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PHOENIX LAW ENFORCEMENT ASSOCIATION

RECAP

JULY 2011

The Official News Magazine of the Phoenix Law Enforcement Association

Mayor and City Council Elections: How Will it Impact You?

by Will Buividas

Chief Negotiator/Phoenix Pension Board Trustee

NOTE: This will be the first of a series of articles, leading up to contract negotiations that commence in January 2012. Please take the time to read these articles as I will break down our Meet and Confer process.



City elections are fast approaching. Most everyone has seen street corners throughout the city littered with election signs. At stake are a Mayor's position and five council seats. In the event that incumbents are not re-elected, we could see several spots on the City Council change hands. What this means to you as an individual police officer is that there will certainly be some new faces deciding our upcoming pay and benefit packages. In the past, city elections have been relatively quiet, barely generating any media attention. Not so this time around. Currently, six people are running for Mayor. At least four of those people have a legitimate shot at becoming the next Mayor. The Arizona Republic is reporting that this is the most competitive Mayor's race in over 30 years. There are also heated races in several of the council districts.

You might be asking yourself why this is important and how any of this will have an impact on your job as a Police Officer. This election has EVERYTHING to do with the future of the Phoenix Police Department! If you have been watching the news over the past several months there are people on the current Council and in the Community that feel we are paid more than we should be. They would like to "roll-back" pay and benefits (CUT) for ALL

city workers including Public Safety. One Councilman in particular has taken it upon himself to aggressively attack our merit pay steps and longevity pay. The new Council will also guide the discussion reference the recently released Berkshire study (see related article pg.7) and have input into the next Police Chief. If you think we can afford to eliminate another 700 Police Officers from the Department as this obviously flawed study suggests, then please vote for those candidates that are saying we need to implement the Berkshire study. My point is that this election more so than any election in recent memory will have a significant impact on YOUR pay and benefits. Remember, it is the City Council that has to give FINAL approval to the new MOU (contract).

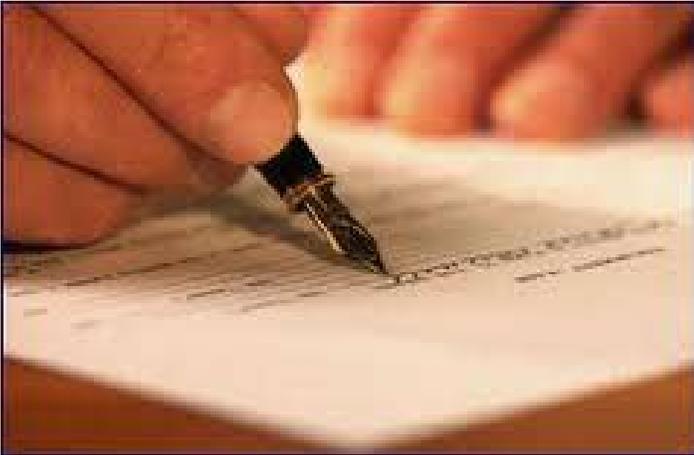
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Under the City ordinance PLEA can't get involved in City elections; however, the Arizona Police Association has endorsed Greg Stanton for Mayor, Thelda Williams for District 1, Bryan Jefferies for District 2 and Daniel Valenzuela for District 5. Some of the opponents to the above candidates have gone on the record to say they support significant cuts to YOUR pay and benefits. Just remember the new Council will have the final say on our new contract. Your vote is very important.

Starting next month I will begin a series explaining how the Meet and Confer process works and the steps to obtaining a new contract.

MONTHLY NOTES AND WHAT THEY MEAN

by Kevin Smith
PLEA Representative



One of the most commonly asked questions at the PLEA office or to PLEA Reps is; “Can my Sergeant put that in my notes”? The answer more often than not is yes, but there are reasons why a supervisor should or should not put certain entries in your notes. The monthly notes are simply a method used by supervisors to document an employee’s performance throughout the month in order to assist in the formulation of their annual PMG. In order for documented performance to be included in the PMG the supervisor is first of all required to keep timely notes on work performance and secondly, is required to have the employee sign their notes within two weeks of the end of the month. Part of the purpose of the monthly notes is to document not only what is being done well but to document performance deficiencies also. In fact, there is a specific form a supervisor can use to document performance deficiencies or concerns. The form is called Employee Performance Notes and has fields for date, time, performance category, performance issue and related notes. The form must be signed by both supervisor and employee.

Once a PMG has been received and signed off the supervisor should either destroy or give the employee their monthly notes from the past year. There is one exception to this. Employees have the right to appeal a not-met rating. If this were to occur, the supervisor would be more than justified in retaining the monthly notes used in formulating the rating until the situation was resolved one way or the other.

In their purest form, the monthly notes can be a useful and valuable tool for both supervisor and employee alike. Problems arise when personalities and personal agendas begin to creep in. Supervisors can also sometimes send mixed messages in the notes they write.

An officer came to me not long ago regarding an issue with their notes and after reading them I couldn’t decide what the sergeant wanted the hard working officer to do. The involved officer has several years on the job, is assigned to 2nd shift and has extensive training in DUI investigations. What follows are some actual entries from the officers notes.

The first entry dated September of 2010 stated:

“although stuck on the desk, helped with a 390D/962 and me with a threats DR. He also helped officers with PACE workups, booking, intel and a DRE.”

So far so good, sounds like a real team player, however, on October 2010 the same supervisor made the following entry into the officer’s monthly notes:

“Officer X answered for a blood draw at the end of his shift. He understands that due to financial constraints he needs to allow a third shift officer to take care of the detail to reduce controllable overtime. The Lt. also spoke with officer X concerning this issue.”

On the same day the same sergeant wrote:

“Officer X helped two officers on the squad with an arrest they made for 390D. Officer X heard them ask for assistance and helped out without being asked. He makes the squad more self-sufficient with his 390D certifications.”

Almost anyone reading these notes could come to a reasonable conclusion that this particular supervisor likes this officer’s work ethic when it is convenient to like it, but sees it as a problem if this officers same work ethic causes him to get held over occasionally. When that occurs it’s a bad thing and it goes in the monthly notes as a negative comment.

Pay and benefit cuts were taken department wide and it’s not the job of the patrol officer to worry about budget issues. If getting held over to do a blood draw on a DUI is that big of a deal one has to wonder why the Sgt. didn’t get on the radio to tell his officer to either not do the detail or to find a shift 3 officer to take it. I wonder if the supervisor received a negative entry in their notes for failing to properly supervise.

Arizona has approximately 1200 fatal accidents annually with alcohol and or drugs being a factor approximately 64% of the time. You would think a supervisor would be happy to have an officer on their squad with the necessary skills to help their squad mates and to assist citywide when needed.

If you don’t agree with your monthly notes when you receive them you have the right to include rebuttal statements when you sign off on them. If you attach comments on a separate sheet of paper make sure you include a comment on the face sheet of the monthly notes by your signature stating “see attached rebuttal comments.”

Monthly notes should be factual in nature and should be free of personal opinion. They also should not include information of a medically sensitive nature. This could include talking about specifics of industrial injuries, medical treatments, pregnancies or other types of physical limitations.

Many officers question whether or not they are required to sign their monthly notes. You should sign the notes as your signature merely acknowledges receipt of the notes. A signature doesn’t have to mean that you agree with the content.

If you are ever in doubt about whether or not something should be allowed to be in your notes, call the PLEA office or contact a precinct PLEA rep for assistance.

Easiest Insurance Policy Ever

by Rob Warren
PLEA Representative



Are you one of those people who exercises before or after your shift at your bureau or precinct weight room? Would you like to be covered by workman's comp if you're injured during your workout? You can be. Submitting a physical fitness plan which has been approved by your bureau/precinct commander will cover you for any injury incurred while exercising, provided you're exercising at a police facility. Per Operations Order 3.10.5 there are four criteria you must meet to be covered. Don't worry, these criteria are uncharacteristically simple. They are:

- 1) **Submit a memo to your commander (these memos expire on January 31 each year).**
- 2) **The memo must include "specific starting and ending times that must be adhered to."**
- 3) **The exercise program must be conducted at a police facility (sorry, pumping iron at LA Fitness doesn't count).**
- 4) **When taking part in a running program, "the course will begin and end at a police facility."**

That's all. Keep in mind, most commanders are probably going to want a bit more in your memo than a start and end time. For example, your memo could say something like this:

Upon approval of this memorandum, I will begin a physical fitness program which will take place (your work days) between (times you expect to exercise, plus about an hour (just in case)) which will take place at (name of bureau/precinct where you plan to exercise). This program will include calisthenics, weightlifting, cardiovascular exercises, and stretching. Any running program will begin and end at (name of bureau/precinct).

Once approved, you will be covered by workman's comp if you are injured during a workout. Pull a muscle? Covered. Drop a weight on your foot? Covered. Hit your head on the ceiling while doing all those pull ups? Covered. Submit your memo to your sergeant as soon as you can. Without it you'll be footing the doctor's bills yourself.



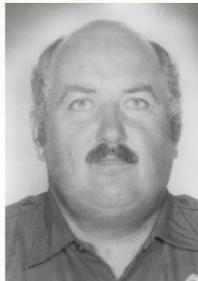
Phoenix Police Officer
Ignatio Conchos
July 1, 1982

Fallen Hero

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

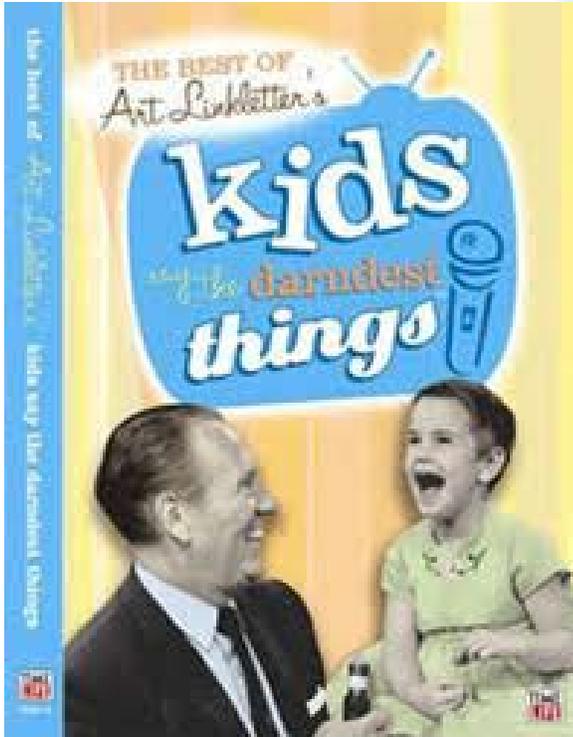


K-9
Rosco
July 14, 1984

Supervisors

~~Kids~~ so

by Ken Crane,
PLEA Secretary



In the March 2011 Monthly RECAP I penned an article titled Blind Call for a Village Idiot. This was prompted by rumors that the command structure in one of the precincts was thinking about implementing a program to issue “administrative tickets” to officers that committed grave offenses in the precinct such as parking a patrol vehicle in the wrong spot among other extremely serious violations.

In conversations with officers from around the department it seems that there is just no shortage of idiocy when it comes to some managerial decisions along with comments that sometimes come out of the mouths of supervisors. I’m reminded of the old Art Linkletter TV show from the 1960s where Art would interview kids about life in general and the adult audience would be entertained by some of the bombshells that were dropped. This prompted Art to eventually write a book titled: Kids Say the Darndest Things. The corollary to this is that PPD supervisors when confronted with questions from subordinates can also manage to “Say the Darndest Things.”

For approximately the past year or so I have worked off and on with officers of the department’s Airport Bureau on a variety of issues, the most recent being “administrative searches” at TSA security checkpoints.

The issue in a nutshell is this: Anyone who has traveled by air since 9/11 has been through the drill of going through a TSA security checkpoint. Most get through the ordeal without incident. On those rare occasions when a passenger sets off a metal detector or has something show up on a body scan, the TSA will go through additional protocols which might include hand-wanding, pat downs, asking a passenger to turn their pockets out maybe even

asking the passenger to step behind a privacy screen where items of clothing can be removed. Most times these procedures will resolve the issue but when it doesn’t and or the person refuses additional screening airport police are called. When this happens, Airport Bureau policy states that officers WILL do an “administrative search” of the person.

As you can imagine, this begs a host of questions. What is an “administrative search”? How far can an officer go? Police officers are trained to do searches incident to arrest based upon probable cause. Reasonable suspicion can get you to the point of a pat down or Terry frisk. I don’t recall the department ever having any type of administrative search training. What if the person refuses to be searched? In a refusal case do we make an arrest? If so, what do we charge them with? Should we dust off the old city code of “opposing the police” in order to be able to charge them with something?

There is limited case law in existence governing search procedures at airport checkpoints, but as we all know case law can oftentimes be a little muddled. For example, one well known case governing checkpoint searches says that the force used in one of these administrative searches would be similar to that employed on a “Terry Stop”, the minimum amount necessary to detain the person and complete the search not to include the use of deadly force. Well now, that’s a relief...we should probably thank the courts for making it clear that we can’t turn some poor citizen into the Valley’s next 18 hole golf course simply because they refused to give us a peek at their junk.

To add to the confusion, at a recent search and seizure training session conducted at 620 W. Washington, one of the PD attorneys was quoted as saying that the Phoenix Police Department does not do administrative searches. If this was indeed stated, I would have to agree with the attorney on this one and, if true, why do we have a policy in place in one of our bureaus that speaks to the opposite?

In all fairness, the Airport Bureau has been working on formulating a workable policy that will allow officers to work effectively when called to a TSA checkpoint but the policy as currently written is vague in nature, leaves much to be desired and creates many more questions than it answers.

In addition, the TSA either can’t or won’t share their policies, procedures and protocols with the cops. Even though doing so might allow us to develop a better policy that would allow for more seamless integration. Apparently sworn law enforcement officers are not to be trusted with such sensitive information.

To date it would appear that the biggest violators of bureau policy have been Airport Bureau supervisors. In a recent conversation one officer had with a lieutenant on the issue, the lieutenant explained that he along with two other officers had recently escorted a subject out of a checkpoint area when the subject had refused further screening. The officer asked the lieutenant if they had done an administrative search prior to releasing the subject. The lieutenant said they did not and the officer then explained that per the Airport Bureau manual, he had violated policy since it states that “Airport Bureau personnel will conduct a search of the person.”

ay the darndest things

The lieutenant's response... "It wasn't that big of a deal." I'm sure it's nice to be able to violate policy at will especially when you have the training and years of experience to determine the difference between a "big deal" and a "little deal." I'm sure it would've been a "big deal" if a line level officer didn't do the mandatory search specified by bureau policy. With that in mind, picture this scenario of a Sgt. addressing one of his squad members: Sgt: "Officer Jones did you impound that baggie of crack that you found earlier tonight in that alley"? Jones: "Nah, there were no victims or suspects so I just did a 40 mph canal impound on the way back to the station." Sgt.: "Great! Well, I'll be in my office typing up your NOI, why don't you call a PLEA Rep and come see me in about 10 minutes." Jones: "Hey boss, I handled it...It wasn't that big of a deal"! We should all be so lucky to be able to make up the rules as we go and when questioned, simply shrug it off with nothing more than "Ahh...Its' not a big deal."

Maybe lieutenants attend some sort of secret lieutenants only "big deal" training module the rest of us don't know about. Even though the lieutenant might have followed the best course of action, unfortunately, words like "shall" and "will" are pretty specific and don't leave a lot of room for personal discretion...even for lieutenants.

Perhaps the lieutenant has already forgotten about a recent Airport Bureau incident involving leave slips and letting people go early. Certain involved Sgts and officers didn't think it was a "big deal." PSB on the other hand thought it was a real "big deal" and invited all concerned to include multiple supervisors to come over to PSB for coffee and a chat.

Almost five years ago now, around 30 officers worked off duty at a town home complex where it was alleged that some left early or showed up late. Aside from the fact that we would all be hard pressed to accurately recall what we did anywhere five years ago, I'm sure the involved officers and supervisors didn't perceive it as a "big deal." The only problem is that the AG's office got involved because they thought it was a pretty "big deal." In addition, PSB is now taking a crack at it because they feel it violates the "big deal" clause in the discipline matrix. I could go on and on about "big deals" but you get the point. Supervisors and officers alike make decisions every day that violate policy, sometimes inadvertently, other times intentionally, and if you asked, I'm sure they would almost always say "It's not that big of a deal", and most times it probably isn't. . . until something goes sideways.

Keep in mind there can be a distinct difference between being given a direct order as opposed to being given permission to deviate from policy. Being given permission to deviate from policy doesn't necessarily constitute blanket protection. If policy isn't followed because your boss grants permission to deviate and something goes south in a big way it could simply translate into you and your supervisor going down in flames together. An attorney in a courtroom a year from now isn't necessarily going to care that your boss gave you permission to violate your policy unless there is a specific clause that addresses such deviations. Operations order 1.2, Limits of Authority (sec. 1 and 2), covers use of

discretion and deviation from policies.

The truly sad part about this situation is that the department in their infinite wisdom did what they do best. When formulating the new policy they overlooked a valuable resource sitting right in front of them; the knowledge and experience provided by the front line officers that do the job every day. Officers in the Airport Bureau can bring considerable knowledge and insight to the table based on their seniority, experience and diverse work history. Between all of them they have probably worked every detail in the department. As end users of the policy they would be able to ask the hard questions (based on personal knowledge and firsthand experience) and suggest the tweaks necessary to make the policy a useful workable product.

My advice to officers of the Airport Bureau: Until the department fixes their flawed policy call a supervisor out every single time you are called to a checkpoint when the TSA has a refusal or an "anomaly" and is requesting you to step in and do a search. With increased rank and authority comes increased responsibility, put the onus on your boss and have them make the call.

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.

DATES TO REMEMBER & BENEFITS TO MEMBERS

Rep from Aflac will be in the PLEA Office the second Wednesday of each month. Call Aflac Office @ 602.870.1122

Hester, Heitel & Associates Exclusive group insurance offers to PLEA Members only for homeowners, and auto and liability. Please call Mark or Loretta at 602.230.7726

Tom Jonovich will not be at PLEA Office on July 21, 2011. He can be reached at 602.989.3560

Rep from Nationwide will be in the PLEA Office the 4th Thursday of each month to assist with Deferred Comp, 401(a), or PEHP and updating your beneficiary. Call Kathleen Donovan @ 602.266.2733, x 1161.

Survey Monkey Says!

by Jerry Gannon
PLEA Trustee



In PLEA's ongoing efforts to keep the membership as well as the Board informed of issues that are important to you, we will soon start using a software program called Survey Monkey. This is an automated survey tool that will allow PLEA to quickly get a feel from the membership about the importance of any number of given issues. These could be anything from uniforms, training, cars, on-duty workout time etc., you name it we can survey it. PLEA will no longer be mailing out surveys for negotiations which will not only save us time and money but will enable us to operate in a more efficient manner.

In order for us to do this safely and confidentially PLEA needs your help. We need a current personal email address from you in order for you to receive this year's contract negotiation survey. Please keep in mind that large survey samples give a greater degree of accuracy on issues being polled. As an important side note, the e-mail data base we will be using to do surveys is different from the one used for our informational e-mail blasts, therefore please don't assume that because you have opted in to the members only section of the PLEA website that you are automatically placed in the survey database. Please give us a call or e-mail us with your personal email address at office@azplea.com or jgannon@azplea.com.

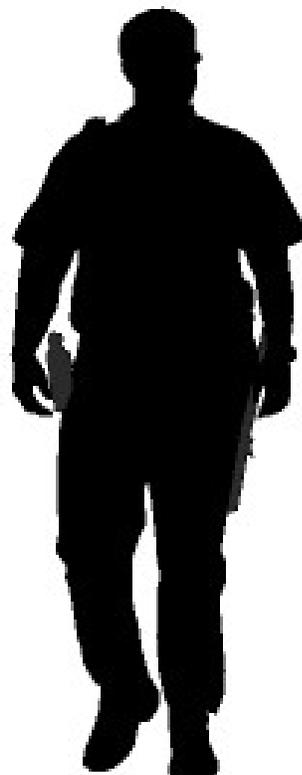
A TRUE LEADER

by Kevin Smith
PLEA Representative

The word leader can have a different meaning to some people. In our department we have all had good bosses as well as some maybe not so good. When you ask a friend or co-worker how their boss is; most will usually give some type of positive response. I have been on the department for eight years now and have been fortunate to have good sergeants (except for one).

On July 6th 2009, my squad received a new and much needed boss. His name: Chris Eyrich. When I first shook Chris' hand, looked him in the eyes and saw the intensity I knew this was going to be a good boss. As time went on the word good was an understatement as Chris turned out to be an excellent supervisor. Sgt. Eyrich began his law enforcement career with Phoenix. He left a few years back and served on the LAPD. After a few years in LA, he decided to come back to the Phoenix PD where he has been working ever since.

Sgt. Eyrich always strives to incorporate progressive training into squad briefings. In speaking with other people from around the department, I was told on many occasions how lucky I was to be able to work for a boss like him. One of his more notable traits is to ensure that his people are taken care of in every way possible. You know you have a good leader in place when other officers in the precinct are vying for transfers to your squad. It is my hope that many more officers get to experience working for Sgt. Eyrich or someone like him. He's been a great boss and hopefully will continue to promote so more people can have the benefit of working for a genuinely good and caring supervisor.





Berkshire Report, Efficiency vs. Practicality

by
Ken Crane PLEA Secretary

As most of you are aware by now the City recently commissioned a professional research group called Berkshire Advisors to do an efficiency study for the City of Phoenix Police Department. The results of the study were published April 19, 2011 in a 90 page report including exhibits and attachments. The recommendations contained in the report generated ripples of concern citywide among police, members of City government and citizens groups alike.

From the day the results were published PLEA was in the mix. We have attended numerous community meetings and met and or spoken with City officials several times between the release of the study and the present. We have voiced strong objections over many of the recommendations made by the study.

What is important for officers to remember is that the Berkshire report is an **efficiency study** and the information contained therein are **recommendations only**. Keep in mind that what might be practical on paper from a financial perspective might not be feasible at all from a practicality perspective.

Some of the more notable and concerning recommendations to come out of the study are:

- Reduction of 700 positions within the police force (400 from patrol).
- Civilianizing the Air Support Unit.
- Changing the work schedule for patrol officers from a 4/10 back to a 5/8 schedule.
- Elimination of any two man patrol units.
- Abolishing NET squads.

When people see recommendations such as these in a formal report it can easily create an atmosphere of panic. While all of the above points might look good on paper in Pennsylvania and could initially save the City some money up front, the flip side is whether or not they are truly practical not to mention the unintended consequences and costs that such changes could have.

PLEA's belief is that to implement these recommendations would be extremely counter-productive in the long run. What might look appealing to some on the front end would ultimately result in the PPD being reactionary rather than proactive. Implementing these measures would ultimately result in the City and the Police Department having to play a dangerous game of catch-up in the not too distant future.

As a counterpoint, consider the following analogy: This same study group could evaluate our public transportation and show that the City could realize significant savings by removing the expensive automated wheel chair ramps from every city bus. After all, the buses could run more efficiently if they didn't have to deal with picking up all of those physically challenged folks not to mention the money that could be saved on maintaining and repairing the electrical lift equipment. While this is probably a true statement from a perspective of pure efficiency, the City, in all reality, would never implement such a measure.

Efficiency studies are just what they say they are. Oftentimes the recommendations that are produced are not realistic or cost effective in the long run. PLEA will continue to monitor the situation and keep you advised.

RECAP PAGE 7

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:

Personal injury recovery (on or off duty); experienced representation at a reduced fee;

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

Free probate of officer's estate for line-of-duty death;

Free consultations to members on any matter, and

Referrals to attorneys or specialists for matters not handled by the firm.

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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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