



MEET PETER AKMAJIAN
INJURED BY A GOVERNMENT WORKER?
A PRIMER ON LAW ENFORCEMENT LIABILITY
AZ SUPREME COURT EXPANDS PROTECTION FOR VULNERABLE ADULTS
COMMON BOND BLOSSOMS INTO NEW ARIZONA LAW FIRM
HAPPENINGS

FALL 2017
AT ISSUE:
OUR NEW FIRM



thinking
Connecting our Community with Current Issues



Meet Peter Akmajian

-Dev Sethi

Peter Akmajian hired me over a Susie Sorority and large iced tea at the Sausage Deli. I had clerked for him at O'Connor Cavanagh before graduating and moving to Las Vegas to start my career as a civil defense lawyer. It was on a trip to Tucson to visit my girlfriend, and now wife, Olivia, that we ran into each other at lunch.

Together Peter and I made a great team. We tried some interesting cases – some for Costco, which jurors love, and others for less popular insurance companies. When I joined Ted and settled into a plaintiff's side practice in 2001, no longer practicing with Peter was the biggest thing I gave up. Over the years Peter and I have had cases opposite each other. He even hired me once to represent the plaintiff in an elaborate focus group trial for one of his clients.

Peter's integrity, grit, and sense of fairness distinguish him, as does his talent in the courtroom. Beyond that, Peter is multi-dimensional – equally comfortable behind a set of conga drums or a piano as he is in trial. With the addition of Peter, we strengthen our ability to take care of our clients and tell their stories. He is a veteran of over 40 civil trials and experienced in issues ranging from administrative law to medical malpractice and lots in between.

Here's a little about our newest partner:

Why are you choosing to represent injured Arizonans?

I did injury and malpractice defense work for 30 years. The cases were interesting and my clients were wonderful. But I often found myself sympathizing

with the seriously injured plaintiff. I decided I wanted to be on that side rather than defending against it.

What's your proudest accomplishment in the law?

I would say two things: Receiving several awards for my pro bono legal services and being inducted into several honorary trial lawyer associations, such as joining Ted in the American College of Trial Lawyers.

What's your proudest accomplishment outside the practice?

I am of course very proud of my children, who are now in their 20s and who are pursuing their dreams. I am also proud to have been involved in several civic organizations, such as Southern Arizona Legal Aid, the Triangle Y Ranch Camp and the Tucson Rotary Club because these groups improve our community.

What's your most memorable case?

Over a 30+ year career, it's hard to say, but one case I had involved a claim that a funeral home gave a grieving widow cremated remains belonging to someone other than her deceased husband. That was unique, and I learned more than I ever thought possible or wanted to know about the cremation process. I have also enjoyed trying lawsuits in Arizona's "out counties," such as Yuma, Bisbee, and Nogales. A trial in a smaller town is an event, and it's also fun to learn about each town's unique culture. But probably the most memorable trial I ever had related to a claim against a lawyer in a very complex personal injury case. I tried the case with Ted Schmidt, and we won. But I learned from a juror afterwards that the initial vote was against our side. This juror persuaded the others that our side was right, and we won. That hammered home how important jury selection is. •



Schmidt, Sethi & Akmajian ATTORNEYS

WWW.AZINJURYLAW.COM



INJURED BY A GOVERNMENT WORKER? THE TRAPS THAT WILL STRIP AWAY YOUR RIGHTS

— JIM CAMPBELL

There are strict time limits to file a lawsuit when a person is injured. What are often misunderstood are the separate time limits and other requirements that apply when the government or one of its employees injures someone. Unfortunately, these shorter time limits are a trap for the unwary.

If a person has been injured by the State of Arizona, a county, a city, or one of their employees, then there are two important deadlines that must be followed. First, according to A.R.S. §12-821.01, within 180 days of when the person knew or should have known they were injured, that person must present a “notice of claim” letter to the government entity or employee that caused their injury. This letter must set forth the facts the injured person claims makes the government entity responsible, a description of the injuries, and a demand to settle for specific amount. This is a highly technical process, and if you have such a claim, we strongly recommend you consult a lawyer. This is important, because if this notice of claim letter is not done just right, the injured person loses their claim.

If the state government does not settle your case, then an injured person has a year from the date they knew or should have known of their injury to file a lawsuit (A.R.S. §12-821). This is shorter than the standard two year statute of limitations.

What is important to recognize is this process applies to all sorts of people or entities that are not obvious as state, county or city employees. Some of the potential defendants covered by these requirements include doctors at state or university hospitals, bus companies, utilities, or other “public entities.”

The Federal Government has its own timelines, as established by the Federal Tort Claims Act. (28 U.S.C. §1346(b)) (“FTCA”). The FTCA is a 1946 federal statute that permits private parties to sue the United States in a federal court for most injuries caused by persons acting

on behalf of the United States. Some examples of this are drivers injured by government workers driving a car in the course of their work, or a Veteran’s Healthcare doctor committing malpractice.

Interestingly, the Act was passed following the 1945 B-25 Empire State Building crash, where a bomber piloted in thick fog by Lieutenant Colonel William F. Smith, Jr. crashed into the north side of the Empire State Building. Up until that time, the government could not be sued for personal injuries.

An injured person starts the process of bringing a claim against the federal government by serving a “Standard Form 95.” This form is used to present claims against the United States for property damage, personal injury, or death allegedly caused by a federal employee’s negligence or wrongful act or omission occurring while they are working. These claims must be presented to the Federal Agency who employed the person that caused the injury, and it must be filed within two years of when the injured person discovers they are injured as a result negligence.

Then, the injured person has to wait to see if the Federal Government accepts or denies the claim. If the government denies the claim, then the injured person must file a FTCA lawsuit in district court within six months of the denial. If the government does nothing, then the claim is deemed automatically denied -- called “constructive denial” -- six months after it was served. In that case, the FTCA lawsuit must be filed within six months of the date of the constructive denial.

This article is designed to alert injured persons to some of the technical requirements that must be met when they are injured by a member of the government. If you find yourself in this circumstance, don’t delay, and seek the counsel of a qualified attorney as soon as possible.



POLICE LINE DO NOT CROSS

A PRIMER ON LAW ENFORCEMENT LIABILITY UNDER SECTION 1983

— MATTHEW F. SCHMIDT

Section 1983 under the federal law creates a civil action for those whose constitutional rights have been violated by someone acting under government authority. This action occurs most often against law enforcement agencies and officials. For example, we currently represent the mother of a 28-year-old man who we allege was unnecessarily shot and killed by the police back in May of 2014. As the date suggests, claims against government officials for constitutional violations can be a long process full of obstacles to overcome. Here are a few to consider when handling a section 1983 claim.

Notice of Claim

Before a lawsuit can even be filed, the correct government entity in charge of the liable department or official must be served with notice that a claim exists. It must be served on an agent with authority to accept service on behalf of the entity. The deadline to serve the Notice of Claim depends on whether the entity is state or federal. The NOC must also provide enough facts for the entity to investigate the claim and must state a specific amount the case can be settled for. Failure to comply with any of these requirements can kill the lawsuit before it has even begun.

Federal Court

Because a section 1983 claim is a federal claim concerning constitutional law, the case will likely take place in federal district court. Federal court can be more conservative, has stricter rules and requires a unanimous jury verdict.

Qualified Immunity

Government officials are entitled to qualified immunity. This means that if the officer's conduct does not violate clearly established rights—rights that a reasonable officer would or should have been aware of—he or she is immune from suit.

The defendant will often raise the immunity defense early; if the court rejects the defense, the defendant then has the right to appeal to the federal circuit courts, which have a two year waiting period before a decision will be reached. This not only adds substantial delay, but the chance that the circuit court will disagree with the district court and grant immunity instead. If the circuit court agrees with the district court, the defendant also has the option to appeal to the Supreme Court.

In other words, a determination of qualified immunity can not only take years and years to complete, it can occur before a significant amount of investigation, depositions, inspections or other discovery has taken place. In our case—now over three years in—even if

the circuit court upholds the district court's rejection of qualified immunity, we will still have a lot of discovery to conduct before the case will be ready for trial.

No Vicarious Liability for Municipalities

In most cases, the employer must legally accept responsibility for the negligent actions of its employees. For example, UPS is responsible for the negligence of its employee-driver who causes a crash while delivering packages.

But municipalities are not vicariously liable for section 1983 violations committed by its officials unless it can be shown that the officials were acting within an unconstitutional, department-wide custom, policy or practice. As one might imagine, this is a substantial burden to overcome. If this can't be proven, the individual officials are the sole defendants.

Attorneys' Fees and Costs

The court has discretion to make the losing party pay the prevailing party's costs and attorneys' fees. Due to the above mentioned hurdles and the lengthy process of these actions, section 1983 claims can be expensive. Though the municipality and its officials will have plenty of resources to defend the case, the plaintiff often won't, adding stress to the possibility of losing.



ARIZONA SUPREME COURT OVERRULES MCGILL & EXPANDS PROTECTIONS FOR VULNERABLE ADULTS

—TED SCHMIDT

In 1998 the Arizona Legislature enacted the Adult Protective Services Act [APSA] extending a broad scope of protections to “vulnerable adults” in our state. Anyone over 18 years of age who is “unable to protect himself from abuse, neglect or exploitation by others because of a physical or mental impairment” qualifies as a vulnerable adult.

Under the APSA vulnerable adults and their families may recover substantial damages if they are victims of abuse or neglect at the hands of their caregivers be it physical, mental or financial harm.

In 2002 the Arizona Supreme Court restricted the scope of an APSA claim to neglect occurring in the delivery of services “related to the recipient’s incapacity.” *McGill ex rel. McGill v. Albrecht*, 203 Ariz. 525 (2002). The court felt it appropriate to avoid overlap between the APSA and the Medical Malpractice Act [MMA--ARS sec. 12-561 et seq.]. The court ruled negligence claims for care unrelated to the patient’s incapacity should be brought under the MMA and not the APSA.

The MMA is much more restrictive in defining when and how victims bring claims and more narrowly defines the scope of the victim or the victim’s survivors’ damages. Victims will almost always prefer to bring an APSA claim whether bringing an MMA claim is available or not.

In June of this year, our Arizona Supreme Court reversed *McGill* finding in practice it was a rule very hard to apply; distinguishing the nature and reason for the care provided and how it relates to the patient’s incapacity was not always an easy task.



The court ruled that neglect or abuse of a vulnerable adult committed by a caregiver, be it doctors and staff at a nursing home in a hospital, rehabilitation center or other health care facility is covered by the APSA.

As a result, the court ruled that neglect or abuse of a vulnerable adult committed by a caregiver, be it doctors and staff at a nursing home in a hospital, rehabilitation center or other health care facility is covered by the APSA. The court recognized that this change in the law would necessarily create an overlap between the APSA and the MMA. The court left it to the legislature to modify the APSA if it determined the overlap undesirable.

This ruling will greatly expand the protections for vulnerable adults and their survivors should they die due to abuse or neglect at the hands of their caregivers. Notably an APSA claim and the damages attributable to it survive the death of the vulnerable adult and plaintiffs may recover attorneys’ fees, neither of which is true for claims brought solely under the MMA.





COMMON BOND BLOSSOMS INTO NEW ARIZONA LAW FIRM

— TED SCHMIDT

After twelve years representing plaintiffs and defendants in Phoenix I moved to Tucson to run the Tucson and Nogales offices for a major Phoenix law firm expanding south. Quickly I needed help and persuaded a young, up and coming lawyer working for John Westover to make the move to Tucson and do tort work with me. Peter Akmajian, an Arizona law grad like myself had worked as a clerk for then Vice Chief Justice Gordon on the Arizona Supreme Court before beginning a remarkable career as a trial lawyer, primarily defending hospitals, doctors, lawyers and other professionals.

Later, Dev Sethi of Arizona Law fame was hired and trained by Peter. Dev's talent for successfully resolving cases for clients of every walk of life could not be missed. His empathy for his clients and ability to obtain full justice for them was uncanny for a lawyer of his youth. I was

thrilled when he agreed to join our firm. Since that time, Dev has fully distinguished himself as one of the top plaintiffs' personal injury lawyers in Arizona handling serious injury and death, mass transit, treatment center, products liability, medical negligence and governmental liability cases.

Now, the triumvirate is complete. Peter joins Dev and me to create an amazing new firm: Schmidt, Sethi & Akmajian. Peter's impeccable trial record, his knowledge of medicine and solid reputation among judges and other lawyers will fully compliment Jim Campbell's solid medical negligence and nursing home practice and Matt Schmidt's growing personal injury, medical device, insurance coverage and insurance bad faith practice.

So come help us celebrate the launch of Schmidt, Sethi & Akmajian at our Open House.

*Please join us for a
Fall Open House*

*as we welcome
Peter Akmajian
into our firm*

*Thursday, November 9th
at 4 o'clock*

*Schmidt, Sethi & Akmajian
1790 E. River Road, Suite 300
Tucson, Arizona 85718*

HAPPENINGS



Meet Peter Akmajian,
our new law partner. He is a trial lawyer with 30+ years of experience and about 40 jury trials in Tucson, Phoenix, Florence, Yuma, Bisbee and Nogales under his belt.

These trials have mainly involved serious personal injury, medical malpractice and wrongful death. He was a civil defense lawyer for many years before making the switch to the plaintiff's side recently. Since 1998, Peter has been certified by the State Bar of Arizona as a Specialist in Personal Injury and Wrongful Death, and he is a long-time member of the State Bar's Commission that vets potential specialists. Peter is honored to have been inducted into three organizations recognizing outstanding trial work: the American College of Trial Lawyers, the International Academy of Trial Lawyers, and the International Society of Barristers. He is also a long-time member of another prestigious trial lawyer organization, the American Board of Trial Advocates. Peter is honored to have served as a judicial law clerk for Vice-Chief Justice Frank X. Gordon of the Arizona Supreme Court, from 1984 – 1985.



Matt Schmidt

As President of the Old Pueblo Rugby Football Club, Matt succeeded raising \$26,000 for the club's charitable program Engage, which provides underprivileged kids more opportunities and resources to play the fastest growing sport in America in a fun and safe environment. Their second annual youth clinic and brand new youth league kicks off this fall. Go to

OldPuebloRugby.com/engage for more information. Matt also serves as the social chair for the Empower Coalition, a nonprofit that raised \$60,000 for local veteran nonprofits at their first inaugural Tucson Beefsteak event. Empower is already working on Tucson Beefsteak 2018.



Ted Schmidt

has been once again selected for Best Lawyers 2017 in the areas of Personal Injury, Medical Malpractice and Products Liability.



Jim Campbell

chaired the Arizona State Bar Trial Section's sessions at the 2016 State Bar Convention. The seminars focused on effective expert depositions and included live demonstrations of examination techniques. Jim continues his youth coaching career by coaching the St. Cyril's Varsity Basketball team. Jim is also an assistant baseball coach with the Tucson Thunder. Jim recently successfully tried *Prosser v. Bogatay*, a dog attack case in Cochise County Superior Court. Jim's client was severely injured when dogs charged her and her husband while they were out for a motorcycle ride in the mountains above Bisbee. The defendant made no offer to settle the case. The jury returned a significant verdict for the client.



Dev Sethi
has been announced as one of the Best Lawyers for 2017.

MEET OUR TEAM



Lisa

Lisa is the legal assistant to both Ted and Matt Schmidt. She is married with 2

children, a daughter who attends the University of Arizona and a son in high school. Lisa enjoys spending time with her family and friends, participating in her son's school activities, and watching Wildcat Basketball.



Melanie

Melanie is Legal Assistant at the firm. She's known she's wanted to be in the law field since high school and loves her profession. She's a

native Tucsonan and she's an Arizona Wildcats fan. She has three daughters that inspire her to be her very best every day and a house full of rescue animals. Her favorite places away from Tucson are New York, North and South Carolina and California, San Diego, specifically. She'd live on a beach if it were allowed.



Michelle

Michelle Vetrano, RN, LNCC, is our firm's Legal Nurse Consultant.

Michelle has been married for 31 years to her husband, Tom, and is the proud mom of her two sons, Nicolas and Joseph. She enjoys traveling, cooking and participates in community work for special needs young adults.



Halei

Halei does clerical work such as filing, printing, small discovery, and any other work either the associates or any paralegals need help with. She has 2 brothers, an older one and a younger one, who she considers to be her best friends. She has a huge family consisting of 15 cousins. She is a certified rescue scuba diver and has been diving since the 8th grade!



Anissa

Anissa is a Legal Assistant - Anissa is a native Tucsonan.

She enjoys participating in her daughters' school and sport activities. She also likes to golf, along with spending time with her daughters, family and friends.



Riley

Riley Campbell is an intern. Born and raised in Tucson, He is currently a junior at the University of

Arizona studying Biomedical Sciences. He has two younger brothers and his father is Jim Campbell. Riley has enjoyed being able to work with his father. When he is not studying or at work, Riley is the President of his Fraternity. Riley enjoys things outdoors such as camping, fishing and off-roading.



Kelly

Kelly Pierce is a clerk in our office. She is a mother of three boys, Tyler (15), Brady (10), and Camden (6)

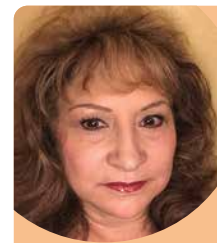
who keep her very busy with all of their sports and activities. She is the head coach of the Salpointe Catholic Girls soccer team and an assistant coach for the FC Tucson Women's team. She enjoys spending time with her family and friends, playing soccer when she can and watching her kid's play their sports on the weekends.



Elizabeth

Elizabeth Gutierrez Holguin is a paralegal with the firm. She is

married with two children, a daughter who attends Grand Canyon University and a son in middle school, she loves to bake and read in her spare time and travel with her family.



Irma

Irma is our Office Manager & also a Paralegal.

She is a native of Tucson and grew up in a large family. She enjoys spending time with her husband, family and friends. She also enjoys traveling and horseback riding.

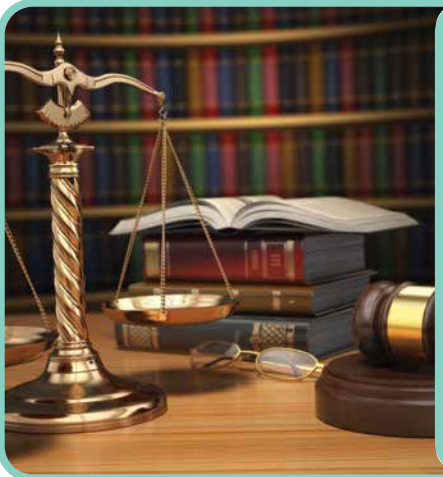
FOR UP TO THE MINUTE REPORTS ON CURRENT LEGAL DEVELOPMENTS, NEW CASES AND INTERESTING ISSUES, SEARCH FOR "SCHMIDT, SETHI & AKMAJIAN" AND GIVE US A LIKE!



Find us on
Facebook



1790 East River Road, Suite 300
Tucson, Arizona 85718



We are dedicated to providing the strongest representation for our clients in a wide range of cases involving serious injury or death. We are grateful for the opportunity to work with referring lawyers from Arizona and around the country. We appreciate the trust those lawyers have in allowing us to assist their clients. We welcome the chance to talk. If you have a case to discuss or simply want to know more about us, please give us a call.

Are you interested in our thinking? If you would like to be added or removed from our mailing list for the SSA newsletter, please contact Irma Almazan 520.545.1666 or ialmazan@azinjurylaw.com.

Our Attorneys: Ted Schmidt, Dev Sethi, Peter Akmajian, Jim Campbell, Matt Schmidt
Exclusively representing individuals in significant injury and wrongful death matters.

1790 East River Road, Suite 300 Tucson, Arizona 85718 520.790.5600 www.azinjurylaw.com