

Rethinking Mayberry: Police Recruitment in 2019

The Andy Griffith Show portrayed an idyllic image of small-town policing in the 1960s. The widowed sheriff and his inept, but well-intentioned, sidekick humanized local heroes. Policing today appears more CSI than Mayberry. Discussions of diversity and inclusiveness, as well as technological changes, have forever altered policing. Much of this is a positive change – and yet there remains a place for the past in our present. Mayberry depicted officers that were a part of their communities. Police departments need this connection to survive and thrive.

Police departments need to attract and retain diverse individuals, and the public benefits from encouraging the best to apply. Departments offer decent pay and benefits, interesting and important work, cutting-edge technologies, and sometimes even a police dog to call your best friend.

The U.S. Department of Justice Bureau of Justice Statistics released a report in August 2018 regarding police shortages. The



Bureau reports that the number of full-time sworn officers in general purpose law enforcement agencies increased by 8% from 1997 to 2016; however, the population grew 21% during this

SEE **POLICE** INSIDE



In Memoriam **Richard H. "Dick" Whitney** 1937-2019

**Long-time partner and
dedicated newsletter founder
Richard H. "Dick" Whitney has died.**

Just before the printing of this edition of our newsletter, Dick passed away. Our Fall 2019 newsletter will highlight his long legal career at Gust Rosenfeld, his extraordinary civic involvement and some of the many achievements during his life.

INSIDE

Attorney/Pet Match

Dog Bites Man

Food Trucks Everywhere

Golf Ball Liability

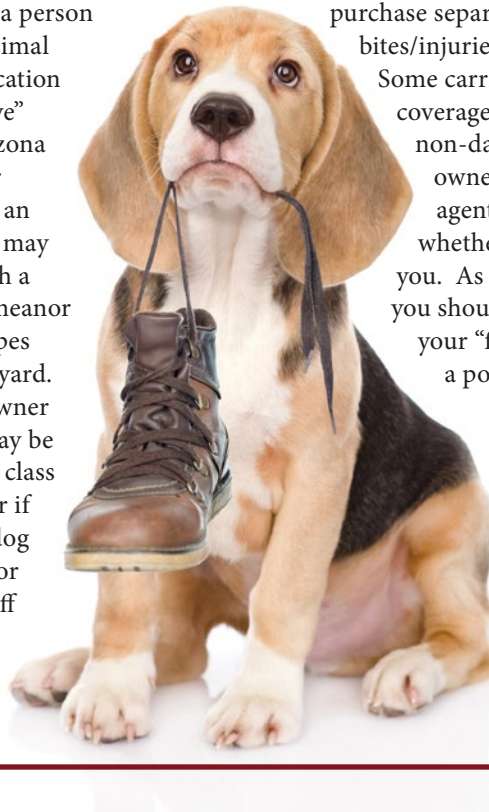
Dog Bites: Information To Sink Your Teeth Into

Lawyers and clients alike love our pets. We treat them like family. But what is an owner's responsibility when a canine "family member" bites someone?

Unlike some other states that follow the common law "one free bite rule," Arizona is a strict liability state. Our statute, A.R.S. §11-1025, states that if a person is bitten while in a public place or lawfully in a private place, including the owner's home, the owner of the dog is liable for damages even if the owner had no reason to know or suspect that the dog would bite. In other words, even if you have the gentlest dog in the world that would never harm a fly, if your dog bites, you are responsible. This applies to guests in your home, groomers, dog sitters and veterinary staff. There are only two defenses available to this strict liability: provocation and trespass on private property. The strict liability statute does not apply if someone is trespassing on your property. The standard for provocation is whether a reasonable person would expect that the conduct or circumstances involved would be likely to provoke a dog.

Any action brought under the dog bite statute must be filed within one year of the bite. A person bitten or otherwise injured by a dog has two years from the date of the injury to bring a general negligence claim.

Other animal laws to be aware of include the requirement that all dogs on public property, including parks unless otherwise marked, must be leashed or contained. If your dog is allowed to run at large off your property, it must have a collar and a valid license. If you keep a dog older than three months for more than six consecutive days, you are considered the owner. A dog that has bitten a person or domestic animal without provocation is an "aggressive" dog under Arizona law. An owner or caretaker of an aggressive dog may be charged with a Class 3 misdemeanor if the dog escapes their house or yard. Similarly, an owner or caretaker may be charged with a class 1 misdemeanor if an aggressive dog bites a person or animal while off of the owner's or caretaker's property.



A final question that arises is whether homeowner's insurance covers dog bite or injury claims. In true lawyer fashion the answer is: it depends. It is becoming more widespread for homeowner's policies to limit or exclude coverage for dog bites and injuries. Some policies contain exclusions if you own a specific breed of dog, such as a Pit Bull or Rottweiler. Some policies require a dog owner to purchase separate coverage for dog bites/injuries at an increased cost.

Some carriers only offer additional coverage for breeds considered non-dangerous. If you are a dog owner, you should ask your agent if you have coverage and whether coverage is available to you. As a responsible dog owner, you should take steps to make sure your "family member" is never in a position to harm others.

*Wendy N. Weigand
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Wendy is a litigator who practices in various areas including construction, catastrophic injury, breach of contract, and commercial law.*

Golf Ball Liability

Arizona is home to many golf courses, but thanks to ever-present hooks, shanks and slices, not all golf balls go where they should. Where does the responsibility lie for damage to a house, say, a broken window, caused by an errant ball?

As with most things legal, it can depend on all the relevant circumstances and parties involved. In broad strokes though, a golfer exercising reasonable care is generally not legally responsible for a misplaced shot. That would leave the homeowner and his or her insurance company to deal with the financial aftermath.

"Reasonable care" is certainly subject to interpretation, of course. It would not shield a golfer from reckless, abnormal or dangerous actions. Similar concepts are applicable if a golfer hits another

person on the course, e.g., hitting while another golfer is within the intended or likely line of flight.

Regardless of whether legally compelled, etiquette dictates that the golfer should offer to pay for the consequences of the bad shot.

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Chris concentrates his practice on commercial and real estate transactions.*





Food Trucks Everywhere

The food truck phenomenon started in Los Angeles and headed east, with Arizona being an easy stop along the way. Today's food trucks serve everything from tacos to gourmet meals at reasonable prices. Fans flock to their favorites. Sometimes several food trucks gather at the same place, at a "food truck round-up" or a special event.

The popularity of food trucks keeps growing, but success has also brought headaches to municipalities and counties trying to keep traffic moving, pedestrians safe and parking spaces available for the general public. Local governments started to adopt regulations to bring some order to the chaos. Then, the Arizona State Legislature got involved.

In 2018, the Legislature passed HB2371, largely preempting local governments in the regulation of food trucks. Municipalities may restrict food trucks from operating in residential zones and within 250 feet of a residential zone. However, municipalities may not require a food truck owner to obtain a special permit not required for other mobile vending businesses. Nor may they require that a food truck operate a specific distance from an existing commercial business or restaurant or prohibit a food truck from using any legal parking space. ("Legal parking space" is not defined.)

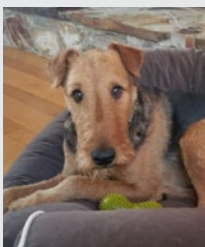
Municipalities may restrict the number of parking spaces, vehicle size and parking duration. They may also restrict the ability of food trucks to occupy sites with insufficient parking capacity as required in the municipality's zoning code. Municipalities do not have to allow food trucks to operate on their own property (except rights-of-way). Municipalities may require food truck owners to be licensed and/or obtain a permit to operate the food truck. Similar requirements apply to counties. It will be important for municipalities and counties to adopt appropriate ordinances and regulations to implement the legislation.

The legislation requires the Arizona Department of Health Services to create a system for licensing food trucks and to establish health and safety standards for food trucks. All employees of the food truck owner will be required to have a valid food handler card. The department may not require a food truck to operate a specific distance from commercial businesses or restaurants and may not set operating hours.

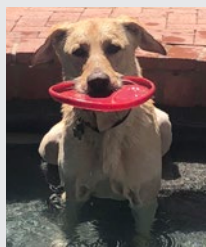
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Susan practices in the area of public law.*

Can You Match the GR Attorney to Their Pet?

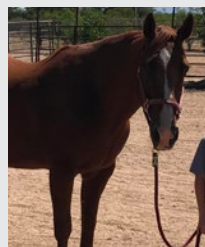
Want to learn which attorneys are matched with which pets? Turn to the last page for answers.



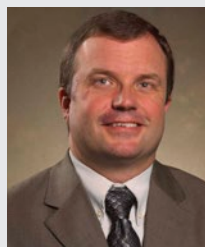
Haggis Neeps



Baloo



Waco



Frank S. Tomkins
Real Estate
Title Insurance



Jennifer N. MacLennan
Education Law,
Labor and
Employment Law



Samantha Winter McAlpin
Litigation Taxation
Trusts and Estates

Gust Rosenfeld Attorneys Recognized by Super Lawyers 2019



Gust Rosenfeld attorneys recognized by Southwest Super Lawyers 2019– Back row from left to right: Rob Williams, Chris McNichol, Chas Wirken, Craig McCarthy, Kent Cammack, Séan O'Brien. Front row from left to right: Shelby Exposito, Trish Stuhan, Samantha Winter McAlpin. Not pictured: Peter Collins and Mina O'Boyle.

Eleven of the firm's attorneys have been selected for inclusion in the 2019 Southwest Super Lawyers publication, including five attorneys who are listed as Rising Stars. Super Lawyers is a national rating agency that evaluates lawyers from more than 70 practice areas.

- **Kent E. Cammack** (Business Litigation)
- **Peter Collins, Jr.** (Insurance Coverage)
- **Shelby M. Exposito** (Government Finance, Schools & Education; Rising Stars)
- **Craig A. McCarthy** (Personal Injury General: Defense)
- **Christopher M. McNichol** (Real Estate)
- **Mina C. O'Boyle** (Real Estate; Rising Stars)
- **Sean P. O'Brien** (Bankruptcy: Business)
- **Trish Stuhan** (State, Local & Municipal; Rising Stars)
- **Robert Williams** (Bankruptcy; Rising Stars)
- **Charles W. Wirken** (Appellate)
- **Samantha Winter McAlpin** (Estate Planning & Probate; Rising Stars)

POLICE FROM FRONT PAGE

same time. Overall, there was an 11% decrease in the average number of full-time sworn officers per 1,000 U.S. residents.

General purpose law enforcement agencies include municipal, county, and state agencies. The result of the decrease of officers is that local departments are relying on overtime to fill shifts. Recruitment of new officers to replace retirees and fill positions cut during the recession is crucial.

Negative public perceptions and concerns over officer safety complicate recruitment. Body-worn cameras have changed policing. This is an opportunity and a challenge, and cameras are not likely to go away. In addition, much can be learned about how to best use social media. Indeed, departments have started their own social media feeds to share critical information, reach youth, and re-brand departments.

Agencies have also examined college degree requirements, tattoo policies, prior drug use, and recruitment of non-citizens with legal status. Agencies have begun pairing candidates with mentors, questioning physical admission standards, and including candidates' families in the recruitment process to address misunderstandings about job risks and opportunities.

Small towns often struggle the most to recruit, competing with larger municipal departments with higher pay, but these small towns offer their own advantages. Can we have modern-day policing in Mayberry? Why not?

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Trish's practice includes public law, civil litigation, bankruptcy and creditors' rights, employment law, and alternative dispute resolution.*

ET·Y·MOL·O·GY COR·NER *Second Chances*

Chris McNichol's article on golf ball liability explains why he carries cash on the golf course and his familiarity with a "mulligan." How that term came into use in golf is the subject of numerous stories. One concerns a golfer in the 1920's, Thomas Mulligan, who, after a particularly bad shot, hit a second ball that he called a "correction shot." His playing partners, though, decided to dub such a redo a "mulligan" and the name stuck.

The origin of the word itself comes from a Gaelic or Old Irish word meaning "bald," as in "the little bald one," thought to refer to a monk with a shaven head. When looking down on a golf ball, there is a resemblance to a bald head, hence some sense in calling a second shot a mulligan, when you don't know where the first little bald one went.

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



PERSONAL NOTES



Susan D. Goodwin and **Christina M. Noyes** were recognized among the Top 100 Lawyers in Arizona for 2019 by Az Business magazine.

Nicholle Harris was featured on the cover of Attorney at Law Magazine Phoenix, February 2019 issue. The article highlights how mentorship has shaped Nicholle as a mentee and a mentor.



Also in Attorney at Law Magazine Phoenix: **Peter Collins, Jr.** was featured in an article in the November 2018 issue about Peter's experience and training as a fighter pilot in the Vietnam War. In the magazine's October 2018 issue, an article about **Susan Plimpton Segal** focused on Susan's lifelong dedication to public education.

Gust Rosenfeld was ranked #1 in Arizona by par amount for 2018 in the year-end bond counsel rankings issued by municipal bond trade publication The Bond Buyer. Par value is the amount of money that bond issuers promise to be repaid to bondholders at a future date.

In January, **James W. Kaucher** spoke at the American Conference Institute's 9th Annual Forum on Long Term Care and Senior Care: Compliance, Risk Management, and Litigation Strategies. Held in Miami, Florida, Jim's presentation was titled "Enlisting the Treating Physicians and Facilities' Staff into Your Defense Arsenal."

Scott A. Malm presented a seminar on escrow fraud at the annual convention of the Land Title Association of Arizona in October 2018. Scott has also been busy in the courtroom involving three successful Court of Appeals cases, including a published Arizona Court of Appeals decision regarding homestead and judgment lien issues. Additionally, Scott had two successful multi-day trials involving escrow fraud and forgery.

Gust Rosenfeld Ranked #1 in Construction Litigation by Ranking Arizona

Gust Rosenfeld was also ranked in the Top 10 in 13 other categories in the 2019 Ranking Arizona lists. The categories in which Gust Rosenfeld was ranked are:

Law Firms

Law Firms: ADR/Mediation & Arbitration

Law Firms: Banking

Law Firms: Business/Corporate

Law Firms: Commercial Litigation

Law Firms: Construction Litigation

Law Firms: Creditors' Rights, Bankruptcy/Reorganization

Law Firms: Employment/Labor

Law Firms: Environmental

Law Firms: Intellectual Property

Law Firms: Mergers/ Acquisitions

Law Firms: Real Estate

Law Firms: Securities/ Corporate Finance

Law Firms: Tax

NEW FACES



Megan E. Ritenour (Phoenix Office)

Megan Ritenour focuses her litigation practice on complex insurance coverage analysis and litigation, as well as insurance defense. She possesses particular experience litigating insurance coverage disputes, including those involving breach of contract and bad faith actions. Megan also litigates in the areas of large loss commercial subrogation, product liability, construction law, commercial litigation, and premises liability.

Megan received her J.D. from DePaul University College of Law and her B.A. from the University of Illinois. She is licensed to practice in Arizona and Illinois. Before joining Gust Rosenfeld, Megan practiced law in Illinois for more than 15 years.

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Newly elected partners, from left to right: Kyle Bate, Shelby Exposito, Trish Stuhan, J.T. Shoaf.

Four Attorneys Elected to Partnership

Gust Rosenfeld is pleased to announce that the following attorneys have been elected to the firm's partnership. They are: **Kyle B. Bate** (Tax and Estate Planning), **Shelby M. Exposito** (Public Finance and Employment), **J.T. Shoaf** (Insurance Defense and Litigation), and **Trish Stuhan** (Public Law and Creditors' Rights).

ATTORNEY PET MATCH... Frank S. Tomkins: Waco / Jennifer N. MacLennan: Haggis Neeps / Samantha Winter McAlpin: Baloo

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