



TIMOTHY J. BERG

Director

P 602.916.5421

E tberg@fennemorelaw.com

Phoenix, Arizona

Formerly the managing partner of our firm, Tim Berg is a distinguished attorney in our business litigation practice group, focusing primarily in the areas of civil appeals, state constitutional and public law, public records law and public utilities regulation. Throughout his career as an appellate attorney, he has participated in the briefing or argument of more than 500 appeals before the United States Courts of Appeals for the Ninth Circuit, the Tenth Circuit, the Second Circuit, the Fourth Circuit, the Fifth Circuit, the Eleventh Circuit, the Federal Circuit, the Supreme Court of Arizona and both divisions of the Arizona Court of Appeals. His appellate practice spans a broad field of substantive areas, including Arizona constitutional and public law, public records law, insurance coverage, medical malpractice, product liability, environmental, state and local taxation, business torts, real property and mineral rights, bankruptcy, public lands and public utilities. Tim represents state and local governments and agencies, as well as companies and individuals in disputes with the government.

As an appellate attorney, Tim enjoys working with his clients to solve their problems, working with a wide variety of people in different industries. He represents business and government clients in litigation arising under Arizona and other states' public records law, and regularly assists clients in protecting their personal, proprietary or confidential information from improper disclosure as a result of public records requests. Tim also represents clients before the Arizona Legislature and state agencies. In his role as an Arizona Uniform Laws Commissioner, he serves on drafting committees for projects involving uniform state laws and model acts for adoption by Indian tribes. Tim clerked for Judge Richard H. Chambers, Chief Judge of the United States Court of Appeals for the Ninth Circuit.

Tim serves as the firm's general counsel. He served for 21 years on our Management Committee, including 10 years as chair of the committee. Outside of his work as an appellate attorney, Tim enjoys date nights with his wife, Pat, going to the theatre, reading, or watching sports. He is a devoted Arizona Diamondbacks fan.

EDUCATION

- J.D., with highest distinction, University of Arizona, James E. Rogers College of Law
- B.A., with high distinction, Arizona State University
- Order of the Coif
- Associate Editor, *Arizona Law Review*

AREAS OF PRACTICE

- Appeals
- Business Litigation
- Indian Law
- Government Relations and Regulatory
- Natural Resources, Energy and Environmental
- Public Records

REPRESENTATIVE CASES

- On behalf of the Arizona Tourism and Sports Authority, successfully defended the constitutionality of a tax on the business of leasing vehicles against challenges under the Dormant Commerce Clause of the United States Constitution and the Anti-Diversion provision of the Arizona Constitution. *Saban Rent-A Car LLC v. Arizona Department of Revenue*, 246 Ariz. 89 (2019)
- Represented the Arizona Health Care Cost Containment System in the successful defense in the Arizona Supreme Court of an assessment authorized by the Arizona Legislature to fund Medicaid restoration against a challenge that the assessment violated the supermajority requirement of Article 9, section 22 of the Arizona Constitution. *Biggs v. Betlach*, 404 P.3d 1243 (2017)
- Represented the City of Phoenix in a lawsuit brought by various taxpayers challenging the constitutionality of a \$100 million retail sales tax incentive agreement between the City and developer NPP CityNorth, LLC. The taxpayers alleged that the subject agreement violated the Gift, Special Law, and Privileges and Immunities clauses of the Arizona Constitution ("Gift Clause"). The trial court rejected each of the taxpayers' claims, and the Court of Appeals of Arizona reversed, holding that the agreement violated the Gift Clause. The Arizona Supreme Court granted review. After hearing the case, it issued a decision early in 2010 that allowed the City of Phoenix sales tax incentive agreement between the City and the developer to stand and vacated the Court of Appeals decision on Gift Clause compliance because the existing legal framework was unclear. It adopted a clear view of public purpose and set a framework for the courts to decide whether a transaction will pass muster under the Gift Clause. *Turken v. Gordon*, 223 Ariz. 342, 224 P.3d 158.
- Obtained decision from Court of Appeals vacating a \$25 million punitive damage award in an action against a mental health provider accused of negligent failure to treat. *Graham v. ValueOptions*, 2010 Ariz. App. Unpub. LEXIS 75.
- Represented a homebuilder on appeal in a coverage action against the homebuilder's insurer. Decision resulted in new coverage law favorable to business insureds. *Desert Mountain Properties Limited Partnership v. Liberty Mutual Fire Ins. Co.*, No. CV-10-0339-PR (Ariz. May 12, 2011).
- Represented a major homebuilder in a successful appeal reversing a summary judgment that the homebuilder's and its contractors' insurers did not have a duty to defend a construction defect lawsuit under a general liability insurance policy. *Lennar Corp. v. Auto-Owners Ins. Co.*, 151 P.3d 538 App. 2007.
- Represented a public official in an appeal resulting in an Arizona Supreme Court opinion establishing that personal emails of a public employee located on his or her employer's computer are not public records unless related to the public business of the employee. *Griffis v. Pinal County and Phoenix Newspapers*, 215 Ariz. 1, 156 P.3d 418 (2007).
- Represented an incumbent telecommunications company in a appeal to the Arizona Supreme Court establishing that all telecommunications providers in the state are subject to the state constitution's fair value requirement. *US West Communications, Inc. v. Arizona Corporation Commission*, 201 Ariz. 242, 34 P.3d 351 (2001).
- Represented Arizona Governor Jane Dee Hull in a special action to the Supreme Court concerning the constitutionality of a statute adopted to deal with the court's mandate concerning funding of construction of school facilities. *Hull v. Albrecht*, 192 Ariz. 34, 960 P.2d 634 (1998).

AWARDS AND HONORS

- *Best Lawyers in America*®, Lawyer of the Year, Litigation-Regulatory Enforcement, 2021
- *Best Lawyers in America*®, Lawyer of the Year, Appellate Practice, 2021
- *Chambers USA*, Leading Lawyers for Business, 2012, 2020-2021
- *Southwest Super Lawyers*®, Appellate and Utilities, 2007-2021
- *Best Lawyers in America*®, Appellate Practice, Communications Law, Energy Law, Litigation - Municipal, Litigation - Regulatory Enforcement (SEC, Telecom, Energy), Utilities Law, 2003-2021
- *Best Lawyers in America*®, Lawyer of the Year, Communications Law, 2020

- *Best Lawyers in America*®, Lawyer of the Year, Litigation-Regulatory Enforcement (SEC, Telecom, Energy), 2012, 2015, 2017, 2020
- Top 100 Lawyers in Arizona, *AZ Big Media*, 2020
- Top 100 Lawyers, *AZ Business Magazine*, 2020
- *Southwest Super Lawyers*®, Top 50 Arizona Super Lawyers, 2012-2013, 2015-2016, 2020
- *Best Lawyers in America*®, Lawyer of the Year, Appellate Practice, 2018
- *Best Lawyers in America*®, Lawyer of the Year, Litigation - Municipal, 2014, 2016
- *Benchmark*: Appellate, Leading Appellate Practitioner, Ninth Circuit, 2012-2013
- Most Admired CEO Award recipient - *Phoenix Business Journal*, 2012
- Arizona's Best Lawyers, Appellate Practice and Commercial Litigation, 2011
- *Best Lawyers*®, Lawyer of the Year, Appellate Law, 2011
- Distinguished Citizen Award, University of Arizona Alumni Association, 2001
- Selected, AZ Business Leaders - Law - Environmental, *AZ Big Media*
- AV® Preeminent™ Peer Review Rated (the highest rating available), by Martindale-Hubbell

ARTICLES AND PRESENTATIONS

- Quoted, "What Is the Purpose of the Preamble to the Constitution," *UpJourney*, April 19, 2021
- Quoted, "What is the Electoral College and how does it work?" *Today*, October 8, 2020
- Quoted, "Supreme Court Refuses to Hear Arizona Rental Car Tax Lawsuit," *Phoenix Business Journal*, October 7, 2019
- Quoted, "Judge Denies State's Request to Let 'Dark Money' Law Stand During Appeal," *Arizona Capitol Times*, August 5, 2019
- Speaker, "Splitting Circuits: Past Results and Present Prospects," 2018 AAAL Fall Meeting, October 5, 2018
- Co-author, "Be Aware of Changes to Phoenix's Rules for Lobbyists," *The Arizona Republic*, October 25, 2017
- Co-author, "Uniform Law Commission," *Arizona Attorney*, November 2016
- Author, "Attorneys' Fees on Appeal, Chapter Nine," *Arizona Attorneys Fees Manual*, 3d Ed.
- Author, "Attorneys' Fees," Chapter Eleven, *Arizona Appellate Handbook*, Vol. I, 3d and 4th Edition

PROFESSIONAL AND COMMUNITY ACTIVITIES

- Member, State Bar of Arizona
- Co-Chair, Arizona Equal Justice Campaign
- Member, Greater Phoenix Leadership
- Member, Maricopa County Bar Association
- Chair, Arizona Commission on Uniform State Laws
- Member, Appellate Handbook Committee, State Bar of Arizona
- Member, Board of Directors, Arizona Law College Association
- Past Chair, Board of Directors, Herberger Theater Center
- Past President, American Academy of Appellate Lawyers
- Past Member, Executive Committee, National Conference of Commissioners on Uniform State Laws
- Past Member, Board of Trustees, Maricopa County Bar Foundation

ADMISSIONS

- Arizona
- Arizona Supreme Court
- U.S. District Court, District of Arizona
- U.S. Court of Appeals, D.C. Circuit
- U.S. Court of Appeals, Federal Circuit

- U.S. Court of Appeals, Second Circuit
- U.S. Court of Appeals, Fifth Circuit
- U.S. Court of Appeals, Ninth Circuit
- U.S. Court of Appeals, Tenth Circuit
- U.S. Court of Appeals, Eleventh Circuit