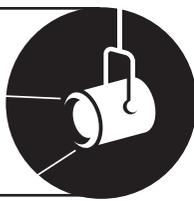


SPOTLIGHT ON

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Fall ballot initiatives



Barrett Marson

Come fall, Arizona residents are going to have a lot of reading to do if they want to be an educated voter.

In addition to the candidates for U.S. Senate, governor, nearly every other statewide office

and the entire Legislature, voters will get to decide the fate of several ballot propositions.

Every two years, the Legislature often sends to the November ballot several propositions for voters to approve. Lawmakers place items on the ballot in hopes of either driving out like-minded voters or to alter voter-protected laws.

The Legislature placed two items on the ballot. First, the Legislature is asking voters to limit candidates who participate in the public campaign financing Clean Elections system from giving money to political parties. The proposition would also make the Citizen Clean Elections Commission subject to the rule making authority of the state.

The public financing of state candidates was approved by voters in the 1990s. Clean Elections has not been popular with some lawmakers but this is the first time it has faced a referendum on its powers.

The Legislature also put on the ballot a proposal to eliminate the prohibition on diminishing retirement benefits according to adjustments made to both the Corrections Officers Retirement Plan and the Elected Officials Retirement Plan. Voters must make the changes proposed by the Legislature.

In addition, a grassroots group of mostly volunteers gathered more than 100,000 signatures in 2017 to force a referendum on the voucher expansion bill known as Empowerment Scholarship Accounts. The bill called for a significant increase in vouchers.

However, the law is placed on hold pending a vote of the people.

Arizona is one of the few states that allow direct democracy on important issues. This year, numerous groups aim to put issues before voters. However, very few of those efforts will be successful.

Two efforts have serious money or momentum that may propel them to the ballot.

Clean Energy for A Healthy Arizona mandates 50 percent of all energy in territories regulated by the Arizona Corporation Commission come from renewable sources by 2030. (Disclosure: Marson Media works for the group Reliable Energy Policy, which opposes the initiative.)

If it makes the ballot, supporters could put in \$15 million to pass the initiative. Opponents could pitch in as much as \$10 million to oppose the effort.

An education group also wants to double the income tax on the wealthiest Arizonans to fund pay increases for school district employees. The Legislature has reduced income taxes across the board over the last two decades. This would be the first time an income tax increase would be dedicated to a specific fund.

Never have there been more resources to learn about candidates and ballot measures. And this year, expect a voluminous voter pamphlet in November. ■

Barrett Marson is a public relations consultant who works in the political, legislative and legal fields. He also hosts a podcast at www.copper-talkaz.com that focuses on politics.

The views and opinions expressed by the author in this column are his own and do not necessarily reflect the views and positions of the MCBA.

Q&A



LAWYER LIABILITY AND ETHICS

Breaking Up Is Hard To Do: When Partners Leave



Joseph Brophy

When a law partner leaves for another firm it presents the opportunity for all kinds of emotions, disputes and chicanery. The departing partner will often be concerned with their financial well-being going forward and setting up shop at the new

firm, which is understandable. However, the members of a partnership owe each other a duty of loyalty and good faith, and as a fiduciary, a partner must consider his or her partners' welfare, and refrain from acting for purely private gain. Therefore, when a partner leaves their current firm their departure is subject to the constraints imposed on them by virtue of their status as fiduciaries.

At one end of the spectrum, where a partner is dissatisfied with the existing partnership, taking steps to locate alternative space and firms does not violate a partner's fiduciary duties. As a matter of ethics, departing partners have been permitted to inform firm clients with whom they have a prior professional relationship about their impending withdrawal and new practice, and to remind the client of their freedom to retain counsel of its choice. Those conversations should take place only after notice to the firm of the partner's plans to leave. At the other end of the spectrum, secretly attempting to lure firm clients to the new firm (even those the partner has brought into the firm and personally represented), lying to clients about their rights with respect to the choice of counsel, lying to partners about plans to leave, and abandoning the firm on short notice (taking clients and files) is potentially actionable as a breach of fiduciary duty to the existing partnership.

Ideally, both the current law firm and departing law partner would send a joint letter of notice. A joint letter allows equal treatment of both the departing law partner and the current firm, and minimizes the oppor-

tunity for disputes. Those of you that have had a partner leave your firm under particularly acrimonious circumstances may correctly point out that a joint letter might be easier said than done.

The departing partner is allowed to recruit their fellow partners to the new firm, however, recruiting non-equity partners, associates and staff (W-2 employees) while still with the old firm can be a grey area. The American Law Institute refuses to draw a distinction between partners and associates for this purpose, and only prohibits pre-departure and pre-notice of intention to withdraw solicitation of clients. The manner in which the departing partner recruits firm employees matters. The departing partner may not provide the new firm with confidential employee information (salaries, billing information) to facilitate the recruitment of the old firm's employees. Even where the departing partner waits until after their resignation to offer jobs to the old firm's employees, it may still be unlawful and unethical if the recruitment is designed in part to interfere with and disrupt the old firm's relationships with their key at-will employees.

Confusion over these issues can often be avoided by spelling out the agreed procedure for leaving the firm in the partnership agreement, which is usually signed when all of the partners still like each other or at least are not openly hostile. For those of you contemplating a lateral move and who have an interest in mitigating the risk of an unpleasant dispute with your current firm, consult ABA Formal Opinion 99-414 Ethical Obligations When a Lawyer Changes Firms and the Arizona State Bar's Ethics Opinion 10-02. ■

Joseph Brophy is a partner at Jennings Hang Cunningham. For more information about this issue, please contact Joseph Brophy at JAB@JHC.Law or 602.234.7849.

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