Board of Director Candidates Wanted

MCBA members interested in serving on the MCBA Board of Directors are now invited to declare their candidacy for election to one of five open seats.

Each position consists of a two-year term beginning in 2010. Board members attend monthly Board meetings, liaise with one or more MCBA sections, divisions, or committees, and support the work of the Association.

Candidates must be active members in good standing. Please submit a letter of candidacy, a resume/biography, and a color digital photograph (jpeg preferred). Email all materials to: Allen W. Kimbrough, Executive Director, akimbrough@maricopabar.org. Print materials are also accepted. Mail or deliver to: MCBA, 2001 N. 3rd Street, Suite 204, Phoenix, AZ 85004-1439.

Please direct questions to the executive director at the above email. All materials must be received BEFORE Tuesday, Sept. 15. Voting will take place in November and results announced in early December.

Meet, Update and Network with Peers at the 10th Annual Arizona Paralegal Conference

The focus will be all paralegals the same time on Friday, Sept. 25, at the Phoenix Convention Center as the MCBA Paralegal Division presents its 10th Arizona Paralegal Conference. Last year, almost 200 paralegals from throughout the state participated and a similar number are expected this year.

From 7:30 a.m. to 5 p.m., the conference will offer attendees four CLE programs comprising six hours of continuing legal education credit (including 1.5 hours of ethics) plus comprehensive materials, meals, door prizes, and an exhibit area with legal-related vendors.

A panel of six—paralegals and attorneys—will discuss “The Future of the Paralegal Profession: Sustaining Viability in a Sharply Competitive Industry.”

Other programs are “Bankruptcy Myth”; “The Lean Mean Negotiating Machine: Cost-Effective Client Service”; and “What Attorneys Expect from Paralegals: e-Discovery and Beyond.” Extensive handout materials are included with each program.

Registration fees are $175 for MCBA members and $225 for non-members. Student members are $50, non-member students, $75. The registration fee is all-inclusive, covering a full breakfast, buffet lunch and refreshments. Complete information and registration forms are available on the MCBA website at www.maricopabar.org. Also available online is a $10 registration discount coupon.

For additional information please contact Andrea Barlito, andrea.barlito@bowmanandbrooke.com or Sara Neily at roger@rtsharp.com.

Tuchi Appointed Interim US Attorney after Humetewa Resigns

The Justice Department appointed John J. Tuchi to serve as the interim US Attorney for the District of Arizona, after Diane J. Humetewa resigned from the position on Aug. 2. Tuchi will serve on an interim basis until US Attorney nominee Dennis Burke is confirmed by the Senate.

Serving as a federal prosecutor in the US Attorney’s Office since 1998, Tuchi has held a variety of leadership positions, including chief of the criminal section and deputy chief of the appellate division. Tuchi has prosecuted a number of cases as an assistant US Attorney, includ-

LRS Committee Meets

Linda Peña, MCBA Lawyer Referral Service Director, clarifies a point at the LRS Committee’s meeting Aug. 19. The committee is reviewing a proposal for the creation of a separate LRS website, logo, and an enhanced Google presence, all of which are expected to boost the service’s visibility online and increase client intake. The committee’s chair is Richard Klauser. From left to right are committee members Don Rolfe, Ari Schwartz, Peña, Rod Knight, and Geoffrey Fish.

Race Judicata: A Race (or Stroll) for Everyone—and Their Dog!

Adults, kids, stroller babies, and even dogs (with their owners, of course) are invited to participate in the Young Lawyers Division’s 5th annual RACE JUDICATA on Sept. 27 at Kiwanis Park in Tempe.

You don’t have to be a serious runner to enjoy this one—there’s a one-mile course for both walkers and runners along the 5K for more ambitious types. Kids have their own event plus a bouncy play area, music and balloons. And if you’d just rather sleep-in (at home, please), you can make a donation instead.

The profits all go to a good cause—the YLD’s community service activities including support for survivors of domestic violence. The registration fee includes a free t-shirt, goodie bag, and food and drink after the race. You may enter as an individual or as a team and potentially win a certificate or medal in a variety of different categories, including practice area and whether you’re a partner or associate.

Fees for MCBA members and their family members are $20 each; non-members $25; teams of 10 or more pay $20 per participant. (Note that team registration closes Sept. 11.) The sleep-in donation is $20 and kids under 15 are $10; $15 after Sept. 18. Late registration, after Sept. 18 is $30.

Complete details and registration forms (pdf and electronic) may be found through the MCBA website at www.maricopabar.org.
Looking Ahead: The Next Several Months and Beyond

MCBA Offices
After diligent efforts by our executive director, MCBA staff, and the board of directors, the rebuild is underway.

The only good thing about having to rebuild the offices twice in a relatively short span of time is that the previous plans and materials were all immediately available to utilize in the process. With this background and resource, the planning and design phase of the project was shortened quite a bit.

With the opportunity to continue to improve on the functionality of the building, the MCBA has taken a bit more time to design the building's floor plan to maximize its utility and professional feel. The prior design experience furthered our ability to improve on the building layout and features.

Some of the improvements and added benefits include:

- Incorporation of under utilized hallway space into a larger and more functional conference room available for large meetings and CLEs.

Reconfiguration of the HVAC system to a more efficient and economical system.

The addition of cabinets and electric range in the break room to allow for catering and other food preparation at the offices.

Various other design improvements that will improve the building's professional look and appeal.

And, an added benefit of many of these improvements is that the changes either incur no additional cost, or come at a cost savings. So, while the fire to our building was indeed tragic and trying, we have been able to turn this loss into an opportunity to improve and advance the MCBA.

We are hopeful that with construction underway, and the benefit of hindsight and experience in tow, we will be "home for the holidays" in our newly improved offices. We look forward to our sections', divisions' and memberships' return to the building as well.

We Need You! A Call for Candidates

With a newly improved facility, this is an excellent time to become more involved with the MCBA.

It takes the efforts of all MCBA members to continue to improve our organization and our profession in Maricopa County. If you have a little time to spare and a desire to get involved, please consider running for the MCBA board of directors.

The board helps the MCBA fulfill its multifaceted mission of service to the profession, the public and the justice system. We are involved in member recruitment, fundraising and oversight of bar operations, among many other activities (which will hopefully NOT include redesign and reconstruction for the next several decades!).

Please see page 1 for further information.

So, while I would not describe the next few months as a "play date," these months will be an exciting time for the MCBA and its membership. Thank you for your continued support of the MCBA and all of its programs.

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OPINION

A Legal Mystery: The Supreme Court and the Claims Statute

By Daniel P. Schaack

The judiciary's inconsistent treatment of Arizona's claims statute promised to change in 2007 with a Supreme Court opinion that gave hope that the statute would be applied as written. That hope faded this year with two more opinions.

In one, the Supreme Court backed off its 2007 promise. In another, it dropped a bombshell.

The legislature did not originally list a notice of claim's required elements. This led, predictably, to varying results. The courts were originally fairly strict, requiring that a notice contain a specific settlement sum. But later, Hollingsworth v. City of Phoenix, 164 Ariz. 462 (App. 1990), required only "a reasonable estimate of what the claim is worth." The Supreme Court did not review Hollingsworth to resolve the obvious conflict.

In 1994, the legislature enacted the current statute, A.R.S. § 12-821.01, listing the mandatory elements, including "a specific amount for which the claim is asserted." Despite this clear rejection of Hollingsworth, the Court of Appeals decided in Young v. City of Scottsdale, 193 Ariz. 110 (App. 1998), that the new statute actually codified Hollingsworth. Once again, the supreme court declined review.

So it was until Deer Valley Unified School District No. 97 v. Houser, 214 Ariz. 293 (2007). Calling Youngi holding "inexplicable," the Supreme Court applied the "clear and unequivocal" statutory language mandating a specific settlement amount. It decided that § 12-821.01 is not a pure-notice statute: it requires more than mere notice of the claim's existence. But "[c]ompliance . . . is not difficult," it reminded us.

It also noted that two statutory elements—the specific settlement amount and "the facts supporting that amount"—work together to require claimants to "explain the amounts identified in the claim by providing the government entity with a factual foundation to permit the entity to evaluate the amount claimed." Together, they "ensure that government entities will be able to realistically consider a claim."

Fury ensued.

Encouraged by the implicit promise to apply the statute as written, government defendants began seeking dismissal of lawsuits with noncompliant notices. The Arizona Trial Lawyers Association responded with amicus briefs in many of the ensuing appeals, often arguing that the government had waived the defense by not asserting it earlier in the litigation. A former chief justice even wrote to the Attorney General questioning the propriety of asserting the statute as a defense for the state. The Supreme Court soon addressed the fury.

It blinked.

In Backus v. State, 220 Ariz. 101 (2009), it upheld notices that stated basically no facts supporting the settlement amount. To reach this result, it decided that "[t]he approach that best furthers legislative intent is to allow a claimant to decide what facts support the amount claimed and to disclose those facts as part of the notice of claim." It held that "a claimant . . . [must] provide[e] the factual foundation that the claimant regards as adequate to permit the public entity to evaluate the specific amount claimed."

The emphasis in those sentences is mine. I write for myself here, not for either my employer or the Maricopa Lawyer. One might debate the factors that the court listed in deciding the case. Read the opinion critically. Read the notices of claim quoted there and ask yourself whether they adhered to the Deer Valley standard of giving a factual foundation that would have allowed the state to realistically consider the claim. When you do so, remember that the choice of what was to be divulged was the legislature's, not the court's, which raises two questions.

First, is it plausible to suppose that the legislature intended to let claimants set their own standard? Would it have established strict requirements for the other two elements while giving claimants near absolute freedom for the settlement facts? Would a government seeking more information give claimants the power to divulge less?

That leads to the second question: Would a legislature that intended set such a low standard have hidden that intent in a mandate to provide "the facts?" If it intended to require only the barest minimum of facts, why use a phrase that in standard English means all of the facts?

The idea that the legislature would leave it completely up to the claimant to decide is dubious, at best, so the court should have

See A Legal Mystery page 14
Keep Ahead of Opposing Counsel by Receiving Minute Entries Electronically

Be the First to Know
Receiving minute entries electronically is the best method to know when the court has issued a ruling.

The majority of attorneys practicing in the Superior Court in Maricopa County (more than 6,500) receive their minute entries electronically. This means all other attorneys practicing in the Superior Court in Maricopa County are two or three days behind opposing counsel to be fully informed about their case.

Since July 1, 2009, the state Supreme Court has required that attorneys provide an e-mail address on pleadings. The court and clerk are authorized to make electronic contact with attorneys at the e-mail address provided. For those attorneys or firms that are not yet registered to receive minute entries online, now is the time to begin that process.

One advantage to receiving minute entries electronically is that the Minute Entry Electronic Distribution System (MEEDS) is used to distribute electronically filed orders. Those not registered for electronic delivery must wait for a paper version to arrive in the mail.

A final motivation to register for electronic minute entry distribution is the Clerk’s authority to charge $1 per minute entry distributed on paper to an attorney. The Minute Entry Electronic Distribution Agreement can be completed online at the Clerk’s website and submitted over the Internet or printed and faxed to the office.

To complete the form, go to clerkofcourt.maricopa.gov/feD login.asp and inactivating your registration with the former employment information.

A request to inactivate your eFiling registration information should be sent to efilesupport@cosc.maricopa.gov or by calling the eFile support line at (602) 506-2565. Inactivating an older account and re-registering with a new username and password allows the system to ensure you receive information related to your new firm and that you don’t receive information related to your former firm.

Attorneys changing firms should also inactivate their Electronic Court Record Online (ECR) registration and re-register with their information from the new firm. The request to inactivate an account should be directed to the eFile support e-mail address or telephone number above.

If the authentication process on re-registration generates an error, Clerk staff can confirm that the attorney’s identity was previously authenticated and will manually authenticate identity on the new ECR Online account. Inactivating an ECR Online account and re-registering with a new username and password is critical for any attorney who has shared their login information.

About That eFiling...
The Clerk’s Office had an active summer training groups on how to use the eFiling system in the Superior Court in Maricopa County.

Beyond regular monthly demonstrations at the Clerk’s Office, representatives have taken the training to the street. This summer we visited over a dozen law firms or organizations to demonstrate the eFiling system. This direct contact with the users has generated thoughtful suggestions for improvement and enthusiastic support for expanding eFiling as soon as possible.

In recent meetings, users have been reminded to check every e-mail from the Clerk’s Office for important information in the “Comments” section and to make sure they track the second e-mail from the Clerk’s Office that states whether an eFiling was accepted or rejected.

To schedule onsite eFiling training for your office or group, contact the Clerk’s Training and Development section at (602) 506-2171.

The Medina Seminar on the Humanities and Science for Judges

By R.L. Gottsfeld

Harold R. Medina, who died in 1990 at age 102, was a top trial lawyer, a law school professor (Columbia), ran a bar review course for 29 years taken by a whole generation of New York Lawyers (1915-1942), and a federal district and appellate judge (Second Circuit) who participated in a number of celebrated trials.

In one antitrust case which lasted 10 months in his trial court, he was famously known as the judge who successfully urged the participating lawyers to take a day off so all could attend Ebbetts Field to see the Dodgers play the Giants.

It is thus fitting that a seminar in his honor has been held at Princeton University for the past 20 years, which is his alma mater and where he served for many years as a university trustee. I was fortunate to attend this past June, along with Arizona District Court Judge Paul G. Rosenblatt, and some 50 other federal and state judges and their spouses/guests. It is open to foreign judges and there was a judge from Australia and one from Israel. A number of Arizona judges have attended over the years.

It is also fitting that the seminar is held at a university without a law school, because the range of topics taught is far beyond that of any law school curriculum or legal conference offerings. We had lectures on physics by Dr. Freeman Dyson, the CIA, China, Russia and North Korea, Abraham Lincoln, molecular biology by a Nobel laureate, Beethoven, the European Union, the French Impressionists, Islam, famous bridges and how they are built, and the history of the world with award winning lecturer Michael Sugrue. Included among the way were a piano jazz concert and an organ recital.

As noted in the seminar brochure the purpose is to “examine various issues and problems in the humanities and science, and perspectives on those issues and problems, so that judges can develop and consider different perspectives for the improvement of the administration of justice in both trial and appellate courts.” The goal is to make us better judges with a wider intellectual base.

It is sponsored by The Judiciary Leadership Development Council, Inc. (JLDC), a nonprofit corporation, which pays the honoraria involved. Judges pay a modest $400 (add $300 for a spouse/guest). This includes truly gourmet meals. Judges pay their own travel and lodging. Some courts reimburse these expenses.

The JLDC advises it always needs more state judge attendees. Contact Senior DC Judge John W. Kern, former dean of the National Judicial College, and founding member of the Medina at jkern@deca.state.dc.us.
Don’t Miss Out on the 10th Annual Arizona Paralegal Conference

On Friday, Sept. 25, 2009, the 10th Annual Arizona Paralegal Conference, “Building Our Legacy: A Decade of Growth,” will be held at the Phoenix Convention Center in downtown Phoenix.

The Conference Committee has been working very hard getting everything ready. Speakers have been arranged, the menu has been chosen, vendors have signed up and door prizes have been collected. It is time for you to fill out your registration forms.

During the conference, the presentation of the Paralegal Day Proclamation will take place, the scholarship winners will be introduced, the division retrospective will be shown, and you will have a chance to win a door prize. Plus, you will have the opportunity to meet and talk to other paralegals from around the state and visit with the vendors in the exhibit hall.

Also during the conference a very special award, the MCBA Paralegal Division Member of the Year, will be presented. This award is given each year to a member who has made extraordinary contributions to the MCBA Paralegal Division throughout the year. We are currently accepting nominations for the Member of the Year.

Please visit our website for conference registration forms, $10.00 off registration coupon and Member of the Year nomination form and award criteria: www.maricopabar.org.

See you all at the conference on Friday, Sept. 25th!

MCBA Member - $175.00
Non-Member - $225.00
Student Member - $50.00
Student Non-Member - $75.00

Your Registration Fee Includes:

- Comprehensive Educational Materials
- 6.0 hours of Continuing Legal Education (CLE) including 1.5 hours of Ethics
- Full Breakfast, Buffet Lunch, and Refreshments
- Interaction With Vendors Who Serve the Legal Community
- A Chance to Win Numerous Prizes

Please mail your registration form with payment to: Laurie Williams, MCBA, 2001 N. 3rd Street, Ste 204, Phoenix, Arizona 85004. Credit Card Registrations can be faxed to Laurie Williams at 602-682-8601 or online registrations can be completed at www.maricopabar.org (For Paralegals Link).

For more information on Paralegal Events please visit our web site at: www.maricopabar.org.
Register, Recruit Family and Friends for Fifth Annual Race Judicata

The MCBA Young Lawyers Division is celebrating the fifth anniversary of Race Judicata. We once again invite the Arizona legal community to lace up their running (or walking) shoes and join us for the race. It begins at 7 a.m. on Sunday, Sept. 27, at Kiwanis Park in Tempe. This annual run and walk event is open to both the legal community and the community-at-large (so please help us register those outside the legal community to make this an even greater success this year).

Race Judicata includes music, vendors, balloons, a moon bouncer for the little ones and a Kids’ Dash immediately following the 5K race. In addition, it includes a one-mile fun run/walk for those who prefer a mid-distance challenge, starting at 7:05 a.m.

In addition to enjoying the health and networking benefits of the race, participants receive goodie bags filled with items such as water bottles, key chains, and gift certificates. Most importantly, the money raised from the event helps support YLD projects such as Law Week, the Domestic Violence (DV) Necessities Drive, and the DV Legal Assistance to Women in Shelters (LAWS) Program.

Awards for the 5K will be given for the three fastest females and males in each 10-year age group (under 19, 20-29, 30-39, 40-49, 50-59, 60-69, 70+). (And remember, a free lunch will be provided by the YLD to any MCBA member that beats LaShawn.) Please join us at this fun and worthwhile event. Family and friends are a must! Registration is available on-line at www.arizonarunningeventsco.com/calendar.htm.

CityNorth Town Hall A Success... No Hecklers

I regret to inform you that the CityNorth Town Hall held on Aug. 13 at Central Grille did not attract organized hecklers like some other more newsworthy town halls. What gives? Do lawyers not care about CityNorth? Are lawyers like “way more cool” than other members of society? Or, as hip-hop would have us believe, should we blame the lawyers’ shameful attentiveness and courtesiness at this town hall on the ah-ah-ah-ah-co-hol that was available? Actually, I think the real culprit is the fact that lawyers want to actually hear and comprehend their opponents’ viewpoints (I know, shocking!)

Thanks to Clint Bolick of the Goldwater Institute and Grady Gammage of the Gammage & Burnham law firm for presenting a lively debate on the issues of the case. Thanks to all that attended and participated in the Q&A session.

For those of you interested in attending the oral argument before the Arizona Supreme Court, it is open to the public and scheduled for Sept. 30 at 9:30 a.m.

You’re Invited to Join the Maricopa County Bar Association 100% Club

By signing up all of your firm members, you show your commitment to the bar and the legal community, as well as opening the door to affordable CLE, networking and community service events, and leadership opportunities to your firm’s attorneys. And not least, you write just one dues check for all members of your firm.

But time is short! The deadline for making a commitment to joining the 2010 MCBA 100% Club is Sept. 16.

For 2010, the MCBA is offering some new, very special privileges to 100% Club firms. These include:

- Two complimentary receptions per year with a featured speaker/program for a managing partner or other representative from each firm.
- Firm name on a plaque displayed in the newly built Maricopa County Bar Association office.
- Firm name published in the Maricopa Lawyer and on the MCBA website.
- To qualify for the MCBA 100% Club:
  1. Firm size: At least 5 attorneys.
  2. All firm attorneys become members of the MCBA at regular dues rates.
  3. Payment for all dues must be received no later than December 15.
- To become a member, please contact Cynthia Quinonez at (602) 257-4200 or email her at cquinonez@maricopabar.org. She will provide you with a list of all firm members we have on record and determine their dues rates. We will invoice dues for each member—and section dues—if they wish to join one or more, and send your firm one statement with the totaled amount. That means you only have to write one check to make all of your firm’s attorneys members.
- MCBA membership offers not only a broad array of CLE courses and discounts with corporate partners, but also offers attorneys a sense of community and a way to engage and participate with their peers in both social and service events.

Public Lawyers Lead the Way with eFiling

By Aaron Nash, President-Elect, Public Lawyers Division

Electronic filings currently account for approximately six percent of all filings in the Superior Court in Maricopa County. Of more than 7,000 documents filed electronically in June of 2009, approximately 53 percent were filed by public lawyers or government agencies.

The highest-volume eFilmer in the Superior Court in Maricopa County is the County Attorney’s office. By embracing technology early, the County Attorney’s office modified its document creation programs to file directly from the County Attorney’s case management system into the Clerk of the Court’s case management system for processing.

Public defense agencies are also a leading segment of the eFiling movement. Including the Public Defender’s Office, Legal Defender, Legal Advocate and the Office of Contract Counsel, public defense agencies account for a substantial percentage of total eFilings. While currently using the eFiling system available to the public, upcoming technological innovations will allow public defense agencies to eFile more efficiently, similar to the County Attorney’s process.

The advantages gained from electronic filing have been significant for both the County Attorney’s Office and public defense agencies. Attorneys on both sides receive immediate notification of new filings and proof of the date and time of filing. While not technical service, this feature of the criminal eFiling system provides valuable notification. In addition, the images of documents that have been electronically filed are quickly available for review in the electronic court record.

Authorized persons who need information from these documents, e.g. victim advocates and paralegals, have quick access from their desktops.

eFilings are also increasing in the private sector, including contributions from several attorneys and individuals specializing in civil law that are pursuing a paperless practice because of eFiling and electronic records management options. Private attorneys also have access to the images of documents in the electronic court record by registering with the Clerk of the Superior Court’s ECR Online website at www.azcourts.net/ECR.

The Public Lawyer’s Division of the MCBA recently hosted an eFiling training, one of several options for learning how to make the most of the court’s latest filing capabilities.

Make Yourself Scarce—You’ll Attract More Clients

By Trey Ryder

Every night around 9 p.m., I go outside to feed our two horses a couple pounds of carrots. The purpose is to make sure they’re eating normally and feel well before we turn in for the night. (If they don’t want a carrot, that’s a sure sign something’s wrong.)

Gracie, our little-old-grandmother golden retriever, lines up for her carrots too. Gracie has never missed a meal, bone, carrot—or opportunity of any kind.

On the other hand, Molly, our American Eskimo Dog, doesn’t care much about carrots. You can offer her one and she might take it—or leave it.

But, if Molly’s in the yard near the horses at carrot time, she lines up for her carrots as quickly as Gracie. When competing against two horses and another dog, Molly sees carrots as a scarce and valuable commodity.

That’s the scarcity principle. It says people (and apparently dogs) value opportunity, scarcity, and the image of scarcity to attract more clients in various ways. (To see his offerings, go to Amazon or Barnes & Noble and do a search for Cialdini. Both bookstores offer his books.)

We see scarcity in marketing every day. In some cases, the scarcity is real, such as when moviegoers line up around the block for a limited number of tickets to the opening of a much-anticipated movie. In other cases, the scarcity is manufactured, such as when Walt Disney offers a classic movie, like Bambi, recommending that you buy it now because the movie is going “into the vault” and won’t be available again for 10 years. (Or until next year, when they want to increase sales.)

When you walk into a convenience store, you may see only a single candy bar left in a display box near the cash register. Often, the customer who sees only one left will grab it because it’s the last one. After the customer leaves, the clerk reaches under the counter and puts one more candy bar in the box.
Late summer and early fall of 1909 was a time of excitement and anticipation for Arizona and Maricopa County. After 59 years of direct federal domination of the territorial government, the tide in Washington was beginning to turn in favor of statehood.

Even better than that, the Ringling Brothers Circus was in Phoenix. Back to school sales were in high gear, and President Taft had been cajoled into making a stop in Arizona’s capitol city on the return leg of his long tour of the western states.

Within weeks, the county’s lawyers would find themselves carefully scrutinizing the progressive constitutions of Oklahoma and other recently minted states. These were the first steps in the process of drafting a proposed state constitution that would be formally crafted a year later at the Arizona Constitutional Convention.

100th Anniversary of Presidential Visit
Marks Genesis of Constitution

After a long and bumpy road, long suppressed statehood ambitions would finally become a reality a few years later, on Feb. 14, 1912.

Territorial Roots
Under pressure, President Lincoln signed the Organic Act for the Arizona Territory on a cold February day in 1863. He was faced with an attempted Confederate annexation of western New Mexico Territory, vocal outcries from white settlers in that region for separation from their Hispanic dominated neighbors to the east, and wartime demands for the region’s substantial natural resources.

After considerable political wrangling, he signed the law carving the Territory of Arizona from the western hinterlands of the original New Mexico Territory, and prohibiting the owning of slaves therein. This new territory had originally been part of the lands ceded by Mexico to the U.S. after the Mexican War in 1848, including today’s Maricopa County north of the Gila River. For 13 years the Salt River Valley had been a neglected stepchild of the New Mexican territorial government.

Arizona’s Organic Act incorporated much of the statute that had established the New Mexico Territory, and authorized the president to appoint a slate of officers to organize and lead the Arizona government. Among these officers were the chief justice and two associate justices of the territorial supreme court. These judges were expected to do double duty as both the territorial and federal courts.

Each of the three was assigned a judicial district and the first week of each court session was set aside for cases involving federal jurisdiction. These federal cases were appealable to the 10th Circuit (later renumbered the Ninth Circuit) that had also been established in 1863.

After the federal cases were heard, the presidentially appointed judge would sit in cases to be heard under territorial law. Notably, these cases were appealable to the three judge territorial supreme court, made up of all three appointees, including the judge who originally had heard the case below. These appeals were believed to be less than unbiased and were a source of consternation for lawyers on the wrong side of a lower court decision.

Competition for these plum patronage appointments was fierce among eastern politicians, especially those of the president’s party who had failed in their efforts to be elected to office in their home states. Not surprisingly, these appointed judges were perceived by Arizonans as not always acting in the best interests of the territorial citizens.

Between the Civil War and 1912, every president, except for Andrew Johnson and Grover Cleveland, was a Republican, and considerable anti-Republican sentiment developed in Arizona as a result of these partisan appointees and the failure of 10 Republican administrations to seriously consider the citizens’ pleas for statehood for the territory.

In his final months in office in 1908, President Theodore Roosevelt was finally persuaded to endorse separate statehood for Arizona and New Mexico. Roosevelt’s hand-picked successor, William H. Taft, echoed Roosevelt’s position and attempted to lobby for a statehood bill with powerful Republican senators who were strongly opposed to admission of what they feared would be a new Democratic state dominated by Mormons and Mexicans. By late summer 1909, prospects for such a bill were improving.

More to Life Than Politics
Diverting the Maricopa County bar’s attention from statehood preoccupation were some familiar distractions. Decades long debates over suffrage for women and local options for prohibition of the sale and consumption of alcoholic beverages continued unsettled, however, there were a few things that both ends of the political spectrum could agree on that September of 1909.

Shopping bargains and incentives abound-
ed. Salim Adek’s store at 20 E. Washington, just down the block from the courthouse, was advertising a free pair of silk gloves with every dress purchased for more than $1.50. Parents seeking a bargain for their children’s school shoes could visit Morales Mercantile, east of the courthouse at 244 E. Washington, and receive a $.50 box of Donofrio’s best candy with the purchase of shoes of over $2.00 a pair. Davidson’s Cash Store was renting rifles and shotguns for the lowest prices of the year, and Sanichas, at 44 W. Washington, was enticing customers with homemade summer candies and takeout orders of ice creams and sherbets for Sunday entertaining.

Aside from bargain shopping, some prime entertainment options were offered that September. In addition to their sweet treats, Sanichas offered a “Free Grand Concert” on Saturday and Sunday evenings, featuring the gramophone recordings of operatic superstars Enrico Caruso, Emma Eames and Ernestine Schumann-Heink. As grand as this entertainment was, it paled, as did almost everything, in comparison to the “World’s Greatest Shows” presented on Sept. 27 by Ringling Brothers Circus.

Circus day in Phoenix got off to a late start due to some washed out railroad track between southern California and Phoenix. After only a few hours delay, however, the 85 rail cars transporting 1,283 employees, 20 tents, and all the accoutrements for its three ring extravaganza, including two stages and seating for 15,000, rolled into town (Phoenix in 1909 had a population of around 11,000).

The parade stretched for three miles and included wild animals, 40 elephants carrying “dazzling Indian royalty,” elaborately carved tableau floats, 650 “sleek high stepping equines,” 100 acts, and hundreds of perform-
ers. The undeterred holiday ended with record breaking attendance at the evening performance and was marred by only one store robbery, not believed to be the work of circus folk.

Three-ring relief from political wrangling in the territorial capital was only temporary. A financial downturn put pressure on municipal governments. The City of Phoenix, facing a substantial budget deficit, was forced to raid the reserve funds of the Water Department.

In a triumph of expediency repeated many times through the years, the city shifted $8,000 generated by and allocated to the city’s infrastructure to cover the operating expenses of other city functions. At the county level, District Attorney G.F. Bullard threatened dire consequences when the county Board of Supervisors refused to pay his office’s ice bill for July and August.

The Big Man Visits
In the midst of this fiscal and political unrest and while much of the community’s attention was riveted on the World Series matchup between Honus Wagner and his Pittsburgh Pirates and Tye Cobb’s Detroit Tigers, Maricopa County’s legal community laid out a very large welcome mat for President Taft. The five foot eleven inch, 335 pound chief of state drew a larger crowd than the circus. More than 20,000 people crowded the streets of the capitol in anticipation of his arrival.

Taft’s five Pullman car entourage crossed...
Legal Briefs

Judicial Conference Suggests Practices for Citing Internet Materials

Because judges are citing to Internet-based information in their opinions with increasing frequency, the federal Judicial Conference recently made recommendations for judges’ use of Internet materials in court opinions.

The recommendations follow a six-month pilot project in which circuit librarians captured and preserved webpages cited in judicial opinions. Some of the suggestions were that:

- All Internet materials cited in judicial opinions should be considered for preservation, with the authoring judge making the final determination of whether the cited reference should be captured and preserved.
- The Administrative Office of the Courts work with the Judicial Conference Committee on Court Administration and Case Management in creating guidelines to assist judges in determining which citations to preserve.
- If a webpage is cited, chambers staff should preserve the citation by filing the page as an attachment to the opinion in the court’s Electronic Case Files System, all the while remembering that some litigants may not have access to a computer.
- So as not to appear as an endorsement, courts should refrain from hyperlinking to documents retrieved from fee-based databases, or courts should provide an appropriate disclaimer when the court deems such hyperlinking feasible or necessary.

PACER Subscriber Registry Reaches One Million

The number of subscribers since 1991 who have registered for Public Access to Court Electronic Records (PACER), the federal courts’ portal for document filings and retrieval, reached one million on July 31, 2009. PACER is a fee-based database that allows public access to federal court documents via the Internet immediately after the documents have been filed.

Arizona Task Force Established to Review and Modify Attorney Discipline System

Arizona Supreme Court Chief Justice Rebecca White Berch recently established a task force that is charged with improving Arizona’s current attorney discipline system.

The task force is directed to review the current system and incorporate best practices from Colorado’s discipline system, including any of the following:

- Allowing intake attorneys to divert more cases, thus reducing both processing times and the number of cases proceeding to investigation.
- Allowing intake attorneys to dismiss matters, offer diversion, or assign matters to a trial attorney.
- Requiring State Bar Counsel to bring a matter under investigation to a probable cause determination within eight months from the receipt of the complaint.
- Requiring the Disciplinary Commission to determine probable cause.
- Allowing a case to bypass probable cause if agreement is reached on a case.
- Creating an Office of the Presiding Disciplinary Judge, who will rule on motions and pre-trial matters, as well as deciding questions of law before and during hearing, and sitting as the chair on hearing boards.
- Requiring an “at issues conference” at which parties will be prepared to discuss potential settlement and related issues.
- Appointing cases to volunteer settlement officers as needed.
- Providing that cases be heard by a three-person hearing board.
- Requiring that the ability to strike hearing board members or the Presiding Disciplinary Judge be for cause.
- Requiring that a disciplinary decision is issued in a case within 60 days.
- Requiring the recording of hearings.
- Eliminating proportionality arguments and imposing sanctions pursuant to ABA guidelines.
- Allowing for appeal to the Arizona Supreme Court.

Keeping Hyphens in Check

Chances are that at some point in a legal writer’s career she heard the following piece of advice: “Look it up in the dictionary.”

Even in the Internet age, this advice is helpful when resolving questions related to spelling and hyphenating words. Not every possible combination of words is in a dictionary, however.

Thus, the following guidelines for hyphenating words are a good place to start a spell check.

Use a hyphen in the following instances:

- When breaking a word at the end of line of text, if that word is too long to fit on one line. You should only break words between syllables.
- Not every word processing program gets these hyphens in this instance.

The poorly-thought-out plan backfired.

When using a modifying phrase that is Latin or foreign:

- An ex post facto law
- When using the prefixes anti, co, de, inter, intra, multi, non, para, re, semi, and super, unless the following word is capitalized or to avoid confusion.
- antitrust, anti-Latin, anti-establishment, multiple, redata.
- When a proper noun is used as an adjective, unless there are other words used as an adjective along with the proper noun.
- The Arizona Supreme Court decision is binding.
- The Nobel Peace Prize-winning humanitarian speaks later today.

Family Law Section’s Law Student Mentoring Program to Bridge Gap

By Nicole Siqueiros

Law students may study family law, but few are afforded practical experiences to apply what is taught in class, except for the lucky few allowed to enter clinical programs or internships. Many attorneys become familiar with the practice of family law (divorce, custody, paternity and child support) through hands-on practice. The Mentoring Program can help bridge the gap.

The MCBA Family Law Section’s Mentoring Program is being spearheaded by Nicole Siqueiros and two law students from the Arizona State University Sandra Day O’Connor School of Law, Joel Shepard and Timea Hargesheimer. The new project provides benefits to both the practicing attorney and the law student with valuable insight into the practice of family law.

The Mentoring Program aims to offer law students the opportunity to meet and develop relationships with practicing family law attorneys. Mentoring programs are invaluable in assisting the development of future family law attorneys; the students become more involved in the legal community; gain knowledge and experience particular to the family law practice, develop relationships with practicing attorneys and enhance their interpersonal skills.

Mentors also receive significant benefits by providing a positive influence on a law student’s education and career, re-examining their practice, and enhancing their skills by teaching others. Overall, the mentoring program is a win-win for everyone.

The program is slated to begin late August or early September 2009. Interested attorneys should submit a one-page application with information. Students will also submit a one-page application about themselves. The one-page applications will be used to pair a mentor with a mentee.

The primary requirements for the Mentor Program is each must attend a one-time mixer where they will meet their mentor in late September or early October and an agreement to meet at least once a month. The time commitment is relatively minor as compared to the benefit this program will provide to all participants.

Interested attorneys should contact the MCBA Family Law Section or Nicole Siqueiros at nsiqueiros@deblanklaw.com to obtain the application and additional information.
**LEGAL ISSUES IN PROFESSIONAL BASEBALL**

**WEDNESDAY, SEPT. 23, 5 P.M.**  
Chase Field

Put some fun in your Wednesday and take in a game between the Arizona Diamondbacks and the San Francisco Giants, beginning at 6:40 p.m. Before that, you’ll get your CLE covering:  
First Amendment vs. rights of publicity  
Closed captioning in venues  
Conducting marketing promotions

*Friends and family are welcome to attend the game.*

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Nona Lee, general counsel, Arizona Diamondbacks  
Caleb Jay, associate general counsel, Arizona Diamondbacks

**COST**  
$60 members  
$80 non-members  
$30 non-CLE participating friends and family

Go to www.maricopabar.org and click on the CLE tab for more information or to register.

### SEPTEMBER 2009

Office hours: 8:30 a.m.-5 p.m., Monday through Friday.

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<td>Estate Planning, Probate &amp; Trust Section</td>
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<td>MCBA office closes</td>
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<td>MCB Foundation Board of Trustees</td>
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<td>CLE and Diamondbacks v. San Francisco Giants: Legal Issues in Professional Baseball</td>
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<td>Game</td>
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<td>12-1:30 p.m.</td>
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<td>Arizona Paralegal Conference</td>
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<td>6:30 a.m.</td>
<td>Race Judicata</td>
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*Please watch your MCBA E-News for updated information about meetings and events.*

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Our New Supreme Court Justice John Pelander

By Jack Levine

John Pelander is 58 years old, has been married to his wife Mary for 30 years, and has two adult children and three grandchildren. Justice Pelander came to Tucson in 1973 after graduating Cum Laude from Wittenberg University that same year with a degree in political science.

He attended the University of Arizona College of Law, graduating sixth in his class in 1976. He was a member of the Order of the Coif and was executive editor of the Arizona Law Review. In later years he also received a master of laws degree in judicial process from the University of Virginia Law School in 1998.

After graduation from law school, Justice Pelander served as a law clerk to Judge Richard H. Chambers of the U.S. Court of Appeals for the Ninth Circuit in 1976. He was a member of the Order of Wittenberg University that same year with the inevitability of significant cuts in the budget for our court system. Justice Pelander sees a possible slowdown in the resolution of cases, particularly civil cases, which have the lowest priority after criminal, juvenile, and workers compensation cases.

Also of concern is the high number of capital cases, approximating 140, currently pending in Maricopa County Superior Court. According to Justice Pelander, there are presently too few resources to efficiently and expeditiously process those cases, and recent studies indicate there may be a several year delay in taking capital cases to trial, with an additional 2-3 years of appellate time before final judicial resolution in the state court system.

Justice Pelander plans to keep his residence in Tucson and does not see this as limiting his work at the court in any way. He knows, however, that he will be spending considerable time at the court in Phoenix and is committed to being there as much as necessary. Justice Pelander claims he has never had a day when he did not look forward to going to work at Division Two of the Court of Appeals and will greatly miss the collegiality there, but looks forward to establishing new relationships with his colleagues at the Supreme Court, where he will be occupying retired Chief Justice McGregor’s old office. Justice Pelander is scheduled to begin work with the “Supremes” on Sept. 8, 2009. His formal investiture is scheduled for Oct. 9, 2009 in Tucson.

For those who would like to actually see and hear Justice Pelander, his interview with the Commission on Appellate Court Appointments can be viewed at the Supreme Court’s Oral Argument website at www.supreme.state.az.us/courtvideos/.

New Presiding Tax Judge Appointed

Shortly after the retirement of Judge Thomas Dunevant III, Presiding Judge Barbara Rodriguez Mundell chose Judge Dean Fink as the new presiding tax judge.

Fink, who was appointed as judge following a three-year stint as a commissioner, left his family court calendar and began training with Dunevant on Aug. 17. He will assume his new tax calendar on Sept. 1. “Congratulations to Judge Fink on his new appointment. He will serve the court well in his new role,” Presiding Judge Rodriguez Mundell said. “Many thanks to Judge Dunevant, he has been in our court for over 20 years and has served in many leadership positions.

“He is an intelligent, hard-working, soft spoken gentleman with a peaceful nature. His contributions to our court have been significant and the court, as well as the community, are lucky to have had him siting as a judge.”

Commissioner Casey Newcomb, just back from active duty with the military, is covering Fink’s family court calendar until a new judge is appointed to the vacancy created by Judge Dunevant’s retirement.

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† Author of Qualified Domestic Relations Orders: Strategy and Liability for the Family Law Attorney (2008 © LexisNexis)

1440 East Washington Street, Phoenix, AZ 85004
VLP ATTORNEY OF THE MONTH
Nicole Seder-Cantelme
Compelled to Provide Legal Help

By Peggi Cornelius

Against the odds, a distraught mother in New York sought help for her daughter and grandchildren living in Arizona. Scanning the Internet pages of the State Bar of Arizona, she found the name of attorney Nicole Seder-Cantelme.

Nearly two years later, the Volunteer Lawyers Program (VLP) has named Cantelme Attorney of the Month for her exceptional pro bono service in a family law matter to which she donated more than 250 hours of her time, and which gave one Arizona family a fresh start.

“Not long before I received the long distance call that engaged me in assisting a young working mother and her two children, I had been recognized by the Young Lawyers Division (YLD) and Phoenix Fire Department for my service in the Volunteers for Heroes program,” said Cantelme. “It was a reference to the YLD award the grandmother had read on the Arizona State Bar’s website.” She added, “I’m a parent, too, and when I heard the family was facing eviction following sudden abandonment by a father who was able, but unwilling, to provide financial support, I felt compelled to find them legal help. My committee work for the bar had introduced me to the director of the Volunteer Lawyers Program, Pat Gerrich.

“I called her to learn more about services available to low-income clients. Not surprisingly, family law representation is an area of great need and precious few resources for low-income litigants.

“With Pat’s encouragement, I joined the VLP and accepted the pro bono case as my own.”

Cantelme grew up on the outskirts of the Phoenix-metropolitan area, aspiring to be an attorney while a student at Apache Junction High School. After completing an undergraduate degree in English, with an emphasis in business and technical writing, at Northern Arizona University, she became a writer and editor at Motorola. To assure herself that a legal education was an investment she wanted to make, Cantelme later worked as a paralegal at the Attorney General’s office.

During law school at Arizona State University, Cantelme read a Maricopa Lawyer article about the Court Appointed Special Advocate Program (CASA) at Superior Court. Since 1999, she has been a CASA volunteer.

“Recently, I’ve scaled back my legal career and volunteer endeavors to spend more time with my family, including my dad and my 1-month-old daughter. The successful conclusion of both the VLP case and a lengthy adoption case in which I was involved with CASA have been especially gratifying,” she said.

An awareness that her achievements have been made possible by the support of others in her life is what Cantelme says commits her to community service. She believes it’s important to use her legal skills to help those who cannot afford legal advocacy.

“I have the foundation of litigation experience, so I can research, learn and be mentored in whatever aspects of the law apply in diverse matters,” she said.

When it comes to being a newcomer in courts where others are more familiar, she believes those who venture outside their usual area of expertise can create an atmosphere of renewed interest and vigor in the justice system.

On a personal note, Cantelme comments, “Particularly if I’m having a tough time, I find service to others helps lift me out of myself and avert depression. I’ve also found pro bono clients to be very appreciative.”

If you would like more information regarding pro bono opportunities, contact Patricia Gerrich at (602) 254-4714 or pgerrich@elsaz.org.

ADOPTION
Lorena E. Chavez
Engelman Berger
Christina Kelly Geremia
Jones Skelton & Hochul
Sarah M. Glover
Ballard Spahr Andrews & Ingenohl

BANKRUPTCY
Mack J. Hawkes
Solo Practitioner
Jeffrey A. Katz
Solo Practitioner
Monica K. Lindstrom
Solo Practitioner
Chihany N. Patel
Solo Practitioner
David Preadhomme
Solo Practitioner
Robert Ray Tracey (three cases)
Phillips & Associates

CHILD PROTECTION-OFFICE ISSUES
Sarah M. Glover
Ballard Spahr Andrews & Ingenohl
Jane A. Proctor
Fennemore Craig
Laura J. Zeman
Snell & Wilmer

CONSUMER ISSUES
Abraham Abraham
Burch & Cracchiolo
James T. Auff, Jr.
Ryan Rapp & Underwood
Sara J. Agne
Snell & Wilmer
Jennifer Benoit
Quarles & Brady

GUARDIANS AD LITEM/COURT ADVISORS FOR CHILDREN
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Bryan Cave
Walter P. Opaska
Bryan Cave

GUARDIANSHIPS OF INCAPACITATED ADULTS
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Snell & Wilmer
Laura H. Kennedy
Cohen Kennedy Dowd & Quigley
Stefanie A. Layton
Snell & Wilmer

GUARDIANSHIP OF MINOR CHILDREN
Simone Colgan Dunlap
Quarles & Brady
Kathleen Yu
Quarles & Brady

GUARDIANSHIP OF MINOR CHILDREN
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Quarles & Brady
Kylie S. Hirsch
Bryan Cave
Anthony Wade Merrill
Bryan Cave
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Clark Hill
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Solo Practitioner
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Solo Practitioner

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TENANTS’ RIGHTS
Phil Derek Petersen
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TORT MOTOR VEHICLE DEFENSE
John R. Cunningham
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Lawyer Referral Service Needs You

Potential clients can be yours with the MCBA Lawyer Referral Service. The LRS receives more than 100,000 calls per year from people seeking legal assistance as well as attorneys referring clients outside their practice area.

Among the areas needing coverage are: administrative law, SSI-SSD/Medicare law, workers’ compensation, and immigration. Spanish-speaking and West Valley attorneys are also needed.

It’s easy to join! Call Linda Peña at (602) 682-8590.
Taking the Pain Out of Foreign-Language Documents

The attorney was frantic. Days before trial, she had remembered that she needed to stipulate to the other side’s translations of key documents—several boxes of them.


With non-English material proliferating in US legal proceedings, this kind of scenario is increasingly common, even for well-organized law firms. Avoid translation disasters with four common-sense steps: 1. Plan ahead; 2. Use a professional; 3. Develop a realistic budget; and 4. Listen to your translator.

Plan Ahead

Inventory non-English material promptly. With a little background, the right linguist can help, reviewing foreign-language material while you focus on other priorities.

Planning is also critical towards the end of your case. Will you need translations or interpreting for depositions and trial? Allow time to order certified translations and book a competent interpreter.

Go with a Pro

“Knowing some German” does not make you a translator, says Thomas L. West III, owner of Intermark Language Services. “A lawyer I know got a fax from his Latin American subsidiary and gave it to his Spanish-speaking secretary,” he recalls. “Three words stood out: ¡celebración, asamblea, and social. ‘They’re having a party,’ she said. It turned out to be an invitation to a shareholders meeting.”

Avoid costly errors by working with a professional. Find one at www.atanet.org, where the American Translators Association (ATA) maintains free, searchable databases of its members.

Bang for the Buck

Quality translation is not cheap, but asking the right questions will minimize costs. Does it all really need to be translated? The right linguist or software can identify the documents that count. The rest can be eliminated or summarized.

“Ideally,” he says, “you’ll work with someone in your market who speaks won’t be able to produce a quality translation for the price they quoted.”

“Thanks to uncoders,” he says, “we can also offer a discount on bulk translations. This is a great way to cut costs on large projects.”

Listening for Added Value

Your non-English documents tell a story: if you are willing to listen, knowledgeable linguists can help you piece it together. They also offer valuable institutional memory.

In the Case of the Lost-Minute Stipulations, the frantic attorney called a translator who had worked on the litigation for several years. She proposed a damage-control strategy that helped the court review the time frame.

Working with non-English material is a challenge, but the right philosophy helps, notes veteran patent translator Nicholas Hartmann.

“I tell the engineers, ‘Languages are important, but they’re not the most important thing.’”

Lamm Takes ABA Presidency, Creates Commissions to Address Economic Crisis, Diversity, Ethics

Carolyn Lamm, an international arbitrator, litigation and trade lawyer from Washington, D.C., took office as president of the American Bar Association last month for the current year.

Lamm’s involvement with the ABA goes as far back as 1982, when she began serving as a member of the ABA House of Delegates. Since then, she has served on the association’s board of governors, chaired the Young Lawyers Division, served on numerous committees with the sections on litigation, international law, and business law.

Serving as president until the association’s Annual Meeting in August 2010, Lamm rolled up her sleeves within days of her election and created several commissions aimed at addressing several trends within the legal profession.

Lamm’s involvement with the ABA goes as far back as 1982, when she began serving as a member of the ABA House of Delegates. Since then, she has served on the association’s board of governors, chaired the Young Lawyers Division, served on numerous committees with the sections on litigation, international law, and business law.

Serving as president until the association’s Annual Meeting in August 2010, Lamm rolled up her sleeves within days of her election and created several commissions aimed at addressing several trends within the legal profession.

The first commission, the Commission on the Impact of the Economic Crisis on the Profession and Legal Needs, will address the problem some lawyers are facing in reduced, deferred or terminated employment, while also confronting recession-related legal problems, such as evictions, foreclosures and bankruptcies.

“The public needs a strong legal profession in place to address legal issues into the future,” Lamm said. “We must preserve a strong, independent legal profession that will continue to work to benefit our clients and serve the larger public good.”

The second commission, the Diversity Commission, will provide resources and guidance to aid women lawyers, lawyers of color, disabled lawyers, lawyers of differing sexual preferences, and young and old lawyers navigate cultures and practices in law firms and corporations to “pierce the glass ceiling.”

Regardless of physical attribute or age, lawyers should be able to practice and excel on the basis of their talent, work ethic and devotion to their clients,” Lamm said.

The commission will sponsor regional programs modeled after a session jointly sponsored by Lamm’s own law firm, White & Case, and the National Asian Pacific American Bar Association. Regional programs will have broader participation, but will emphasize building networks in which lawyers who have already overcome barriers to advancement can share with aspiring lawyers strategies and understanding that worked for them.

With the changes brought to the profession by technological advances and globalization, the third commission, the Commission on Ethics 20/20, will review lawyer ethics rules and regulation across the country in the context of a global legal services marketplace.

“Its work will be guided by three simple principles: protect the public, preserve core professional values, and maintain a strong, independent and self-regulated profession,” Lamm said. “Restoring the US legal profession to better serve clients and lawyers in this evolving environment will require a clear vision of the future; it will require 20/20 vision.”

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NEW MCBA MEMBERS

MCBA welcomed 29 new members to the Association. New members are those who have never been, or have not been for at least one year, a member of the MCBA.

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City of Scottsdale
Scotsdale
Alexander Y. Benikov
The Law Office of Alexander Y. Benikov, PLLC
Phoenix
Brian Mathew Blum
Blum Law Office, PLLC
Scottsdale
Tom Busby
Law Office of James R Vaughan
Phoenix
Darren T. Case
Tiffany & Bosco, PA
Phoenix
Jonathan D. Conant
Conant Mediation Center
Fort Myers, FL
Catherine A. Creighton
The Law Office of Grant Creighton & Scottsdale
Scottsdale
Matthew K. Donovan
Snell & Wilmer, LLP
Phoenix
Haven Lee Dove
Evans Dow & Nelson, PLC
Mesa

James C. Dutson
Dutson Law Firm, Ltd
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Joseph D. Estes
Mann Berens & Wisner, LLP
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Meredith Flori
Clark Law Offices
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Chandler
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To register, use the registration form on this page, go to www.maricopabar.org, or call Jennifer Deckert at (602) 257-4200. Unless otherwise specified, all CLE programs will be held at the MCBA office: 2001 N. 3rd Street, Suite 204, Phoenix, AZ 85004.

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5 P.M. WITH GAME TO FOLLOW
AT 6:40 P.M.

Legal Issues in Professional Baseball + Diamondbacks Game

1 credit hour

LOCATION:
Chase Field, Phoenix

The CLE portion of the evening will cover:
First Amendment vs. Rights of Publicity: C.B.C. Distribution and Marketing, Inc. v. MLBAM
Conducting Marketing Promotions

PRESIDENT:
–Caleb Jay, Associate General Counsel, Arizona Diamondbacks

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COST:
❑ MCBA member - CLE and game: $80
❑ Non-member - CLE and game: $80
❑ Game-only tickets for friends and family members: $30 each

THURSDAY • SEPTEMBER 24
12-1:30 P.M. (lunch included)
2009 Employment Law Update

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**Disability Law Center Uses MCBF Grant for Self-Advocacy**

This article is one of a series provided by agencies that received a 2009 grant from the Maricopa County Bar Foundation.

The Maricopa County Bar Foundation recently awarded a grant in the amount of $2,000 to the Arizona Center for Disability Law, a nonprofit public interest law firm dedicated to protecting and advancing the rights of individuals with disabilities in Arizona. This grant will enable the Center to develop a self-advocacy guide to Medicaid long-term care services in Arizona.

The guide will explain what Medicaid long-term care services are available, what the eligibility criteria are, and how people can apply for them. The guide will also provide practical pointers about how to qualify, such as ensuring that the applicant provides the correct medical documentation. Designated for parents, guardians, case managers, social workers, and individuals with developmental disabilities or mental illness, the guide will also be translated into Spanish and a low-literacy version.

This self-advocacy guide is a much-needed resource that does not currently exist in Arizona. In just the past six months, the Center received over 200 phone calls from callers seeking information and advice related to long-term care issues. Increasing unemployment and deepening state budget cuts that reduce access to non-Medicaid social services mean that more people will be turning to the Medicaid program for the health care services they need.

Medicaid long-term care services are often found by making appointments with people who want to see you, or by receiving services in a nursing home. Unfortunately, the Center is unable to provide direct legal representation to everyone who requests our assistance. This new self-advocacy guide is an effort to help more individuals with disabilities by providing them with the tools they need to apply for and access needed long-term care services.

The Center appreciates the support of the MCBF and looks forward to this special partnership.

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**Moves and New Hires**

Bowman and Brooke, LLP is pleased to announce that Jeffrey C. Warren has joined the firm as senior counsel. Warren is a graduate of the University of Chicago Law School and a member of the State Bar of Arizona, the American Bar Association and the Maricopa County Bar Association.

Jaburg & Wilk, PC, is pleased to announce that Barbara Klabacha and Victoria Zukerman Warren have become attorneys in the firm.

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**Honors, Awards and Certifications**

Cary L. Lackey, of the Law Office of Cary L. Lackey, PC, has been certified and registered as an Agent/Contract Advisor with the Canadian Football League Players Association.

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**Make Yourself Scarce—You’ll Attract More Clients**

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Creating the appearance of scarcity.

For lawyers, the scarcity principle says the more time you have available in your schedule, the less prospects and clients will value your services. But as you grow busier and have less time available, prospects and clients will see your services as increasingly more valuable.

The scarcity principle goes further, too, because as you and your services grow more scarce, people use your availability as a shortcut to their quality. They draw two conclusions: The busier you are, the more valuable you are. And the busier you are, the higher the quality of your services and skills.

Scarcity is an even stronger motivator when two things occur: (1) when the opportunity has only recently become scarce, and (2) when you compete with others for the scarce commodity (recalling Molly and her carrots).

Another one of my college professors used the scarcity principle to sell his old cars. First, he advertised the car in the classifieds for a specific price “or best offer.” When his phone started to ring, he made appointments with people who wanted to see it. To gain the most from scarcity, the professor scheduled appointments five minutes apart. The first buyer arrived and the professor spoke with him for a few minutes. Then the second arrived. And then the third.

Immediately, prospects saw they were competing for the opportunity to buy the car. This made the car more valuable in their eyes. Then the professor conducted a mini-auction among the three buyers, often finding the best offer was higher than his asking price.

Here’s the key: When you inject scarcity into your prospects’ decision to hire you, prospects feel they need to act quickly, before they lose the opportunity.

Here are ways you might profit from scarcity when talking with prospects and clients:

Tip #1: Explain that your prospect will lose the opportunity to file suit because the statute of limitations will bar his claim.

Tip #2: Explain that your prospect may lose the opportunity because of a pending change in the law.

Tip #3: Explain that your prospect may lose the opportunity to buy (anything) at the current price because of an imminent price increase.

Tip #4: Explain that your prospect is competing for this opportunity with other people or companies—and that if he doesn’t act quickly, someone else may seize the opportunity, leaving him with nothing.

Tip #5: Explain that your prospect has a limited time to act or the other party will withdraw the offer.

When relating to your services:

Tip #6: Explain that your appointment calendar is tight, but that you can meet with a prospective client at a particular time and date.

Tip #7: Explain that your client roster is nearly full, but that you can make room for one more client based on your current caseload.

And so on.

If anyone asks whether you’re busy, don’t say, “Well, I’m killing time waiting for clients to walk in the door.” People will immediately conclude your services aren’t worth much.

Instead, you might say, “I’ve never been busier.” Or, “I have so many clients, I’m starting to work nights,” unless you own the firm. Then working nights is nothing new.

In summary, explain how a commodity or service is scarce and why it’s important that your prospect act now. When possible, point out that only recently has the opportunity become scarce and that your prospect is competing head-to-head with others for the same opportunity.

Often, scarcity will provide the urgency your prospect needs to hire you or take the action you recommend.
A Legal Mystery: The Supreme Court and the Claims Statute

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required clear and unambiguous language to dispel the inherent doubt. What it said about contract interpretation in Taylor v. State Farm Mutual Automobile Insurance Co., 175 Ariz. 148 (1993), is apt: at some point, judges should stop “listening to testimony that white is black and that a dollar is fifty cents.”

Judging is not a like calling balls and strikes. Sometimes courts must do more than interpret the words to make a statute workable, and that may be true of the supporting-facts requirement. Requiring a claimant to provide “the facts” basically means all of the facts, and a wooden interpretation would demand every fact imaginable—not a valid option. So some interpretation was necessary.

But in statutory interpretation, the court is the subversive entity. The objective is to determine and implement the legislature’s intent. The task in Backus was to identify and apply a standard consistent with the clear legislative intent, an intent the court had already recognized in Deer Valley. Why did Backus back off from Deer Valley? The court did not opine that such a standard would be unworkable. So had it come to disagree with Deer Valley? Was it daunted by all the fury? Did it not trust the lower courts to fairly administer the statute that it had envisioned in Deer Valley?

It’s a mystery.


The main holding there was that claimants intending to file class actions must state a settlement amount for the individual claim, not the class claim. The notice in question did not comply. But the court went to extraordinary lengths to save the plaintiffs from its holding. It decided that the defendants had waived the defense by engaging in “substantial litigation” on other issues before asserting the claim statute.

There was a problem with this idea, though: the plaintiffs never raised this waiver issue. Not in the Supreme Court, not in the Court of Appeals, and—despite what the opinion says—not in the Superior Court. It was the ATLA that raised the waiver argument—on appeal. Arizona courts do not allow amici to inject new issues into cases except in extraordinary situations. This situation did not qualify because the issue was already before the court in a petition for review from Jones v. Cochise County, 218 Ariz. 372 (App. 2008). Having already conferred on that petition, the court was well aware that it properly presented the waiver issue. It was also well aware that other public entities would file amicus briefs on the issue, having filed briefs supporting Cochise County’s petition. Yet, with no public announcement, the court chose City of Phoenix to decide the waiver issue.

Could the court not see the message this sent? Could it not see that this conveyed the impression that it favored the plaintiffs’ bar, not only by allowing them to inject an issue improperly into a case but also by considering their amicus brief, while, at the same time shutting out the government-defense bar by not providing them an equal opportunity to brief the issue?

Even more mysterious is the conclusion the court reached on the issue. Waiver is the intentional—voluntary— relinquishment of a known right. A question of fact, it can be shown by conduct, but the conduct must be incompatible with the right, clearly and unequivocally demonstrating the intent to forever forgo the right. There was no such unequivocal conduct in City of Phoenix. The court cited cases holding that parties who seek affirmative relief from a court may not later challenge that court’s power to hear the suit. Those cases recognize that seeking affirmative relief is unequivocally inconsistent with a forum defense. But the claims statute is not a forum defense. All that raising a merit defense says about other merits defenses is that they might be raised later. Any contrary inference is certainly not unequivocal.

The court also complained that the defendants had increased expenses for the plaintiffs and the judicial system and accused them of hindering the interests of persons who weren’t even parties. But those are not waiver factors. In Markowitz v. Arizona Parks Board, 146 Ariz. 352 (1985), the court reminded us to keep our doctrines straight (there, the difference between duty and the standard of care). Where was that attitude in City of Phoenix? Courts are legitimately interested in checking litigation costs, but striking a defense for lack of a little diligence is an overreaction.

Uyehara v. D.S. Renton, 194 Ariz. 300 (App. 1999), recognized long ago that courts should adjust the costs awarded, not deprive defendants of legitimate defenses, if they are asserted a little late. Courts proclaim a preference for deciding cases on the merits—considering all claims and defenses—rather than letting litigation pend atollies decide the winner. The discovery rules enshrine this attitude, requiring courts to consider lesser sanctions before dropping the bomb. Where was that attitude in City of Phoenix?

The court asserted that the defendants must have intended to relinquish the defense because asserting it immediately could have meant immediate victory. But this ignores other possible explanations, like inadvertence. Not raising a defense immediately is unequivocal evidence of an intent to waive it only if you assume absolute perfection: counsel always mindful of all available defenses and always filing motions with pinpoint precision. Why was such perfection so necessary in this case?

The court found waiver from the attorneys’ conduct, but evidently forgot that the defense belonged to the defendants. It beggars belief to assert that the attorneys’ actions unequivocally demonstrated that the clients’ were ceding a complete defense. Again, refer to the discovery rules, which generally require the client to be at fault before imposing ultimate sanctions against the client. Where was that concern for the defendants in City of Phoenix?

The ruling deprived the defendants of a chance to fairly dispute the waiver accusation. Had the plaintiffs properly raised the issue, the defendants could have provided actual evidence, leading to a decision based on facts rather than post-hoc supposition. The supreme court refused to reconsider even after being informed that it had wrongly supposed that the plaintiffs had preserved the issue. That refusal is disconcerting. So is the irony of its granting relief to the plaintiffs on an issue they never raised, based on a finding that the defendants had waived an argument they had actually raised well ahead of any significant deadline. City of Phoenix is not really about waiver; it neither lists nor analyzes waiver elements.

Rather, it’s about a new procedural rule with a vague standard, requiring defendants to assert complete defenses before engaging in “substantial litigation” of other issues. Even if such a rule, it should have been in place before the game started is an appropriate one. City of Phoenix changed the rules after the game, muddied waiver law in the process. • • •

The legislature has the constitutional power to “direct by law in what manner and in what courts suits may be brought against the state,” so it can fix A.R.S. § 12-821.01. Continuing resistance to the statute counsels it to be extra explicit, should it decide to do so.

The law of waiver will require a different fix.

Daniel P. Schaad is a Phoenix attorney who represented the State of Arizona before the Supreme Court in Backus v. State.

100th Anniversary of Presidential Visit Marks Genesis of Constitution

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into Arizona Territory in the early morning hours of Oct. 13, 1909. The president had left Riverside the night before, around 9:30, after dining with a few hundred California politicians at the Mission Inn. The robust Taft had relaxed in a chair custom built by the hotel with the extra-large chief executive’s dimensions provided for.

Taft’s train reached Maricopa at about 9:00 a.m. and transferred to the tracks of the Maricopa and Phoenix railway. At 10:42, the president arrived west of the Capitol Building for what would be a busy two-hour visit to Phoenix.

He was whisked away by a 16-car motorcade to the Capitol Building. The big man shared his car with a Secret Service guard, his military aide Captain Archibald Butt, and Territorial Gov. Sloan. At the Capitol, he was introduced to 500 local dignitaries, including most of the leaders of the legal community.

The group soon made its way to City Hall Plaza and the largest crowd that had ever assembled in the territory. Gov. Sloan introduced the president at about 11:20 and Mr. Taft spoke extemporaneously for about 12 minutes.

During his remarks, the president rewarded the crowd with an expression of his hearty pledge of support for statehood.

Taft’s encouraging words would come back to haunt him, and eventually cause him severe political grief, but the state’s lawyers and other leaders responded and plunged ahead with an epic constitutional debate. When the political dust settled, Arizona’s new constitution would be part of the same radical progressive tsunami that would sweep away the Taft presidency and decades of Republican dominance of national politics.
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JOHN F. NAPOLITANO is the former United States Attorney for the District of Arizona and a former Assistant United States Attorney. John has practiced law in Phoenix for over 40 years and served as a U.S. Attorney from 1985 to 1990. John is currently a Partner at Mckinzie & Wright, a law firm with a strong practice in the area of civil litigation.

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Tuchi Appointed Interim US Attorney after Humetewa Resigns

Ten Years and Going Strong continued from page 4

Ten Years and Going Strong continued from page 4

Ten Years and Going Strong continued from page 4

Ten Years and Going Strong continued from page 4

The First Native American woman to have served in the position, Humetewa's resignation came after nearly two years of service in the position. “It has been a great privilege to serve the citizens of this office,” Humetewa said. “I am grateful to the entire US Attorney staff for their daily commitment in the pursuit of justice for our citizens, and I am also grateful to all our federal, tribal, state and local law enforcement partners whose hard work is indispensable in that pursuit.” Among her acts was the indictment of former Congressman Richard Renzi on embezzle¬ ment and misuse of public office for financial gain charges, and the indictment of two Illinois brothers on conspiracy charges in the February 2004 bombing of the Scottsdale Office of Diversity and Dialogue.

While these are just a few of the many milestones for the Paralegal Division, through¬ out its history it has afforded multiple oppor¬ tunities to its members to pass the evaluation and certification. In its continuing effort to advance the pro¬ fession through training and education, the Paralegal Division has provided instructional courses to its members in preparation for the CLA and PACE exams. The first CLA Review Course was offered in 2001 and the first ever PACE review course in Arizona was offered in 2003. Both review courses continue to provide paralegals with the necessary tools to pass the examinations and certification.

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