Keep Growing Your Investment—Renew Your Membership

You can now easily renew your membership online at www.maricopabar.org. Click on “Member Log-in” (top center). Next, enter your username, which is your email address, and unless you’ve already changed it, “maricopabar” is your default password. This will bring up your personal information page from which to renew your membership.

Stay connected with MCBA and the legal community in 2011 and enjoy the benefits of membership—affordable and timely CLE, social activities, leadership opportunities, community service, and legal news and updates.

You may also renew by calling the Membership Department at (602) 257-4200. We look forward to enhancing your life in the law in 2011.

Case, Huff Classic Brings on the Fun with Fundraising

Happy first-place Case Huff winners are, from left, Matt Horton, The Horton Team; John Hall & Associates; David Sandoval, Carmichael & Powell, PC; Kiilu Davis, Law Offices of Stone & Davis; and Don Benner, O’Neil Printing.

Appeals Court Navigates Thomas, Appellate Jurisdiction Controversies

Controversies

This month features two different controversies that Division One of the Arizona Court of Appeals has recently addressed. In one case, it resolved a political impasse. In another, it found itself in an internal debate on an issue of appellate jurisdiction.

... 

While he was Maricopa County Attorney, Andrew Thomas did not have a harmonious relationship with the County Board of Supervisors. In response to the ongoing problems, the board hired a law firm as special legal counsel to advise it on whether there was a conflict of interest and what actions it might take as a result.

The board also created two new county law departments to handle civil litigation, independent of the county attorney. These departments prosecuted and defended most of the county’s civil litigation.

Some teams were good, some were so-so and one came in dead last. But all managed to have a good time at this year’s Case, Huff & Associates Pro Bono Golf Classic, held Saturday, Nov. 6 at the Legacy Golf Resort in Phoenix. The annual Classic helps to raise funds for the Maricopa County Bar Foundation and Volunteer Lawyers Program, which benefits those who cannot afford legal representation on their own.

This year, 26 foursomes competed at the classic sponsored by Case, Huff & Associates, Inc. The first-place foursome was sponsored by Kiilu Davis from the Law Offices of Stone & Davis. His winning teammates were Matt Horton, John Hall & Associates (The Horton Team); Don Benner, O’Neil Printing; and David Sandoval, Carmichael & Powell.

The second-place foursome comprised John Gilbert, Alvarez & Gilbert, PLLC; Mike Berman, Perkins Coie Brown and Bain LLP; Nic Fisher; and Neil Harrington, Harrington Law. Third place honors went to the Horton Team sponsored by Happy first-place Case Huff winners are, from left, Matt Horton, The Horton Team; John Hall & Associates; David Sandoval, Carmichael & Powell, PC; Kiilu Davis, Law Offices of Stone & Davis; and Don Benner, O’Neil Printing.

New Year Bringing Quality CLE at a Reasonable Cost

Headlines everywhere tell of today’s trying economic times, from the steady stream of foreclosures and job losses to extended periods of unanticipated unemployment, many are struggling—including legal professionals. Recognizing the obstacles attorneys, paralegals and others in law are facing, the MCBA is committed to offering its members high-quality, low-cost CLE programs.

Laurie Williams, CLE director, said the MCBA plans to maintain its reasonable CLE prices, plus offer discounts to members.

“We’re offering a lot of incentive programs for the people that follow us on Twitter and Facebook starting in 2011. They’ll go online, get on Twitter and Facebook, and put in a discount code,” she said.

The discount will be offered to anyone who takes a few seconds to log onto their Facebook and Twitter accounts and either “like” or “follow,” respectively, the MCBA’s pages: http://www.facebook.com/pages/
Hall of Fun: Remembering 2010

MCBA PRESIDENT

Jenifer E. Green

I hate good-byes. I know what I need. I need more hellos. –Charles M. Schulz

As a lifelong Arizonian, one thing that’s neat about being a relatively new state is that the folks who blazed trails are still around. Heck, they’re still practicing law, presiding over trials, and serving on committees.

October 20th marked what has become the signature event of our organization: the third Maricopa County Bar Hall of Fame Induction and 2010 Annual Meeting. Thanks to Judge Glenn Davis for starting the tradition and continuing his leadership with the Hall of Fame, and to his committee for their many months of work to ensure its success. Congratulations again to our third crop of honorees.

Our annual meeting has become not just a gathering to honor our local legends, but to hear from them. Every honoree spoke for a few minutes, and many of their comments about how much we’ve grown as a county and as a legal community really put “new Arizona” into perspective. The stories were delightful. This year we were treated to a visit from Senator Kyl, who took a day away from furious midterm election campaigning to join us; heard from Judge Mary Murphy Schroeder, one of our true pioneers; listened to some political commentary (!) from one of our most-loved true pioneers; listened to some political commentary (!) from one of our most-loved

AZ Supreme Court Welcomes Public to Celebrate 1910 Constitutional Convention

One hundred years ago during the fall of 1910, a group of delegates convened for Arizona’s Constitutional Convention. As part of efforts to celebrate the state’s centennial, the Arizona Supreme Court, in partnership with the State Bar of Arizona, will host a public forum to highlight and reflect on this momentous event. The public is invited to join community leaders on Thursday, December 2, from 2 to 5 p.m. at Memorial Hall, located at Steele Indian School Park, 300 East Indian School, for an afternoon discussion about the convention, its delegates, the development of our state’s constitution, and modern challenges to it. The program will include live comments and presentations from Retired U.S. Supreme Court Justice Sandra Day O’Connor, Arizona Supreme Court Chief Justice Rebecca White Berch, Retired Arizona Supreme Court Chief Justice Ruth McGregor and many more speakers.

The program is free but seating will be limited. Attendees are asked to RSVP to AOCEvents@courts.az.gov. A reception outside of Memorial Hall will immediately follow the event.

U.S. District Court Chooses Lawyer Reps

The United States District Court for the District of Arizona has announced its selection of five attorneys as lawyer representatives: Bridget Bade, Beshears, Muchmore & Wallwork, Chartered; Steven Berger, Engelman Berger PC; Douglas Metcalf, Lewis & Roca LLP; Georgia Staton, Jones, Skelton & Hochuli; and Angela Woolridge, Assistant U.S. Attorney for the District of Arizona in Tucson.

CORRECTION

In the November 2010 article, “Let the Mocking Begin! PSL Students Participate in Mock Interviews,” the name of a third-year Phoenix School of Law student was incorrect. The student’s correct name is Marisol Angulo. We apologize for the error.
What Did Jeffrey Landrigan’s Execution Teach Us About Respect?

By Larry A. Hammond

Those who argue about the death penalty often focus on the concept of respect. Respect for victims and their families is sometimes included as a factor either in favor of capital punishment or against it. Respect for all human life is sometimes also used as an argument both by proponents and opponents. What about respect for our judges? A snapshot of the two weeks before Mr. Landrigan’s execution told us a lot about public respect for the judicial branch. Whether judges deserve respect or not, they were afforded none.

When the trial judge appeared before the clemency board and expressed her concern about executing Mr. Landrigan, many criticized her personally. She must have gone soft; there was the manner of execution, and specifically the drugs used to accomplish lethal injection. Was he denied the resources and the qualified lawyers we now say we demand in every case? Why was he never sentenced by a jury? Why did the Arizona Attorney General refuse to disclose information about the drug administered to Mr. Landrigan to eliminate pain?

These are all questions we might, as lawyers, wish to address, but my point is this: too few care about these questions or the answers that might be offered. When people stop respecting the judges, they stop caring about the reasons they might offer. This is not just the isolated lesson of this case. It is a lesson we can see in every death penalty case. We simply have failed to devise a legal system that can ensure just results and, as a consequence, fewer and fewer of our citizens really think our judges are trying, or are worthy of respect. This should be reason enough for members of our profession to wish to bring an end to the death penalty.

Larry Hammond is a practicing criminal defense lawyer with Osborn Maledon. He is also a former president of the American Judicature Society, an organization devoted to merit selection of judges and to Article III of the United States Constitution. The Landrigan execution causes him to wonder whether time spent on these issues is time well spent.

“He who has gone, so we but cherish his memory, abides with us, more potent, nay, more present than the living man.”

~ Antoine de Saint-Exupéry

THOUGH A PERSON DIES, HIS MEMORY LIVES ON.

If someone you know passes away, and they are a member of the Maricopa County Bar Association, please let us know. We will publish an announcement in the Maricopa Lawyer.

For information, please contact us at (602) 257-4200.
That’s a Wrap! 2010 YLD Year in Review

What a productive year this has been for the MCBA Young Lawyers Division. Despite the various activities, social events, service projects, and educational opportunities the Young Lawyers Division offered this year, I am most proud of the new members and volunteers we have recruited to the association in 2010. At the beginning of the year I noted the importance of becoming involved in the bar association and active in the community. This is so important, particularly as our legal community continues to grow larger than ever and interaction among attorneys dwindles. It is critical to the integrity and satisfaction of the profession that young lawyers invest themselves in this community, and MCBA provides the perfect network.

I will not take this opportunity to debrief you on the wonderful things the YLD has achieved this year – as I probably noted them each month in this column. But I would like to express my sincere and personal thanks to, and congratulate, the members of the Young Lawyers Division, especially the board members, committee chairs, and officers for their time and efforts:

Stefan Palys (President-Elect), Stinson Morrison Hecker
Blake Mayes (Treasurer), MayesTelles
Nicole Soto (Secretary), Arizona Credit Union System
LaShawn Jenkins (Past President), The Jenkins Law Firm
Sara Anchors, Quarles & Brady
Alison Carter, Quarles & Brady
Casey Blais, Burch & Cracchiolo
Flynn Carey, Gallagher & Kennedy
Megan Jury, Snell & Wilmer
Jessica Jackson, Ekmark & Ekmark
Rachel James, Nirenstein Garnice Soderquist
Julie Rebholz, Burrell & Seltos
Leslie Satterlee, Nirenstein Garnice Soderquist
Melinda Sloma, Doyle Law Group

Next year will no doubt be another productive one for the Young Lawyers Division. Congratulations to Stefan Palys, who will serve as president; Leslie Satterlee, as president-elect; Melinda Sloma, as treasurer; and Shauna Yoder, as secretary. I am confident that this group of leaders will carry on the spirit and tradition of selfless dedication and social benefit that the YLD seeks to promote through its activities.

2010 has been an interesting year for the law, particularly in Arizona. This is an exciting time to be a young attorney as we see the role we can play in identifying problems, working toward solutions, and most importantly (hopefully) bringing people together in the process. Unfortunately it seems that our community has become divided, or at least the news media would have us believe so. Certainly our leaders and lawmakers appear divided and this tone inevitably trickles down among us. We all are advocates — but we serve one community. After all, this is why most of us pursued the law as a career. As this year comes to an end, I hope that we can look forward to more cooperation and productivity. Please enjoy a happy and safe holiday, and we will pick up again next year!

REPORT:
Law Firms Slicing Jobs, Hiring Less Due to Recession

An article published on the Slate.com website, authored by Annie Lowrey, reports that a flooded market of attorneys mixed with a flooded market of attorneys mixed with a

While law jobs are dwindling, law schools

Large firms, which make up about 28 percent of recent grad’s employment, cut their start dates of thousands more. In June 2007, the number of people employed in legal services hit a record high of 1.196 million. That number currently stands at 1.103 million, a decrease of about 7.8 percent in the number of legal jobs. Comparatively, the total number of jobs has fallen about 5.4 percent over the same period.

Salaries Reported v. Salaries Made

Though big law schools report the average graduate as making in the high figures for entry level work, the National Association for Law Placement notes that there is obvious bias in the data: students don’t tell their law school what they make unless it’s substantial. Likewise, the law schools report their own salary-at-graduation data to organizations such as the NALP and magazines like U.S. News and World Report.

Another concern is that prospective law students usually look at average pay at graduation, which hides vast inequality between the high-paying entry level jobs—$160,000 per year—and the rest of the jobs, which average between $45,000 and $60,000. Most salaries are clustered at the bottom with almost none near the median or average and with fewer high earners, many of whom come from a handful of super-elite law schools, up at the top. That means that most students do not meet the break-even salary—estimated at around $65,000—that would make law school tuition a good investment.

Downward Trend Not Forever

In 2005, New York Law School Dean Richard Matasar wrote that students simply “cannot earn enough income after graduation to support the debt they incur.” “Even those making the highest salaries find that the debt that they have accumulated while in school may tax them for years,” he said.

Despite the challenges of being a young or new lawyer, thousands have continued to enroll in law school during the recession. However, Lowrey writes that according to David McGowan of the University of San Diego and Bernard Burk of the Center for Corporate Governance at Stanford the trend will not continue as prospective students realize law school may not be for them and applications begin to drop. They predict that some newer, lower-ranked law schools will end up closing, thus leading to fewer lawyers.

The National Law Journal Survey

In a separate article, The National Law Journal author, Leigh Jones, reports that the country’s 250 largest law firms have shed more than 1,400 lawyers this year. An annual survey conducted by the Journal showed the biggest two-year decline in the survey’s 33-year history, especially a decline in associate ranks, which fell by nearly 1,000 lawyers.

Altman Weil consultant Ward Bower said that despite the dire figures, it appears the country is seeing “the bottom of the legal recession.”

Compared to last year, the decline in attorney totals has been smaller with NLJ 250 firms employing 126,299 lawyers in 2010, compared with 127,701 in 2009. That is, the drop of 1,402 attorneys is equal to a firm about the size of Kirkland & Ellis. In 2009, the number of lost attorneys was 5,259—amounting to about four Kirklands.

The NLJ 250 ranking was based on the average number of full-time equivalent attorneys for the calendar year 2010, with a projection to Dec. 31. Firms included had their principal or largest office in the United States, but totals include attorneys in foreign offices.

Baker & McKenzie was at the top of the list of 250 firms with 3,774 attorneys, 175 fewer than last year. The firm has held the top spot since the survey’s inception in 1978, except for 2007 and 2008, when DLA Piper took the No. 1 position. Broad and Cassel, with 160 lawyers, is the smallest firm on the NLJ 250 this year.

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Kelly C. Mooney, J.D., L.L.M. (taxation)
Kelly C. Mooney, J.D., L.L.M.

Though famous for saying “it’s not easy being green,” Kermit the Frog may be singing a different tune in today’s economy where going “green” often comes with significant opportunities for tax incentives and savings. Both the federal government and many states, including Arizona, provide a range of tax credits and other financial incentives for builders to go green. Key among these incentives are the federal energy-efficient commercial buildings tax deduction and energy investment tax credit and the State of Arizona’s commercial and industrial solar tax credit and renewable energy tax incentive program. Unfortunately, many builders and real estate professionals have been slow to reap the benefits of these green project incentives, often leaving cash on the table.

Energy Efficient Commercial Buildings Deduction

Enacted as part of the Energy Policy Act of 2005, the federal energy-efficient commercial buildings deduction provides owners of commercial buildings with an immediate tax deduction for all or part of the cost of installing certain energy-efficient property. Internal Revenue Code (“IRC”) § 179D(a). The deductible amount is up to $1.80 per square foot for the installation of interior lighting, heating, cooling, ventilation, hot water, or building envelope systems that are installed as part of a plan to reduce the amount of power used by 50 percent or more, in comparison to a reference building defined in the Treasury Regulations. IRC § 179D(b) and (c).

The deduction is available for property that is “placed in service” before December 31, 2015 and covers “green” projects such as the installation of automatic lighting controls, efficient insulation, and the use of recycled water for cooling and restroom facilities. Id.; and IRC § 179D(b).

Energy Investment Tax Credit

The federal energy investment tax credit is aimed at encouraging taxpayers to produce and use energy sources other than oil or gas. Under IRC § 48, business are entitled to claim a 10-percent or 30-percent credit for installing property that generates energy for the business’s own use. A 30-percent credit is available for the installation of (i) equipment using solar energy to generate electricity or to cool or heat a building; (ii) fuel cells that generate electricity; and (iii) small wind energy property. IRC § 48(a)(2).

A 10-percent credit is available for the installation of solar property for lighting a building, certain combined heat and power systems, and equipment using groundwater for heating or cooling. Id.

In order to claim the credit, the taxpayer must either construct or reconstruct the property or be the first user of the property and the property must satisfy certain performance and quality standards set forth in the Treasury Regulations. IRC § 48(a).

Arizona Commercial/Industrial Solar Energy Tax Credit

Under Arizona Revised Statutes (“ARS”) § 41-1510.01, an income tax credit is available to businesses that install one or more solar energy devices in an Arizona facility. The tax credit is equal to 10 percent of the cost of the solar energy device, with up to $25,000 of tax credit available for a single building. Id.; see also www.azcommerce.com/BusAss/Incentives. The credit is available through the Arizona Department of Commerce, which is authorized to certify up to $1 million in solar energy credits per year. Id. Solar energy devices qualifying for the credit generally include devices that are designed to provide heating, cooling, or daylighting or to produce electrical power from solar energy. Id.

Arizona Renewable Energy Tax Incentive Program

Effective as of January 1, 2010, the State of Arizona is offering a tax incentive program aimed at encouraging renewable energy product manufacturers to relocate to Arizona or expand their Arizona operations. The program provides income and property tax incentives to businesses in the solar, wind, geothermal, or renewable energy industries who make certain qualifying investments in manufacturing or headquarter operations in Arizona. ARS § 41-1511; see also www.azcommerce.com/BusAss/Incentives.

Qualifying businesses can receive a refundable income tax credit and real and personal property tax reductions. The credit is available through the Arizona Department of Commerce, which is authorized to certify up to $70 million in income tax credits for the five year period beginning on January 1, 2010. Id.

In Sun

The green tax credits and incentives highlighted above represent only the “tip of the iceberg” of potential tax and financial benefits available to companies committed to green construction. However, because the ability to claim tax incentives and credits for green projects often involves some preplanning, certification, or record keeping requirements, consulting with a professional tax advisor prior to undertaking a green construction project is advisable. In sum, while being green may not be easy, it can create substantial tax savings opportunities.

It is a privilege to serve those who interact with the superior court in Maricopa County, and it is an honor to work with great staff who continually strive for outstanding customer service. Their efforts benefit our customers, each other, and some who will never pass through the courts and who they will never have the chance to meet.

Happy Holidays and a Happy New Year to all!
Avoiding LOL with “e.g.” and “i.e.”

In class last week, a student asked me a question that was bothering some of the students. He asked me what “e.g.” and “i.e.” stand for when these abbreviations appear in legal writing. It is safe to say that many newer legal writers are more used to abbreviations used in texts and emails than they are with abbreviations of certain Latin terms. The following is a primer to make sure all legal writers use these Latin terms correctly:

1. e.g. This abbreviation means “for the sake of example” and stands for the Latin term “exempli gratia.” Many writing style manuals suggest not using this abbreviation in legal writing text. Instead, replace the abbreviation with the words “for example.”

2. i.e. This abbreviation means “that is” and is used to give further information. It stands for the Latin term “id est.” Be careful not to confuse this abbreviation with “e.g.” which is a common mistake. The abbreviation “i.e.” never means “for example.” When using “i.e.” present it in normal typeface and place a comma after it.

The company filed its prospectus, i.e., a legal document that provides information about the company’s securities. The prospectus is a key document that investors use to evaluate the company and make informed investment decisions.

Although there are other abbreviations this column could discuss, perfecting the use of these two abbreviations will keep legal readers from LOL.

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Contingency Fee Splitting available in compliance with Ethical Rule 1.5(e)
It has been my distinct privilege and pleasure to serve as the 2010 president of the MCBA Paralegal Division. I just wanted to briefly recap the division’s very successful year and recognize the hard work of its many volunteers.

The division hosted its annual Paralegal Career Day in March and awarded six $1,000 scholarships to paralegal students. Paul Martin chaired the scholarship program and Marge Haberman and Linda Hasseler chaired Career Day. Nancy Youngerman and Sarah Fluke worked very hard on preparing this year’s CLA Review course due to the changes in format to the exam. Erica Warne chaired the Resources Committee and planned three very informative CLE programs. The 11th Annual Arizona Paralegal Conference had an extremely successful year and was chaired by Sara Neily and Felice Wortman. Felice was also honored as this year’s 2010 Member of the Year. The division’s Annual Dental Drive to support John C. Lincoln’s Children’s Dental Clinic collected more items than any other year thanks to its co-chairs Lynse Cooper and Julie Eslick. Lynse and Julie are currently hard at work collecting items for our Toy Drive to benefit Arizona Children’s Association Gifts of Hope Holiday Program. The division’s membership grew this year, thanks in part to Jennifer Caccavale, chair of the Membership Committee. Our Mentor Program once again offered advice to students and new paralegals. Maureen Zachow once again chaired this committee. Davin James helped us all keep informed by maintaining our web page. 2010 was made successful by the countless efforts of the entire board of directors and officers of the division. My sincere thanks to Maureen Zachow, immediate past president; Kelly Gray, president-elect; Erica Warne, treasurer; Cami Barnella, secretary; Directors Mandy Bennett, Jennifer Caccavale, Linda Hasseler, Julie Eslick, Paul Martin and Felice Wortman; and each of the committee chairs mentioned above. Special thanks also to Laurie Williams at the MCBA for her help and dedication throughout this year.

There are many other people who put in countless hours to contribute to the success of our division. In fact, too many to mention in this article, but I hope they realize that their efforts have not gone unnoticed. On a personal note, I would like to thank several people for their support. First of all, thank you to Immediate Past-President Maureen Zachow for being the person I could always count on, no matter what. To my firm, Snell & Wilmer L.L.P., which has always recognized the value paralegals bring to the legal profession. And last, and most important, my husband Rick and son Derik who supported me during this year despite the many hours away from home.

Thank you all for this opportunity to serve the Paralegal Division this year.

A Recap of This Year’s Successes and Many Thanks

Stacy Palmer, outgoing Paralegal Division president, left, joins Sara Neily and Felice Wortman, committee chairs for this year's Arizona Paralegal Conference, at the conference held Oct. 1.

Paul Stoller, an attorney with Gallagher & Kennedy, speaks to the audience about social media at the 2010 Arizona Paralegal Conference.

END-OF-YEAR CELEBRATION

2010 MCBA PARALEGAL DIVISION TOY DRIVE

SUPPORTING ARIZONA’S CHILDREN ASSOCIATION

Collections of children’s toys (new) from birth to 17 years old, and clothing for infants and toddlers will be from November 15 through December 15.

FOR MORE INFORMATION, CONTACT

JULIE ESLICK
jeslick@swlaw.com

LYNSE COOPER
lcooper@swlaw.com

Calendar of Events

DECEMBER

9 Thursday Board of Directors Meeting
15 Wednesday End of Year Celebration End of Toy Drive Time and Location to be determined

All Board of Director meetings are held at 12pm unless otherwise specified.
All Conference Committee meetings are held at 5:30pm unless otherwise specified
All Board of Director, Conference Committee and Quarterly Division Meetings are held at the MCBA Offices unless otherwise specified.
For more information on Paralegal Events please visit our web site at: www.maricopabar.org click on the "Paralegal Link".
Pro Bono Golf Classic
continued from page 1

place went to Robert Crompton; Mark McAllister; Mark Manley, EZ Messenger; and George McDonald.

The second-to-last place winners were Hon. Glenn Davis; Mike Williams; David Benton, general counsel to Maricopa County; and Comm. Bernie Owens. In last place was Rod Galarza, chair of this year’s Pro Bono Golf Classic committee and an attorney with Kasdan Simonds Riley & Vaughan LLP; Matt Dorgan, project manager at Independent (RDC); Chris Rike, Kielsky, Rike & Elgart PLLC; and Jeff Abbott. Other winners include Jim Ryan, Frazer, Ryan, Goldberg & Arnold LLP, who won Closest to the Pin, sponsored by Grant Thornton; and Martin Baaz Lindquist, who had the Longest Putt, sponsored by EZ Messenger. See the Case Huff Classic sponsors on p. 13.

The barbecue lunch drew in hungry golfers after they completed their rounds.

Winner of the infamous, yet highly valued garden gnome this year is the last-place team of Jeff Abbott; Rod Galarza, Kasdan Simonds Riley & Vaughan, LLP; Chris Rike, Kielsky, Rike & Elgart, PLLC; and Matt Dorgan.

It’s the 18th hole and the Legacy’s delicious lunch and all manner of prizes are just a short putt away.

*Please watch your MCBA E-News for updated information about meetings and events.
New Year Bringing Quality CLE at a Reasonable Cost
continued from page 1

Phoenix-AZ/Maricopa-County-Bar-Association/88618034464 (Facebook) and http://twitter.com/maricopabar (Twitter). If anyone has any challenges starting up a Facebook or Twitter account or logging onto the MCBA's social media pages, please contact the CLE Department at (602) 257-4200 (ext. 118) and ask for Lisa.

Williams said the MCBA also plans on continuing and expanding its Fundamental Series, which it started last year, and will offer all-day advanced programming to several sections and divisions throughout the year.

There will also be plenty of CLE offering ethics credits in June—the last month for attorneys to earn CLE credits—in addition to the one-hour CLEs covering important legal topics.

Lisa Bivens Joins the Team
The MCBA is also pleased to introduce a new employee, Lisa Bivens, who was hired last month as the CLE Coordinator working alongside Williams. Bivens, a Phoenix native, graduated from Northern Arizona University where she studied sociology and English and served as the editor-in-chief of NAU’s independent student newspaper, The Lumberjack.

“We're happy to welcome Lisa to the CLE department here. I think that between [Lisa and the Communications Department] we'll increase our visibility on Facebook and Twitter,” said Williams.

Planning Ahead
Williams said the CLE Department is planning its programs far in advance to accommodate members’ busy schedules. “The CLE department is working hard to make the CLE in 2011 a great year.”

Lisa Bivens has joined the MCBA as Coordinator of CLE programs, assisting members in registering for CLEs and coordinating the schedule and programs. Bivens graduated from Northern Arizona University, where she studied sociology and English and served as the editor-in-chief of NAU’s independent student newspaper, The Lumberjack. She is a Phoenix native with a deep appreciation for Camelback Mountain and cowboy boots. Her latest claim to fame is that, regardless of her liberal arts background, she has been able to find respectable work in the real world.

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**INSIDE THE COURTS**

**Investiture of Judge LeClaire**

Arizona Supreme Court Justice W. Scott Bales (right) delivers the oath of office to Superior Court Judge Thomas LeClaire during an investiture ceremony in the Board of Supervisors Auditorium in Phoenix.

**Q & A with Judge Douglas Gerlach**

Q: You've practiced law for more than 25 years. During your career, you have represented clients from many different industries and spent some time working in the Public Defender's office. Explain how the variety of assignments you've handled will prepare you for your career as a judge?

A: The more experience I have gained, the more I have realized what I do not know. Because of that, my experience motivates me to continue learning and trying to get better at what I do. Beyond that, my experience has also made me aware of questions that need to be asked: in any given case, there are many, many questions I ask today that I would have never thought to ask 10 or 20 years ago. And, it seems to me, being a good trial court judge is not only a function of the knowledge that one brings to the bench, but perhaps even more important, learning what is not known, i.e., asking the right questions and dealing with the answers.

Q: You are an experienced television and radio sportscaster and once were a finalist for Arizona Sports Broadcaster of the Year. What are some of your memorable moments as a broadcaster?

A: Five NCAA (College World Series) championship games, especially the 1977 game when, by luck of the draw, I was handling the play-by-play when Arizona State's Chris Bando hit what turned out to be the game-winning home run (plus the additional thrill of arriving home with the team at 2 a.m. later that night to find the terminal at Sky Harbor jammed with cheering fans, and the parking lots outside full of cars with horns blaring); broadcasting a professional baseball game that began at 7:30 p.m. and ended 22 innings and almost seven hours later; many "post-game shows" with ASU coaches Frank Kush and especially Jim Brock; doing a radio recreation of a minor league baseball game; and once, while on the air, hearing the stadium public address announcer describe a car in the parking lot with its lights on, and it was mine.

Q: What's your favorite quote?

A: "The humble person makes room for progress. The proud person believes he is already there." — Fulton J. Sheen

Q: Do you have a favorite movie or television show in the court or legal genre? Please explain.

A: The original "Law & Order" series because the stories are often based on actual events and because, at times, it also reminds me of events experienced by either one of my colleagues or me during the time that I worked for the Maricopa County Public Defender's Office. I also have committed to memory Vinny's opening statement in "My Cousin Vinny," although I have never had an occasion to use it as my own.

Q: Do you own an iPod and what kind of music is on your playlists?

A: At the moment, a lot of Susan Graham and Renee Fleming (I know little about opera, but their voices are captivating), as well as a mix that includes Mary Chapin Carpenter, Frank Sinatra, Stevie Nicks, Willie Nelson, and CSN&Y, plus a healthy dose of the "Three B's," Bach, Beethoven, and the Beach Boys.

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FRIDAY, JANUARY 7
Where There Isn’t a Will, There’s a Way

A quiet revolution is happening in estate planning. Non-probate will substitutes are occupying the field, so that probate often is not necessary, and even wills are not necessary. In this seminar, you will examine the competing philosophies of probate vs. non-probate transfers, explore the various alternatives to wills, and discuss the importance of coordinating probate and non-probate “governing instruments” for your clients.

PRESENTER:
Mark Moniz, Attorney at Law

SESSION II
FRIDAY, JANUARY 14
Basic Estate Planning

The presentation will include an overview of estate-planning vehicles, discussion of applicable Arizona law, discussion of information needed from client and client interaction, community property, insurance and tax considerations. A form engagement letter, client questionnaires, trust funding letter, and durable power of attorney will be included.

PRESENTER:
Roberta E. Berger, St. Counsel, Wells Fargo Law Department

SESSION III
FRIDAY, JANUARY 21
Basic Conservatorship/Guardianship for Adults

This program will cover guardianship and conservatorship of adults from intake through the first year. A great primer for beginners or refreshers for more experienced practitioners in this area.

PRESENTERS:
Brian Thost, Thost, Thost & Thost, PC; serves as court-appointed attorney and guardian ad litem
Kevin Parker, Snell & Wilmer; assists the Volunteer Lawyers Program with handling and placement of a number of adult guardianships and conservatorships

PRESENTER:
Judie M. Rettelle, Attorney at Law

SESSION IV
FRIDAY, JANUARY 28
Intro to Probate

In this program you’ll learn about which assets will pass via probate proceedings, via non-probate or via small property affidavit. Formal vs. informal probate proceedings will be discussed, as well as common problems in estate administration, including getting your attorney fees paid, dealing with creditors of the estate, and dealing with disputes among beneficiaries. This program will also review common mistakes in guardianships and conservatorships.

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Commercial Purchase Contract and Option Contract Disputes

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Andrew Stone, Snell & Wilmer

SESSION II
FRIDAY, FEBRUARY 11
Bankruptcy Impacts on Real Estate Disputes

PRESENTERS:
Steven Jerome, Snell & Wilmer
Benjamin Reeves, Snell & Wilmer

SESSION III
FRIDAY, FEBRUARY 18
Title and Escrow Disputes

PRESENTERS:
Matthew Fischer, Snell & Wilmer
Adam Lang, Snell & Wilmer

SESSION IV
FRIDAY, FEBRUARY 24
Foreclosure Issues in Commercial Lease Relationships

PRESENTERS:
Danielle Vida, Snell & Wilmer
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VLP ATTORNEY OF THE MONTH
Cohen Committed 25 Years to Serving as Volunteer Lawyer

By Peggy Cornelius, CVA

Attorney Larry Cohen wasted no time making pro bono work a significant part of his legal career. Within two months of being admitted to practice law in Arizona in November 1985, he had become a member of the Maricopa County Volunteer Lawyers Program (VLP). The length of his commitment is remarkable by itself, but there are many additional reasons why Cohen is currently being recognized as VLP’s Attorney of the Month.

Cohen describes himself as a litigation and trial attorney, but he is also an avid educator. He is an adjunct faculty member at the Sandra Day O’Connor College of Law and the Phoenix College of Law and formerly with Argosy University. He frequently conducts continuing education programs for lawyers, health-care providers, and other professionals and para-professionals in Arizona and across the country. One of the outstanding ways he assists the VLP is in donating his time and expertise to conduct free ethics and profession-based CLE programs to volunteer attorneys throughout the state of Arizona.

In representing VLP clients, Cohen exemplifies the ideal volunteer in two ways. First, he applies his skill as a litigator to cases outside the realm of his private-practice areas. Although known for his expertise in torts and wrongful-death matters, when accepting pro bono cases, Cohen willingly provides representation in complex family law matters that often involve custody disputes and allegations of domestic violence. Second, Cohen initiates pro bono work, contacting VLP to request case referrals and accepting a new case as soon as one is completed.

A native of Boston, Cohen earned the first of many degrees and honors as an undergraduate in political science at the University of Massachusetts, Amherst. Thereafter, he completed master’s and doctoral studies in political science at Syracuse University in New York.

“A few months after being admitted to practice law, I contacted VLP and became a volunteer,” Cohen says. “This was the beginning of my commitment to VLP. After three years, I became a permanent volunteer.”

While there I realized I was less interested in developing policy programs and evaluating social policy than I was in helping individual people. Becoming an attorney seemed to me the best way one could help individuals. So I returned to Chicago and entered law school at Northwestern University,” he said.

Because learning is as much a part of his life as practicing his profession, Cohen is currently pursuing post-doctoral certification in clinical neuropsychology, with a specialty in pediatrics. He notes that “Representing VLP clients in family law matters provides me learning opportunities, too.”

His own family is an extremely important part of the foundation supporting Cohen’s full and busy life. In speaking about his professional commitments, Cohen says, “I take my responsibility to clients and to litigants whose cases I hear as a settlement judge and judge pro tem very seriously, and there’s enjoyment in being of service. My wonderful family supports and inspires me. My wife is a loving and caring person who works in the court system. Her 24-year-old son is accomplishing great things at ASU. My 17-year-old son excels as an honor student and musician, but more importantly, I think he is the best person I’ve ever known.”

For more information about pro bono opportunities through the VLP, contact director Patricia Gerrich at 602-254-3434, Ext. 2630.

A Small Donation Makes A Big Difference

Arbitration Fee Donations Help

Partnering with the Maricopa County Superior Court, the Maricopa County Bar Foundation (MCBF) is once again encouraging attorneys assigned to arbitration to donate the $75 fee to the foundation’s fundraising efforts. Tens of thousands of dollars in funding each year goes toward providing services to pro bono attorneys and firms for agreeing to accept 33 referrals from VLP to help low-income families. VLP supports pro bono service of attorneys by screening for financial need and legal merit and provides primary malpractice coverage, donated services from support professionals, training, materials, mentors, and consultants. Each attorney receives a certificate from MCBF for a CLE discount. For more information about cases and other ways to help, please contact Pat Gerrich at VLP at 602-254-4714 or pgerrich@claz.org.

The Volunteer Lawyers Program Thanks Attorneys

The Volunteer Lawyers Program thanks the following attorneys and firms for agreeing to accept 33 referrals from VLP to help low-income families. VLP supports pro bono service of attorneys by screening for financial need and legal merit and provides primary malpractice coverage, donated services from support professionals, training, materials, mentors, and consultants. Each attorney receives a certificate from MCBF for a CLE discount. For more information about cases and other ways to help, please contact Pat Gerrich at VLP at 602-254-4714 or pgerrich@claz.org.

This Month
In Legal History

D E C E M B E R 9, 2000

Supreme Court Halts Vote Recount

In a 5-4 decision, the U.S. Supreme Court orders the Florida Supreme Court to stop a manual vote recount requested by presidential candidate Al Gore. The court order comes as the result of an emergency appeal by attorneys for presidential candidate George W. Bush, who led the Florida election by 327 votes as of the last official count.

Information from “Today in Legal History,” a partnership of Justice Learning and FindLaw.com, at http://www.justicelearning.com/todayinlaw
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Elections
The national law firm of Quarles & Brady LLP announced that Allison Pulaski Carter, an attorney in the firm’s Phoenix office, has been elected to the executive committee of the board of trustees for Childplay, Inc. Carter practices in the firm’s commercial litigation group, representing local and national corporations in complex civil litigation cases involving contract and tort claims, product liability claims, insurance coverage and bad faith litigation and appellate defense.

The law firm of Tiffany & Bosco P.A. is pleased to announce that attorney J. Daryl Doney has been appointed to the board of directors of Rosie’s House, a non-profit organization that provides music instruction and mentorship to hundreds of Phoenix-area children each year. Doney practices in the area of commercial bankruptcy and creditors rights.

The law firm of Tiffany & Bosco P.A. is pleased to announce that attorney Kevin P. Nelson has been named as chair of the board of directors of the Big Brothers Big Sisters of Central Arizona Association. Nelson will help steer a clothing collection business, the proceeds of which are contributed to the Big Brothers Big Sisters of Central Arizona Foundation, and grow and coordinate a board of directors to assist in overseeing and advising the operation of the business.

New Hires/Promotions
Jennings, Strouss & Salmon, PLLC, a leading Phoenix-based law firm focused on a variety of practices for business and individual clients, is pleased to announce today that Jacob A. Hecker has been hired as an associate in the firm’s Phoenix office. Hecker, a Phoenix resident, will concentrate his practice on general commercial litigation with an emphasis in franchise, business, real estate, contract, securities and finance.

Lewis and Roca is pleased to announce that three associates have joined the firm: Kathleen Kahn, Brent Rasmussen and Cindy Villanueva. Kahn is an associate in Lewis and Roca’s litigation practice group. Rasmussen is an associate in Lewis and Roca’s commercial litigation practice group. Villanueva is an associate in Lewis and Roca’s commercial litigation practice group.

The Phoenix law firm of Osborn Maleden, P.A. has announced three new partners. The new partners are Mark Hummel, Danielle Janitch and Jason Romans. Hummel’s practice focuses on appellate law, attorney ethics and discipline and litigation. Janitch practices in technology and intellectual property, software and corporate securities law and general counsel services. Romans specializes in bankruptcy/corporate restructuring and litigation.

Andante Law Group of Daniel E. Garrison, PLLC is pleased to announce that Matthew B. Meaker has joined the firm as a senior associate, where his practice is concentrated in all construction-related matters and litigation. Meaker also routinely practices in the areas of corporate restructuring, business bankruptcy, and bankruptcy-related litigation.

As Nussbaum & Gillis, P.C. continues to grow, we are pleased to announce, effective November 1, that shareholder Dean M. Dinnen is added to our firm name: Nussbaum Gillis & Dinnen, P.C.

Commercial litigator Ryan M. Schaber has joined the Chandler law firm Hoopes, Adams & Alexander, PLLC, as an associate attorney. Schaber earned his law degree and bachelor’s degree from the University of Notre Dame.

The national law firm of Quarles & Brady LLP announced that four of its Phoenix-based attorneys have been elected to partnership by the firm’s executive committee. The attorneys from the Phoenix office who were elected are Lisa E. Davis (health law), Hector J. Diaz (commercial litigation), Isaac M. Gabriel (commercial bankruptcy, restructuring creditors’ rights) and Mark D. Viladey (tax).
ATTORNEY WANTED

BOUTIQUE LAW FIRM in Phoenix, Arizona is looking for a talented mid-level (2-5 years) associate to join their litigation practice. The position works directly with the firm's shareholders and clients in business development and case strategy. Candidates should possess excellent research and drafting skills, strong written and oral communication skills, persuasive advocacy skills, and an entrepreneurial spirit. Salary is commensurate with experience. Please submit cover letter, resume, and references to twales@doylelaw.com.

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interest. Writing for the court, Judge John C. Gemmill noted that a statute makes the county attorney the legal advisor to the board of supervisors, and the board generally must accept his representation. But an exception applies when the county attorney refuses to act, cannot act, or is otherwise unavailable. A county attorney with a conflict of interest is unavailable, Gemmill concluded.

Gemmill then took up how to determine whether there was a disqualifying conflict. ENDORsing a procedure suggested by the Utah Supreme Court, he laid out a series of steps for the sides to follow:

First, they should try to resolve the matter themselves. If that fails, they should turn to the attorney general, under his authority and duty to supervise the county attorneys and give legal opinions on questions relating to them. As a last resort, Gemmill wrote, “the parties should resort to the courts by seeking a declaratory judgment.”

Gemmill concluded that it is appropriate for the board to retain outside counsel for legal advice when a potential conflict with the county attorney arises. “[W]hether conflicts of interest exist and the issue of how to proceed to resolve the matter, including whether to bring such a declaratory action, require legal advice, which of course the county attorney would not be in a position to offer,” he noted.

But he concluded that the board had overstepped its authority in creating the new legal departments. He noted the county attorney’s statutory authority to both “defend actions brought against the county” and to “oppose claims against the county which the county attorney deems unjust or illegal.” At the same time, the board has the authority to “[d]irect and control the prosecution and defense of all actions to which the county is a party; and compromise them.”

These two statutory grants of authority raise the potential for conflict. Relying on an old Arizona Supreme Court opinion, Gemmill decided that when there is disharmony between the two, the public interest is best served by allowing the board—the party with the ultimate say—to choose who should represent the county.

“Since there is no specific prohibition against it in the statutes,” Gemmill wrote, quoting the supreme court, “we think [the applicable statute] gives implied authority to the board of supervisors in its discretion to employ counsel in the handling of all matters to which the county is a party.” But Gemmill held that the discretion is limited and does not allow the board “to divest the county attorney on a wholesale basis of his duty and authority to represent the county in civil litigation, as the Board has done here.”

“[W]e conclude,” he continued, “that a county board of supervisors would exceed its authority in effectively divesting the county attorney of his power to represent the county and its agencies without the requisite deter-

Nitigation on a case-by-case basis of unavailability of the county attorney or a lack of harmony between the board and the county attorney.”

Joining Gemmill were Judges Jon W. Thompson and Diane M. Johnsen.

Litigators Face Nightmare with Appellate Timing

If you asked litigators what they fear most, they might say “appeals.” One of their big worries is getting a case properly transferred from the trial court to the court of appeals. One problem they face centers on certain motions—including motions to alter or amend the judgment and motions for new trial—that extend the deadline for filing a notice of appeal.

The question is: What happens if one of these time-extending motions is still pending when the notice of appeal is filed? Is the notice of appeal immediately effective, placing jurisdiction in the court of appeals and wresting the pending motion away from the superior court? Is the notice ineffective—a nullity? Or does it go into limbo—as occurs under the federal rule—springing to life after the trial court decides the pending motion? Hardly the stuff of a Stephen King novel or a Wes Craven movie, but don’t tell that to a litigator. It’s scary and has recently gotten more so, with the court of appeals tossing out a long-established rule after it was too late for some attorneys to comply with its new rule.

Division One first stepped into the morass in 1994 in Baumann v. Tomon, 180 Ariz. 370, 884 P.2d 256 (App. 1994), where the defendants argued that the plaintiff had abandoned his motion for a new trial by filing his notice of appeal before the superior court could rule. Division One disagreed, holding that the plaintiff did not implicitly abandon the motion by filing an appeal. To the contrary, it held the notice of appeal was itself a nullity.

The court sank a little deeper in 2000. It limited the Baumann rule in Performance Funding LLC v. Barcon Corp., 197 Ariz. 286, 3 P.3d 1206 (App. 2000). There, one party filed a notice of appeal while its opponent’s time-extending motion was still pending. The court held that Barcon only applies when the same party files both documents. By contrast, a notice of appeal filed while the opponent’s time-extending motion remains pending is not null but merely premature, and thus, under Barassi v. Maitson, 130 Ariz. 418, 636 P.2d 1200 (1981), there is appellate jurisdiction if the opponent is not prejudiced.

Performance Funding remained unchallenged for nearly a decade. But with an opinion issued last year, the court fell into the mire up to its waist.

In Engel v. Landman, 221 Ariz. 504, 212 P.3d 842 (App. 2009), the husband moved for a new trial from an order mod-1ifying a dissolution decree. Without waiting for a ruling, he filed a notice of appeal; the wife then filed a notice of cross-appeal. Examining its jurisdiction over the wife’s cross-appeal, the court of appeals rejected Performance Funding. It relied on Smith v. Arizona Citizens Clean Elections Commission, 212 Ariz. 407, 132 P.3d 1187 (2006), where the supreme court had reiterated Barassi’s statement that “appeals courts should dismiss a case for lack of jurisdiction while [a time-extending] motion was still pending in the trial court.” The Engel court read this language as tacitly criticizing how Performance Funding had distinguished and limited Barassi. It dismissed the cross-appeal.

The court has recently gotten even deeper into it. The issue arose again in circumstances mirroring Engel. In Craig v. Craig, No. 1 CA-CV 08-0776 (Ariz. App. Oct. 28, 2010), the husband filed a time-extending motion after the family court entered a decree. Both parties then filed notices of appeal before the family court ruled on the motion.

The appellate court, with Judges Patrick Irvine and Michael J. Brown in the majority, dismissed the appeal. Irvine’s opinion relied upon and applied Engel while rejecting Performance Funding.

Judge Donn Kessler’s dissenting opinion is essentially a cry to the supreme court to pull the court of appeals out of its predica-

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