergeant responded by laughing, but did not say anything. Nixon took this laughter as a "yes" and spoke to the media at the scene. In his statement to the media, Nixon was extremely critical of the department's handling of the pursuit. He did not stop there. While presenting himself as a spokesman for the department (which was not his job) Nixon conducted two other interviews where he echoed his criticisms of his department. As a result, he was fired and he sued saying he was speaking on a matter of public concern and since he was not a Public Information

Officer, his speech was not part of his official duties. The court found that though Nixon was not an official department spokesperson, he was an officer and by default a representative of the police department. Therefore, his speech was NOT protected by the First Amendment and his firing was upheld.

I could go on...and on...and on as there have been several dozen cases, all with the same outcome. If you're not speaking on a matter of public concern, what you say could cause a serious disruption to the function of the department. If you are not speaking in a manner which is in the course of your official duties, then your speech is NOT protected.

So far, the only time the First Amendment has applied to employees in such a manner has been when they were speaking as representatives of their union. Even then there are limits.

Remember, this article strictly addresses First Amendment rights. In internal departmental matters, especially where discipline is given out, there may be other protections given to you under the MOU or the Fair Labor Standards Act or the Family and Medical Leave Act or the Americans with Disabilities Act Amendments Act or a slew of other rights given to you. To protect yourself, however, you should be aware of when the First Amendment applies to you to avoid these issues in the first place.

BENEFITS TO MEMBERS

Aflac Rep, Debby Tornberg,
is available to meet
with members at a place and time
convenient to them.

She can be reached at 602.214.4686.

Nationwide Retirement Solutions Representative

Jared Williams will be at the PLEA Office on Friday July 27
9:00 AM until 3:00 PM

to assist members with their accounts. Jared can also be
reached at 602-266-2733, extension 1168.

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Please call Mark or Pat at 602.230.7726



Back to the Basics

*by Franklin R. Marino
PLEA Secretary*

During the late afternoon hours of June 6, 2012, PLEA President Joe Clure, Vice President Ken Crane, Treasurer/Chief Negotiator Will Buividas, Grievance Chairman Dave Kothe, Vice Grievance Chairman Jerry Gannon, and I were informed that due to the injunction filed by the Goldwater Institute, effective immediately, we would be assigned to the Arizona Law Enforcement Academy for three weeks for training since we could not be working at the PLEA Office. Things were about to become interesting.

We reported in at 0700 hours on June 7th and although we could have, we did not file a grievance for violating our MOU right to have seven days' notice of a change in work hours and days. Lieutenant Jim Burgett, our acting supervisor, gave us the rundown of what we would be doing over the course of the next 3 weeks. First and foremost, we would get all of our mandatory and required Advanced Officer Training, including Annual Qualification, completed and once we were finished with that, we would have time to attend or participate in other training we felt we needed or wanted to do.

Although some of us had meetings including IRPs, DRBs, and grievances scheduled, being team players and based on our own personal work experiences, instructor certifications, and previous work assignments, we offered our assistance as well. This included helping out at the Range, Driving Track, evaluating Field Problems, assisting with computer and IT issues, and whatever else we could to assist squads assigned to the Advanced Training and Firearms Units.

At approximately 1400 hours, we were pulled out of our CPR class as we had an emergency meeting to attend. We were then informed all of us would be going back to Patrol effective the week of June 18th and as a reward for our seniority and experience, the assignments were various shifts with midweek days off. Now, given the fact that the Department has the right to assign us where manpower is needed, I get why we were given those assignments.

On the other hand, it was apparent that whoever was involved in the decision making process never took into consideration that we would be doing many of our normal representation activities on our "N" days, giving us a minimal amount of time with our families. Even then, we were not able to cope with the demands of our representation obligations.

Now, I don't know too much about these things, but I do know there is a document called the MOU that says when you work on your normally scheduled day off, you are entitled to overtime, and it is a three hour minimum. So much for that Goldwater math and saving the taxpayers' money, which they claim eliminating full time release positions will do. The other Board members and I were all confident that there were certain people on the twelfth floor of City Hall, the Fourth Floor at 620 West Washington, and others in several bureaus, precincts, and details who were celebrating with a victory dance since those recalcitrants at the PLEA Office were getting their due and GOD'ed back to Patrol!

We came back in on Friday morning, reported to the range, and began working on our marksmanship skills. As we all know, shooting is a perishable skill and it deteriorates if you don't practice. I'm not ashamed to admit that I definitely needed some work, even though I had done some shooting since my last qualification, including the Phoenix Combat Classic last October. Under the watchful eyes of officers from the firearms detail, they got us squared away and dialed in to put rounds where we needed to. We also had the opportunity to do some practice shooting under the dreaded 2012 Annual Qualification protocol on the dastardly TQ21 target we heard was causing so much grief and aggravation.

As our training progressed, we continued with training on building searches in the Tactical Village, hands on training in the Defensive Tactics room, more time on the range including our actual Annual Qualification, classes on the Taser, Excited Delirium, and a stint out at the driving track, where we did backing, evasives, and

J-turns. For those of us who either hadn't done this in a while, or never did it at all, I can honestly say, it was a blast and there were definitely grins and laughs. Prior to heading home on Thursday, June 14, we did Decision Making 2012.

Now, keep in mind, that while all this training was going on, there was still PLEA business to take care of, so every night after we were finished with at the Academy, we inevitably ended up at the PLEA office catching up on emails, voice mails, missed phone calls, and all the other tasks we normally handle. As my Drill Sergeant, Joe Shelley, standing at the right of the picture and wearing those good old Army Issue RPGs, used to say, "It ain't nothin' but a thing." The bottom line is that there was work to be done and being committed to the members, we were willing to do whatever it took, including putting in extra time at the office on our own in efforts to get it done.

Looking back on our "academy time" I believe the consensus is that it was positive in more ways than one. Aside from the training itself, it was good to get "face time" and talk with people from the Advanced Training Unit who we haven't seen in a while. One thing that was discussed with everyone from Lieutenant Burgett on down the chain of command is working on better communication between the Advanced Training Unit and PLEA to be able to address potential problems with training polices or protocols whenever there is a revision proposal. This is especially important when it comes to use of force issues, which is one of the primary areas where we provide representation. One way to alleviate tension down the road is by ensuring we are all on the same page and discussing both sides of the issue when it comes to knowing what is going to be in a proposed policy. Two recent examples include working on the revised Rifle Policy with the elimination of the 40 hour school for a triple failure on a qualification. Also, participating in and reviewing all the Decision Making 2012 scenarios so we know what the scenarios are. This will be especially helpful in the event of potential grievances from people who didn't pass.

On behalf of myself, Joe Clure, Ken Crane, Jerry Gannon, and Will Buividas, I would like to personally thank Lieutenant Jim Burgett and all the staff members of the Advanced Training Unit, including the Firearms Detail, Tactical Training Detail, and EVOG (driving track) who took the time to work with us over the course of our six day refresher course.

*Membership meetings are the last
Tuesday of each month at
7:30, 12:30, and 5:30.*

*Board meeting is held the
3rd Tuesday
each month and members can
attend at 8:30 am.*

LAW OFFICES OF MICHAEL NAPIER, P.C.

MICHAEL NAPIER has been representing Phoenix officers for over 32 years. Mr. Napier is one of the most experienced labor and personal injury attorneys in Arizona. Mr. Napier has represented hundred of officers before administrative bodies throughout Arizona, and has assisted critically injured officers and the survivors of the officers in obtaining compensation for their injuries and losses.

ANTHONY COURY has focused his 9 years of practice primarily on personal injury and wrongful death lawsuits in which he has served as plaintiffs' counsel. He has experience in cases dealing with dram shop liability, negligence, governmental claims and products liability including service as counsel on the litigation team for Phoenix Police Officer Jason Schechterle.

KATHRYN BAILLIE was born and reared in Phoenix, Arizona, completing her undergraduate degree at Arizona State University. She served as a J.A. for the Third Circuit Court and then worked as a Public Defender in the Commonwealth of Kentucky before joining the Law Office of Michael Napier, P.C. She has worked with Michael Napier on personal injury and wrongful death cases, dram shop liability, negligence, administrative, disciplinary, and other employment matters.

JAMES P. ABDO was born in Omaha, Nebraska. He earned his undergraduate degree from the University of Rochester in 1984 and his Juris Doctorate from the College of Law at Arizona State University in 1991. Mr. Abdo served as an Assistant Attorney General for Arizona before entering private practice as a partner at two major Phoenix law firms, where his practice focused on commercial litigation of all types. He has extensive experience both representing government bodies appearing before numerous state, county and city agencies in numerous licensing, procurement and labor/employment matters. His practice also includes the formation, counseling and representation of business entities, the drafting of a wide variety of real estate and other contract documents in addition to litigating disputes arising out of contracts.

In addition to the full services provided to PLEA members to protect their careers, the Law Offices of Michael Napier P.C. provide the following:

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Reduced fees for matters not covered by the PLEA legal plan;

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If You Have A Grievance

FIRST: Attempt to resolve the matter informally with your supervisor.

SECOND: If you cannot resolve this with your supervisor, contact one of the representatives above.

REMEMBER: There are time limits to initiate a written grievance.

If You Are Being Investigated

RECORD: All interviews once you have been given an NOI.

COPY: All memos or paperwork related to the investigation.

TRUTHFULLY: Answer all questions related to the investigation.

If you are called by Professional Standards Bureau or any police supervisor regarding an investigatory interview or interrogation, you may have PLEA representation during that interview.

Call for representation as soon as possible. For your convenience, a PLEA board member and representative are available 24/7.

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- Ken Crane Vice President
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- Frank Marino Secretary
- Tim Baiardi.....Trustee/Representation
- Jerry GannonTrustee/Representation
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