Men vs. Women: Courts Handle Sexual Harassment Stereotyping

**Men Can be Sexually Harassed**

According to the stereotype, men are pigs. And if you believe the stand-up comedians, it would be impossible for a woman to sexually harass a man: if she propositioned him, he would simply accept. The Ninth Circuit Court of Appeals recently rejected this stereotype in a workplace-harassment case: *Equal Employment Opportunity Commission v. Prospect Airport Servs. Inc.*

"Men can be sexually harassed, too!"

Lamas's wife had recently died, but his grief began hitting on him. The married woman was soon to be compounded at work as a fellow passenger service assistant. Sylvia Munoz, promoted to lead passenger service assistant.

Rudolpho Lamas worked for Prospect Airport Services as a passenger service assistant at the Las Vegas airport. He was promoted to lead passenger service assistant.

Lamas's wife had recently died, but his grief began hitting on him. The married woman was soon to be compounded at work as a fellow passenger service assistant. Sylvia Munoz, promoted to lead passenger service assistant.

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"Men can be sexually harassed, too!"

After the first note, Lamas told Munoz that he was not interested. Undeterred, she continued to give him notes. One night, she gave him a provocative photo of herself. Irritated, Lamas gave it back and repeated that he was not interested in her.

It didn't stop. Munoz gave him another note, telling him that she dreamed of taking a bath with him. Her note said: "It seems to me I cannot get you off my mind no matter how hard I try! I hope you will consider? I'll take care of you, you take care of me! Please let me know soon! I do want you sexually and romantically!"

Lamas had never expressed any interest in her. Munoz even recruited coworkers to help her solicit Lamas's favor. When he continued to refuse, they began speculating that he was gay. Lamas complained to several managers.

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October is Domestic Violence Awareness Month

On a sweltering summer day in 2008 at approximately noon, defendant returned to the home he shared with his girlfriend of seven years, the victim. Both defendant and the victim had been drinking alcohol that morning. The victim drank because she believed that it would help give her “liquid courage” to ask her longtime partner why something was wrong – was he using drugs? Was he cheating on her? The victim was sitting on the edge of the couple’s bed in their bedroom and finally confronted him with his strange behavior. Defendant grabbed her throat with his hand. She twisted away from him. Moments after she twisted away, defendant struck the victim in the face with his fists. She blacked out and fell to their bed, bleeding severely. During her fall, her head struck the nightstand, and then the hard floor. Defendant left the victim there, and headed out for more drinking. For five hours.

He returned in the evening, and called police. When police arrived they found the victim lying on a blood-soaked mattress with her face and head covered in blood.

Paramedics worked hard to keep her alive, and believed she would die en route to the hospital. Defendant told officers that he found her “like that” after he returned home from the grocery store. He was rude to investigating officers and never once asked if the victim was going to survive after bleeding out for more than five hours.

The victim was rushed to a local hospital, and later to Good Sam. She sustained severe injuries, including facial fractures; skull fractures; two cuts to her forehead, including one near her eye; and badly bruised and swollen eyes. She endured two surgeries wherein doctors used metal screws to mend broken bones and reconstruct her face. Another surgery borrowed fatty tissue from her mid-section to fill in her face, which was left misshapen from the fractures. You can still see the scar on her head where hair won’t grow back. She was then sent to rehab to deal with balance issues, because the fall had rung her bell pretty hard.

Doctors performed an amazing job on her and she looks pretty good. Her memory isn’t back up to snuff, and probably won’t ever be. But can you imagine having your memories beaten out of you? Despite her battered sense of self, there is a glimmer at the end of this long and rough road. The victim has a job, has stopped drinking, and has scraped together her sense of self worth for the first time in her adult life. But she needed plenty of help to get from where she was to where she is today.

Oct 2 • OCTOBER 2010 MARICOPA LAWYER

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Give Us Your Opinion
The Maricopa Lawyer welcomes letters to the editors or opinion pieces for publication. Letters and opinion pieces should be typed and preferably submitted electronically. Opinion pieces are limited to 1,500 words and letters to 700 words, and the editors reserve the right to reject submissions or condense for clarity, style and space considerations. Letters must be signed to verify authorship, but names will be withheld upon request. Authors of opinion pieces will have their names published. Letters and opinion pieces should be mailed to: Isolde Davidson, Editor-in-Chief, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, AZ 85004-1532. Phone: (602) 257-4200. Fax: (602) 257-0405. Email: idavidson@maricopabar.org.

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MCBA PRESIDENT
Jennifer E. Green
MCBA Seeking Members to Serve on Guadalupe Judicial Selection Advisory Board

The mayor and council of the Town of Guadalupe are seeking an active member of the Maricopa County Bar Association to serve on its volunteer Judicial Selection Advisory Board for the purpose of appointing a magistrate. Three nominations must be approved by the MCBA and submitted to the mayor and council. Seven members will be appointed by the mayor and council to the advisory board, including one of those nominated by the Maricopa County Bar. Candidates do not have to reside in Guadalupe to be eligible to serve.

The board consists of the presiding judge of the Maricopa County Superior Court, an active member of the State Bar of Arizona, an active member of the Maricopa County Bar Association and four Guadalupe electors. The mayor of Guadalupe shall appoint the members of the board for staggered terms of three years each, and designate the length of time for each such member to provide for staggered terms. No member of the board shall serve for more than two complete consecutive terms. However, a member may be reappointed after the lapse of three years from the end of the previous term.

MCBA members who are interested in serving as an advisory board member are asked to submit a letter of interest and resume by 5 p.m., Oct. 8 to Isolde Davidson at idavidson@maricopabar.org.

WIN A FREE DINNER AT VINCENT’S
Be one of four to win a free dinner for two.

If you’re a renewing member and we receive your dues payment by Oct. 15, we’ll put your name into the hat for a prize drawing. Four winners will each receive a free* dinner for two at the renowned Vincent’s on Camelback. It’s just one more way to connect—with great food!

*Excluding drinks, tax and tip.

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+ Divorce/Family Matters
+ Complex Business Litigation
+ Anticompetitive Practices
+ Intellectual Property

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As always, October brings a number of opportunities for lawyers to become involved in the bar association as well as the general community. On October 30, in honor of Domestic Violence Awareness Month, the Domestic Violence Committee of the MCBA YLD has organized its annual Necessities Drive. The drive will gather much needed daily goods, such as shampoo, soap, diapers, deodorant, toothpaste/toothbrushes, and feminine products, and distribute them to women and children in Valley area domestic violence shelters. MCBA YLD is proud to work with a number of shelters across the community to raise awareness and collect these critical items for victims and survivors of domestic violence.

The Domestic Violence Committee also provides a “Survivors Guide,” which contains basic legal information needed by survivors of domestic violence. With this project, the Domestic Violence Committee’s goal is to help victims of domestic violence make a new start.

In order to make the Necessities Drive another success this year, we ask for your help — and donations! If you or your office would like to donate any of the above listed items, please do so by bringing them to Laurie Williams at the MCBA office no later than Monday, Oct. 11. Cash donations, in any amount, are always accepted as well so that we can purchase items particularly needed by the shelters. Or please consider helping with the assembly of items on Saturday, October 30 at 9 a.m. The Young Lawyers Division will meet to assemble packages for each shelter, to be delivered later by Two Men and a Truck. Special thanks to Leslie Satterlee and the Domestic Violence Committee for their work, and to Two Men and a Truck for its services again this year. Please contact me at richard_siever@rmetro.com for more information about how you can participate.

Helping Law Students with Job Hunting

Last month the Young Lawyers Division also reached out to students at the ASU Sandra Day O’Connor College of Law and Phoenix School of Law to prepare students for interviews, provide feedback on resumes, and offer guidance for the interviewing process and career searching. The YLD thanks Alison Carter and Travis Pacheco of the YLD Mock Interview Committee for successfully coordinating approximately 75 interviews last month! Additionally, the YLD extends its special gratitude to each of the attorney volunteers who donated their time to the mock interview process, met with students, and lent their experience to ASU and Phoenix Law to enhance interview skills and guide a new crop of lawyers through the process.

YLD to Publish AZ Statute of Limitations Guide

Finally, be on the lookout for more information about the Arizona Statute of Limitations Guide, a revised edition to be published by the MCBA YLD later this year. The guide will offer a comprehensive outline of the various timing requirements applicable under different claims and laws and intended as an aid to attorneys in all phases of the practice of law. We hope this publication will be of help to the bar in reducing the incidence of malpractice claims in this area. Please contact me if you would like more information about any of these opportunities or would like to become involved in the MCBA YLD. ■

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MCBA Introduces Two New Corporate Partners, Three New Services

MCBA is pleased to announce that two companies, BBVA Compass and Affiniscape GoTo Partner Program, offering three different types of services have become partners with the association.

BBVA Compass, an authorized insurance broker, is now making affordable individual and family health insurance available to members through Blue Cross Blue Shield. This is a name you know and trust and it speaks for itself. If you’re scouting for health insurance for yourself or your firm, call Judy Dempsey at (602) 977-3669. Be sure to identify yourself as an MCBA member.

BBVA Compass Bank is now “MCBA’s Financial Institution of Choice.” Compass has a “Professional Mortgage Program” with features such as financing with low down payment—up to $1 million; private mortgage insurance not required; a variety of home types (condos, lofts) eligible; and student loans deferred for 12 months not counted in qualifying ratios. Refinances with high loan-to-values are also available.

Not familiar with BBVA Compass? It’s the 15th largest U.S. commercial bank based on deposit market share and ranks as the fifth largest bank in Arizona. Through three major business units – Corporate Banking, Retail Banking and Wealth Management – Compass offers customers unique products and services with a focus on providing customers with financial solutions to fit their lives. For immediate financial services, call (480)783-8010 and be sure to mention that you’re a member of the Maricopa County Bar Association.

MCBA’s second new partner is Affiniscape GoTo Partner Program. With a motto of “Online webinars and meetings made even easier”—and we might add, a whole lot cheaper. This product is perfect for any board or committee meetings, online training events or educational webinars.

The program features: One organizer; unlimited GoToWebinar® sessions with a maximum of 1,000 participants per session; unlimited GoToMeeting® sessions with a maximum of 25 participants per session; ability to record and store GoToMeeting® or GoToWebinar® sessions to your local computer; ability to add more accounts for an additional 10% discount; initial support; and a one-year contract.

Because MCBA is an Affiniscape partner you and your firm can purchase a license for only $79/year or $79/month. (The usual corporate rate is $478/year or $49/month.) This is a huge savings for you. Only a limited number of licenses are available at this rate. Go to http://www.affiniscape.com/goto to get started. Already a corporate customer and want to switch? Go to AffinGoToSupport@affiniscape.com. Be sure to reference the MCBA when you make contact. ■

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Arizona Supreme Court Selects Presiding Disciplinary Judge

The Arizona Supreme Court has chosen Pinal County Superior Court Judge William J. O’Neil as the Presiding Disciplinary Judge. The position was created by the Arizona Supreme Court’s adoption of changes to the attorney discipline system in June.

A hiring committee chaired by Chief Justice Rebecca White Berch reviewed applications and interviewed candidates. Three names were submitted to the Supreme Court for final selection. The court chose Judge O’Neil after a final round of interviews.

“The court has every confidence that Judge O’Neil will do an excellent job as Arizona’s first presiding disciplinary judge,” stated White Berch. “Having just revised Arizona’s lawyer discipline system, the court sought a broad range of talents from its inaugural PDJ. Judge O’Neil has those talents. He is widely known in the legal community and is well respected as a fair and knowledgeable judge. He will be a fine spokesperson for the new system, which is designed to protect the public and hold lawyers accountable for their conduct.”

Born and raised in Pinal County, O’Neil has served as a judge of the Superior Court of Arizona in Pinal County since 1991. He is currently the presiding civil court judge, and has served as presiding judge for the Superior Court from 2001 through 2005.

He has received multiple awards for his judicial work, including the Arizona Supreme Court 2007 Improving Trust and Confidence in the Court Award. He was a recipient of The Arizona Foundation for Legal Services Mark Santana Law-Related Education Award for his exceptional contributions in furthering education and understanding of the role of the law. He has served on virtually every state-wide committee involving the court, including the Arizona Judicial Council, the primary policy-making body of Arizona’s Supreme Court.

Involved with his community, he has served on numerous community organizations, including the Heart Foundation, the American Cancer Society, United Way, Rotary, various historical societies, state and county town halls and has coached youth soccer and little league teams.

Before becoming a judge, O’Neil was in private practice. He was president of the Pinal County Bar Association in 1989 and a member of the State Bar of Arizona Disciplinary Commission from 1988 to 1989. O’Neil received his law degree from Stetson University College of Law in St. Petersburg, Florida and an undergraduate degree in business administration from the University of Arizona.

“I am thrilled to be chosen for this position. I sought this opportunity because of my passion for the profession, my involvement in community service and my experience with the administration of justice,” O’Neil stated. “I look forward to serving the residents of Arizona and members of the State Bar of Arizona.”

The approved rules make significant changes to the attorney discipline system in Arizona. The changes will maintain a fair and impartial system, while streamlining the attorney discipline process and decreasing the time and cost to process cases.

The new rules will go into effect on January 1, 2011 and include the following changes:

- Utilization of a paid full-time hearing officer, the presiding disciplinary judge, to preside over all formal cases;
- Establishment of an independent probable cause committee, appointed by the Supreme Court, with representation of attorneys and members of the public;
- A streamlined process for formal cases that encourages resolution of cases before the presiding disciplinary judge and provides the judge with the authority to impose all sanctions, including disbarment;
- Elimination of the Disciplinary Commission review and recommendation process; replacing it with a direct appeal to the Supreme Court;
- Appointment of counsel by the presiding disciplinary judge for investigation of conflict cases;
- Establishment of an advisory committee on attorney regulation to monitor the implementation of the new process and to periodically review the entire attorney admission and discipline system.

For more information about the Attorney Discipline System or about the administration of justice in Arizona, visit www.azcourts.gov

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BRINGING LIGHT TO BROKEN LIVES
Bar Foundation Spotlight: ECH Helps AZ’s Homeless

The Ecumenical Chaplaincy for the Homeless (ECH) assists individuals with replacing and/or acquiring the necessary documents for obtaining a state ID. Without identification, there is no hope for people on the street; they cannot work, obtain housing or utilize the services meant to help them. For legal immigrants who have lost their permanent resident card, work authorization card, or naturalization certificate this presents a special hardship. As birth certificates are necessary when obtaining Arizona identification, so too are immigration documents. Birth certificates range in price from $7 to $60. Replacement immigration documents range from $340 to $460. Many penniless legal immigrants have no idea where to turn for assistance in replacing their lost, stolen or expired documents.

ECH could only see three immigration work authorization card. At that time, he was able to help him replace his expired card. Fernando has since taken many immigrants that he meets under his wing, and brings them to ECH for assistance. He continues to ‘pay it forward’ so to speak. He now owns a taxi cab and regularly hires men from the very shelter where he used to lay his head at night.

Zakaria Lug

Zakaria Lug, a refugee from Sudan, received our help in February 2010 with replacing his permanent resident card. He was beaten and robbed while on the street. He was hospitalized and yet still called to check on his immigration mail. His social worker at the hospital made sure he made it to his biometrics appointment and he received his green card without delay. He is now employed and maintaining his sobriety.

Thomas Losch

Thomas Losch was born in Germany to an American father and a European mother. He arrived in the U.S. as a young child and, until battling some inner demons in his late thirties, never worried about where his immigration documents were or what documents he needed. His parents were deceased and he had no other family. Our quest began in August 2009 and ended with him receiving his naturalization certificate this July.

All three of these men patiently waited for many months, living in a homeless shelter, remaining in limbo until they received their immigration documentation and could get their Arizona state identification. The support of the MCBA has enabled the ECH to help more people like Fernando, Zakaria and Thomas move forward with their lives and be productive citizens in their adopted country. For additional information, including possibilities of giving support, please visit our website: www.azhomeless.org or find us on Facebook under The Ecumenical Chaplaincy for the Homeless. For more inspiring stories visit our blog at: http://newsfromthestreets.blogspot.com/

Thank you for supporting the ECH.

Legal Briefs

SCOTUSblog gets facelift

A newly formatted SCOTUSblog has hit the blogosphere! The redesigned blog incorporates the material from SCOTUSwiki into the blog, and the new format attempts to have the blog serve as an archival resource for merits cases and serious petitions for certiorari as well as delivering the Supreme Court’s “news of the moment.”

SCOTUSblog’s homepage now has seven sections. From the top of the homepage to the bottom they include: 1) Blog posts; 2) This week at the court; 3) An expanded Calendar; 4) Merits cases; 5) Petitions We’re Watching; 6) Statistics; and 7) Posts by Category. A new navigation bar allows users to jump to particular types of content, and the new sidebar contains upgraded subscription or following features, the ability to search the blog’s archival material, and a blogroll, masthead, and educational resources.

Explore the redesigned SCOTUSblog at http://www.scotusblog.com/

Process for selecting IRC members begins

The Commission on Appellate Court Appointments is taking applications for membership on the Independent Redistricting Commission (IRC). The IRC oversees the mapping of Arizona’s congressional and legislative districts. All Arizona voters who have been registered with the same political party or as unaffiliated with a political party for the last three years are eligible to apply; however, people who have held or run for political office, served as an officer of a political party or on a candidate’s campaign committee, or worked as a registered paid lobbyist for the last three years are ineligible.

Applications forms are available at www.azredistricting-nominations.com and must be submitted by 5 p.m. on October 15.

Age-Defying Writing

No one, including me, likes to see her age quantified in writing. Because of this, writing about someone’s age is a sensitive issue. A legal writer has two specific pitfalls to avoid when writing about age: inadvertent ageism and ambiguity.

The best way to avoid inadvertent ageism is to avoid using adjectives to describe someone’s age. Consider the following sentence:

“The young executive chaired the meeting.”

Does “young” mean incompetent? Is “young” a compliment? Or is “young” intended to be merely descriptive? Each is a possibility. To be clear, I suggest replacing “young” or other such similar age-related adjectives with a more descriptive adjective or the actual age.

The 26-year-old executive chaired the meeting.

The up-and-coming executive chaired the meeting.

The incompetent executive chaired the meeting.

In short, if someone’s actual age is important, avoid using qualifiers and use the simple number or date of birth.

As for age ambiguity, a legal drafter faces this issue when drafting a condition that requires a person to be a certain age. Consider the following example:

A person is eligible for benefits when he is over age 18.

When is a person over 18? Does this happen one day after the person’s 18th birthday? Or does this happen on the person’s 19th birthday? Either is a possibility. This same ambiguity happens when a writer uses the phrase “until age 65.” To solve this ambiguity, use ages as the “bookends” to an age range and then describe that range in terms of “over” and “under.”

A person is eligible for benefits when he is 18 and over.

The program is open for persons who are 18 or over but under age 65.

And just in case anyone asks, I claim to be 29 and holding -- no “over” or “under” for me!

“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 you know someone who has passed away, and you 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) 267-4200.

~ Antoine de Saint-Exupéry

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~ Antoine de Saint-Exupéry

THOUGH A PERSON DIES, HIS MEMORY LIVES ON.
INSIDE THE PARALEGAL DIVISION

Paralegal Division Dental Drive a Great Success

This year’s Dental Drive to support the John C. Lincoln Children’s Dental Clinic was an overwhelming success. The Paralegal Division created over 375 dental kits containing toothbrushes, toothpaste and stickers for the clinic’s many patients. I would especially like to thank this year’s co-chairs of the Dental Drive: Julie Edlick and Lynse Cooper, both of Snell & Wilmer L.L.P.

As I have mentioned before, this is a very special project for the Paralegal Division because we feel like dental items are such a basic need to which everyone should have access, especially children. The members of the clinic were very excited and extremely grateful for our donations. It sparked such a good feeling for me and the other members of the division. While there is a personal satisfaction to volunteering and community involvement, I have also discovered there are a few other benefits; here are just a few:

Add to Your Resume and Skills
Community work is a great way to build your resume, and volunteer positions can be a great form of on-the-job training. It can also be a way to explore a possible change in practice area.

Networking
Community involvement is one of the best ways to make connections. Networking is an incredibly important part of searching for jobs and building careers. It can also be a way to find new friends who share similar interests.

Create Positive Change in Your Community
Community organizations are the driving force behind social change. These organizations can’t function without the energy of volunteers. Volunteers can also serve as positive and inspiring role models who encourage others to get active and involved.

Be a Part of Your Community
Community involvement is one of the best ways to feel connected to your community. You can positively impact the lives of others, as well as your own. What better way is there to connect with your community and give something back.

Calendar of Events

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1 Friday 11th Annual Paralegal Conference
14 Thursday Board of Directors Meeting
11 Thursday Board of Directors Meeting
15 Monday Toy Drive Begins
9 Thursday Board of Directors Meeting
15 Wednesday End of Year Celebration
End of Toy Drive

This year’s Dental Drive to support the John C. Lincoln Children’s Dental Clinic was an overwhelming success. The Paralegal Division created over 375 dental kits to donate to the John C. Lincoln Children’s Dental Clinic. From left to right: Kathy Fitzgerald, Children’s Dental Clinic; Stacy Palmer, Paralegal Division President; Maureen Zachow, Paralegal Division Immediate Past President; Julie Edlick, Dental Drive Co-Chair; and Lynse Cooper, Dental Drive Co-Chair.

REMINDER!

2010 MCBA PARALEGAL DIVISION TOY DRIVE
MCBA Paralegal Division supports the 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 16 through December 15.

For More Information
Contact Outreach Chairs
JULIE ESLICK 602-382-6854 OR
LYNSE COOPER 602-382-6671

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INSIDE THE COURTS

Google Scholar Legal Opinions – An Alternative to Westlaw?

By Lori Rader, Law Librarian for Superior Court in Maricopa County

It was only a matter of time before Google delved into the legal field and, with the introduction of Google Scholar Legal Opinions last fall, Google has become a hot topic in the field of legal research. But, what exactly does Google Scholar’s Legal Opinions provide the researcher?

Google Scholar Legal Opinions database’s (http://scholar.google.com/) most obvious feature is the cost of using the service — it’s free! The price can’t be beat, but Google Scholar isn’t the first or only free legal database in existence. Two primary resources for free case law research that have been around for awhile are the Public Library of Law (www.plsl.org) and LexisOne (www.lexisone.com) which is provided through LexisNexis.

The coverage of Google Scholar’s Legal Opinions database isn’t readily apparent from looking at the search screen. After digging around the site for a while, a question on the help screen provided the date range of the database. U.S. Supreme Court opinions date back to 1791; U.S. federal district, appellate, tax and bankruptcy court opinions may be found back to 1923; and U.S. state appellate and Supreme Court cases are included back to 1950. It is also not readily apparent how frequently the database is updated or how the database is kept current and accurate.

How does Google Scholar compare with Westlaw? First and foremost, Google Scholar lacks any method of “keyciting” or “deshpardizing” a case to determine if it is “good law.” This very important function in Westlaw allows the user the capability of checking the history of a case to see if it has been overturned or in some other way determined to no longer be valid for citing purposes. The “how cited” feature on Google can give some indication of history and what other cases have cited a particular case, but doesn’t show whether the cases are still good law or not. Secondly, Google Scholar does not have the capability to perform “Terms and Connectors” or Boolean searching to whittle down search results to more precise hits. Thirdly, Google Scholar does not have field searching; although the user may be able to adapt their Google search to allow some field searching for such things as citation and judge.

Additionally, Westlaw adds topic information for each case which enables the user to search for cases on the same topic using the West key number system. The Google cases do not contain any of the headnote information from the West database that assigns subject matter designations for each case.

Google’s database does not allow the ability to search for a specific federal jurisdiction, i.e., the user cannot specify that search results only come from U.S. Supreme Court cases or the 9th Circuit Court of Appeals. When searching for federal cases, results can only be narrowed down to all federal jurisdictions. Also missing from Google are secondary sources. Many of the treatises and practice guides published by West and LexisNexis included in their respective databases provide guidance for the legal researcher.

Finally, the Google database is quite comprehensive for a free service, but it does not cover the range and diversity of Westlaw. Generally, Westlaw will cover cases from the beginning of a state’s history to the present. It will also include unpublished opinions and up-to-date case information. It is not clear how much of the unpublished opinions are included in Google or how frequently the case information that is included is updated.

No doubt Google will continue to enhance and develop their database, and it will be interesting to see what the Google Scholar Legal Opinions database encompasses in the next few years. In the meantime, for comprehensive case law research, please see the online research databases, such as Westlaw, available on computers at the Superior Court Law Library.

Japanese Judge Visits Juvenile Court

Judge Ryoko Saeki is our newest visiting judicial officer from Japan. She is part of an ongoing program that partners Maricopa County Superior Court with the Supreme Court of Japan offering yearlong experiences for young Japanese judges.

Judge Saeki was appointed to the Supreme Court of Japan in 2004 and began her practice with the Osaka District Court. Since 2008, she has been with the Nagasaki District Court hearing criminal trial cases as an assistant judge and managing civil preservation, civil execution and bankruptcy proceedings.

While in Arizona, she will attend classes at the Sandra Day O’Connor School of Law at ASU for a semester and conduct research with Maricopa County Superior Court. She has expressed a strong interest in both juvenile and criminal process and spent a week with each department meeting judicial officers, court administration and staff.

Judge Saeki will return to Japan in June 2011.

Judicial Branch is now on Facebook and Twitter

The Administrative Office of the Courts (AOC) has launched the Arizona Courts Facebook page and Twitter feed to complement its ongoing public education and outreach efforts about the judicial branch of government and access to justice.

Those who “like” the Facebook Page, “Arizona Supreme Court” and follow “ArCourts” on Twitter will receive updates on topics, including the announcement of Supreme Court opinions, news releases, and updates on new content and resources posted to the Arizona Judicial Branch website, www.azcourts.gov.

“The judicial branch is committed to access to justice and government transparency serves that commitment,” said Dave Byers, administrative director of the courts. “These tools enable us to provide information in the formats the public expects and relies on. They complement work we are already undertaking with technology and online services. The AOC’s adoption of these new web tools will expand the public’s access to news, knowledge-sharing tools, and educational resources about the Arizona judicial branch, and enable users to choose how they receive information about the third branch of government.”

New Job for Retired Justice

Chief Justice Rebecca Berch announced Sept. 2 the appointment of former Justice Michael Ryan as a Supreme Court hearing officer for attorney discipline cases. Ryan retired from the Supreme Court bench last month after a judicial career that also included service as a judge on the Maricopa County Superior Court and Arizona Court of Appeals.

Brewer appoints 2 new judges for Maricopa County

On Sept. 2, Gov. Jan Brewer appointed two new judges for Maricopa County. Brewer appointed Douglas Gerlach and Peter Thompson to the bench in the state’s most-populous county. Gerlach is replacing former Superior Court Presiding Judge Barbara Rodriguez-Mundell. He was previously a business attorney and took a two-year leave to serve as a public defender in the early 1990s.

Thompson has been a Maricopa County Court Commissioner since 2007 and previously was a staff attorney for the Mesa Police Department. He replaces former Criminal Presiding Judge James Keppel.
Clinic Gives Student Real-World View of Lawyering

By the time they graduate from law school, students are well versed in contracts, constitutional law and criminal procedure. They have participated in oral arguments and attended many lectures. Fewer of them have navigated the complex IRS regulations on non-profit organizations, or written and filed for articles of incorporation on their behalf.

But Megan Fox has. Fox was enrolled in the legal clinic of the Innovation Advancement Program, formerly the Technology Ventures Services Group, and worked with ASU law, business and engineering students to provide legal and business consulting services to Arizona entrepreneurs.

The 2010 alumna of the College of Law, worked on three projects, including Africa Health New Horizons (AHNH), a non-profit started by a Congolese-born physician who needed help launching his business from the ground up. Fox worked alongside Jennifer Lefere, an attorney at Hool Law Group in Phoenix, which mentors IAP students, and IAP director Eric Menkhus. Together, they created and filed the appropriate government paperwork for Kigabo Mbazumutima, whose dream is to change healthcare for his people in Africa.

Fox worked with other clients, too, preparing a supply chain assessment, performing an intellectual property audit for a start-up software venture and handling other business consulting functions.

“I want to do transactional work, and that’s what the clinic does,” said Fox, who has a B.A. in Economics from Colorado College and had contemplated getting an MBA before enrolling in law school.

The most important skill she has learned in the clinic is keeping clients on task. “When you’re a lawyer and you have to bill your clients for every 20 minutes, you do them a disservice if you don’t keep them on point,” she said. “I’ve learned how important client management skills are.”

Fox said she gained great insight from working with Lefere and Tom Fulcher, another IAP mentor and president of The Idea Gardener, a Valley business consulting firm. “It’s the best way to learn, working with real professionals, because there’s only so much you can learn in a class room. You get passionate about something by watching someone who is doing it,” she said.

Students enrolled in the IAP should be self-motivated, organized and good at balancing their class work with their clinic responsibilities, she said. “You get out of the projects what you put into them, and how far you go is up to you,” Fox said. “You have to be somebody who is not afraid to jump in and get started.”

She called Menkhus a “great mentor who really cares about all of his clients and wants to see them and us succeed. He is as actively involved in all of the projects as he can be.”

Fox had other good hands-on experiences during law school, including an internship at Intel Corp. in Chandler and an externship at the Frank Lloyd Wright Foundation in Scottsdale. She hopes to stay in Phoenix and work in intellectual property law, and she continues to volunteer as a part of the AHNH team.

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**SUPPORT VICTIMS OF DOMESTIC VIOLENCE**

October is Domestic Violence Awareness Month

Donate items or $$$ by Monday, Oct. 11 to the annual Necessities Drive for DV shelters. You can also volunteer to assemble items on Oct. 30.

For more information, contact Laurie Williams at lwilliams@maricopabar.org.

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Arizona Paralegal Conference 2010
7:30 a.m. to 5 p.m.
Estate Planning Section
Board meeting
7:30 to 8:30 a.m.
2010 Race Judicata
Registration begins at 6 a.m.
YLD Board meeting
Noon to 1 p.m.
Construction Law Section
Board meeting
Noon to 1 p.m.
MCBA closes at noon for Columbus Day holiday
CLE: Environmental Law: It’s All About Arizona Wine
3 to 5 p.m. (tour of Page Springs Vineyards & Cellars)
Office closed for Columbus Day holiday
Family Law Section Board meeting
Noon to 1 p.m.
Public Lawyers Division meeting
Noon to 1 p.m.
Environmental Law Section
Board meeting
Noon to 1 p.m.
Executive Committee meeting
7:30 to 8:30 a.m.
Paralegal Division Board meeting
Noon to 1 p.m.
Maricopa County Bar Foundation meeting
7:30 to 9 a.m.
MCBA Annual Meeting/Hall of Fame Induction
11:30 a.m. to 2 p.m.
Hyatt Regency Phoenix
Employment Law Section
Board meeting
Noon to 1 p.m.
CLE: Estate Planning: Attorney Due Care Regarding Life Insurance
7:30 to 9 a.m.
MCBA Board meeting
4:30 to 5:30 p.m.
CLE: Corporate Counsel Division: Recent Developments in Arbitration Law and How They Affect Your Corporate Clients
Noon to 1 p.m.
MCBA Diversity Committee Meeting
Noon to 1:30 p.m.

**Please watch your MCBA E-News for updated information about meetings and events.**

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**Congratulations to the 2010 Maricopa County Bar Hall of Fame Inductees!**

Jennings Strouss proudly congratulates our alumni, Senator Jon Kyl, Philip A. Robbins and Gary L. Stuart, on their induction into the 2010 Maricopa County Bar Hall of Fame. These distinguished individuals are being recognized for their adherence to the highest principles and traditions of the legal profession. Their unique contributions to our legal community exemplify their passion and dedication to the law.

We congratulate Senator Kyl, Mr. Robbins, Mr. Stuart and all of the 2010 Inductees on this well-deserved recognition.
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Legal Hiring To Increase in 2010
Fourth Quarter

Increased business confidence and renewed legal hiring are expected in fourth quarter of 2010. Twenty-nine percent of lawyers interviewed for The Robert Half Legal Hiring Index indicated they plan to add legal jobs. The majority (88 percent) expressed confidence in their organization’s ability to expand in the next quarter. The new report tracking legal hiring was released today by Robert Half Legal, a specialized staffing firm placing lawyers, paralegals and legal support staff on a project and full-time basis. Among the findings:

- 29 percent of lawyers interviewed plan to hire full-time staff in the next three months, while 6 percent plan staff cutbacks, resulting in a net 23 percent hiring increase.
- 88 percent of lawyers are confident in their organization’s prospects for growth in the third quarter.
- 45 percent of lawyers said it is challenging to find skilled legal professionals.

Bankruptcy/foreclosure is predicted to be the most active practice area with 24 percent of the most active practice area with 24 percent of the majority (88 percent) expressed confidence in

Estate Planning, Probate & Trust Section

THURSDAY • OCTOBER 11
11:30 am - 1:00 pm
Top Ten Things You Need to Know When Advising Employers on Immigration Matters
1.5 credit hours

As an Arizona lawyer, whether you practice immigration law or not, your clients may look to you for answers to their immigration concerns. This panel will give you the tools to spot critical issues and help your clients to avoid the many pitfalls in the world of immigration. Topics that will be addressed include:

- Useful and common work visa categories for working in the US
- Verifying work authorization and implementing good policies
- Responding to audits, investigations and enforcement actions

PRESENTERS:
Nancy-Jo Merritt, Director, Fennemore Craig
Matt J. Martinez, Director, Fennemore Craig
Jared C. Legg, Counsel, Fennemore Craig

SPONSORED BY: Estate Planning, Probate & Trust Section

COST:
- Estate Planning, Probate & Trust Section member: $55
- MCBA member: $62.50
- Non-member: $92.50
- Student member: $10

Register via the MCBA Website at www.maricopabar.org or call Laurie Williams, (602) 257-4200. Ext. 118, with credit card payment.

Estate Planning: Dead Man Talking—Attorney/Client
Privilege After Death
1.5 credit hours, including 5 ethics

Ethical Rule 1.6 requires an attorney not to reveal information concerning the representation of the client. This program will discuss how this applies once the client has died or become incapacitated. You’ll also learn who holds the privilege after death or incapacity and who may waive the privilege, as well as the nuances of when communications may be admissible, even if they are covered by attorney/client privilege. Situations such as these can arise in probate or estate matters, guardianships or conservatorships, medical malpractice cases, personal injury lawsuits, and divorce actions when a party dies during the pending divorce.

PRESENTER:
Jay M. Polk, Barron & Polk, PLLC

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WAYS TO REGISTER
Mail: Send check or credit card information with registration form to: MCBA CLE Registration 303 E. Palm Lane, Phoenix, AZ 85004
Online: www.maricopabar.org
Fax: Credit card payment to Laurie Williams, (602) 682-8897
Phone: Laurie Williams, (602) 257-4200 Ext. 118, with credit card payment

To register, use the registration form on this page, go to www.maricopabar.org, or call Laurie Williams at (602) 257-4200. Unless otherwise specified, all CLE programs will be held at the MCBA office: 303 E. Palm Lane, Phoenix, AZ 85004.
Longtime Arizona Attorney Receives Justice Award

By Laura Swendsen

On November 18, attorney Larry Hammond will be presented the Morris Dees Justice Award in New York City. The award is given annually to a lawyer who has devoted his or her career to serving the public interest and pursuing justice, and whose work has brought about positive change in the community, state, or nation.

In his more than 40 years as an Arizona attorney, Hammond said he has enjoyed seeing, and occasionally participating directly in, what are now hundreds of exonerations—some of whom were people facing the death penalty.

As founder and chair of the Arizona Justice Project, a member of the Board of the Arizona Capital Representation Project, and chair of the Criminal Justice Reform Committee of the American Judicature Society (AJS), Hammond has worked tirelessly to correct systemic injustice in death penalty litigation in the United States.

His passion for helping to release people from the fear and bondage of being sentenced to death was born during his early years as a law clerk for U.S. Supreme Court Associate Justices Lewis F. Powell Jr. and Hugo L. Black, as well as Judge Carl McGowan, U.S. Court of Appeals, District of Columbia Circuit.

As a young clerk for Justice Powell, Hammond spent six months researching the constitutionality of the death penalty for the groundbreaking case Furman v. Georgia. The Supreme Court’s 5-4 decision in that case led to a de facto moratorium on capital punishment throughout the country.

The 71-year-old veteran attorney said he finds the recognition deeply meaningful for two reasons. One relates to the man for whom the award is named, Morris Dees, who Hammond said has been a beacon to justice projects all across the country. “I’ve known Morris for many years, so to receive an award named after him is a great honor.”

The second reason has to do with the state of Alabama and the University of Alabama School of Law, Morris’s alma mater.

In 1971, Hammond clerked for U.S. Supreme Court Associate Justice Hugo Black, an Alabama native referred to as the “son of Alabama.”

“It was very important for me to be, in some very distant 40-years-later-way, connected to the University of Alabama and the work of that law school,” he said.

Hammond’s own roots trace back to the University of Texas, where he earned both his Bachelor’s degree and Juris Doctor in the late 60s and early 70s. In 1975, he was admitted into the Arizona State Bar and shortly thereafter began practicing at the firm, Osborn Maledon, then known as Meyer, Hendricks, Victor, Osborn and Maledon.

Hammond said that at that time there wasn’t much attention given to the death penalty by the legal profession. However, his firm always strove to have some working on cases related to the death penalty. “That was 30 years ago, and in Osborn Maledon and its predecessor firm, we have always stuck to that rule,” he said.

Q and A with Attorney Larry Hammond

What has driven you to form organizations such as the Arizona Attorneys for Criminal Justice and the AJS Institute for Forensic Science and Public Policy?

I joined a group of lawyers who formed the Arizona Justice Project within the pre-existing AACP nonprofit organization. Examinerings in the 1990s had become more of an issue; Barry Scheck and Peter Neufeld had started their project in NYC. A wonderful project was rising at Northwestern in Chicago. I had witnessed miscarriages of justice in Arizona for years. There seemed no acceptable reason not to do something in our own state.

The AJS Institute, which is now known as a “Center” I think, was the result of conversations with Janet Reno and others while I was the president of AJS. The flaws in forensic testimony in criminal cases was haunting the entire criminal justice system.

Something obviously had to be done to draw scientists and lawyers together with the judges to look at the causes underlying wrongful convictions. This was several years before the National Academy of Sciences issued its amazing report on the failure of our courts to assure that bad science is kept out. So today there is a real sense across America that every state needs to be looking at the quality of its scientific evidence.

Do you ever become disillusioned or overwhelmed by the responsibilities of pursuing equality and justice or are you always positive that things will work out?

Yes, absolutely. I do feel disappointed. Often. Sadly, I am sometimes most discouraged by the lack of leadership by people who have much more power to effect change than I will ever have: the judges, the prosecutors, the elected officials. We are in a state blessed with some of the best judges, prosecutors, the elected officials. We are in a state blessed with some of the best legal system reformers, yet so little happens and it happens so slowly. I am positive about all of this though.

Look at the people around the Justice Project. Their energy, their determination, their talent, the way they have encouraged so many law students to become engaged, is enough to fuel me. Come talk to my great secretary, Donna Toland, or go visit with the AJP people at ASU, the UofA and PhxLaw and you will see what I mean. These people have an abiding interest in doing things right and not giving up.

What do you think of CLE programs?

I understand they weren’t required when you first started out as an attorney; are you glad they are now?

Yes. I am generally glad we have mandatory CLE. I want the Bar to be central to elevating the practice of all our lawyers.

What has your experience with the MCBA been like over the years?

I have seen the Maricopa County Bar Association become more relevant over time. I like what the Bar is doing. (I wish the MCBA had more money to give away?)

Who do you esteem in the legal field?

There are no three finer criminal defense lawyers in this state than Tom Henze, Jon Sands and John Sears. Nationally, I admire most the lawyers who have devoted their entire careers to public service: Morris Dees, Brian Stephenson, Barry Scheck, Peter Neufeld. I also have endless respect for the lawyers who have devoted their careers to the death penalty by the legal profession. However, his work always strove to have some working on cases related to the death penalty. “That was 30 years ago, and in Osborn Maledon and its predecessor firm, we have always stuck to that rule,” he said.

See Longtime Arizona Attorney page 16
VLP ATTORNEY OF THE MONTH
Johnson Finds ‘Perfect Fit’ Helping Tenants With Rights

Peggi Cornelius, CVA

Attorney Jaclyn Johnson speaks of the outstanding pro bono work for which many of her colleagues at Quarles & Brady have been recognized by the Volunteer Lawyers Program. As the most recent recipient of VLP’s “Attorney of the Month” award, she feels honored to be among them.

For two years, Johnson has regularly participated in VLP’s Tenants’ Rights advice clinics, held at Community Legal Services. Listening to the reasons people have come for legal assistance, she hears stories ranging from a landlord’s refusal to return a refundable deposit to illegal lockouts and disposal or conversion of personal property.

“Residents living on low or fixed incomes are at a severe disadvantage in seeking affordable and habitable housing in safe neighborhoods. Where moving might be the most simple remedy for many people who find themselves in disputes with a landlord, the costs of relocating may be prohibitive for clients Johnson counsels at VLP. For some, the advice or intervention she provides might literally make the difference between their having a home and being homeless.”

“Except when my involvement goes beyond the clinic visit, I rarely know the outcomes of my meetings with VLP clients,” said Johnson. “I do know educating people about their rights and responsibilities under the Arizona Residential Landlord and Tenant Act can really make a difference.” She recalled an example in which the tenant had been told to immediately vacate his home, without a 30-day notice, or notice of eviction proceedings. “In that case, I believe the client moved. But having reasonable time to do so was crucial, and he had no idea of his rights. I helped him compose a letter to the landlord.”

Johnson’s private practice specialties involve Indian law and real estate law. Having grown up on the Flathead Reservation in Montana, she attended Dartmouth College and obtained an undergraduate degree in Native American and environmental studies. “As I learned about tribal history and the impact of governmental policies, I realized that law is an important vehicle for social change,” she said. Thereafter, she attended law school at the University of Michigan.

When Johnson first explored possibilities for pro bono work through the VLP, she participated in legal advice clinics conducted at a Salvation Army facility, and attended a continuing education program sponsored by VLP. She says she found her perfect fit with a commitment to the Tenants’ Rights Clinic. The advantages include a close proximity to her office and a wealth of opportunities to help numerous people in ways that don’t necessarily involve litigation.

Johnson’s enthusiasm for her work through the VLP is so great she intends to plan a recruitment luncheon at Quarles & Brady, to enlist more of her colleagues in the program.

If you would like further information regarding membership in the VLP, contact director Pat Gerrich at VLP (602) 254-4714 or pgerrich@clsaz.org.

IT’S ALL ABOUT ARIZONA WINE!
History and Distribution Law—and Wine Tasting Afterwards
Join the MCBA Environmental & Natural Resources Law Section for an afternoon of learning, touring and tasting in Page Springs (near Sedona).

FRIDAY, OCT. 8, 2010 • CLE (2 credit hours): 3-5 P.M. • WINE TASTING: 5 P.M.
Robert Lynch of Robert S. Lynch & Associates and Kevin O’Malley of Gallagher & Kennedy will cover the history of Arizona’s wine distribution laws, proposed changes to federal law, and recent cases affecting local and national wineries. After the presentation, enjoy a tour of Page Springs Vineyards & Cellars featured in the documentary Blood into Wine, wine tasting and light appetizers.

Drive on your own, or MCBA will arrange shuttle or alternative transportation at additional cost. If you will need transportation arranged for you, please be sure to call Laurie Williams as soon as possible.

At least 15 persons are required for a shuttle.

REGISTER NOW AT WWW.MARICOPAPBAR.ORG OR CALL LAURIE AT (602) 257-4200.

REGISTRATION INFORMATION
Section member: $55 • MCBA regular or student member: $100 • Non-member: $125
Guests: $35 each, plus any applicable transportation cost.

Volunteer Lawyers Program Thanks Attorneys

The Volunteer Lawyers Program thanks the following attorneys and firms for agreeing to accept 39 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 and mentors and consultants. Each attorney receives a certificate from MCBA for a CLE discount. For information about cases and other ways to help, please contact Pat Gerrich at VLP (602) 254-4714 or pgerrich@clsaz.org.

ADOPTION
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Burguan Clarke
Law Office PLLC
Ms. Gregg R. Woodnick
Sole Practitioner
Ms. Breia Burgie
Sole Practitioner

BANKRUPTCY
Mr. Allen D. Butler
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Ms. Othila M. Diaz
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Mr. Jared Parker
DeConcini McDonald Yerrin & Lacey
Ms. Chihayal N. Patel
Patel Law PLC
Mr. Robert R. Teague
Phillips & Associates (3 cases)

CONSUMER LAW ISSUES
Ms. Shirley A. Baum
Pinnacle West Capital Corporation
Ms. Lyzzette M. Bullock
Quarles & Brady

HOME OWNERSHIP ISSUES
Ms. Marguerite Breidenbach
Sole Practitioner
Ms. Jody K. Pokorski
Snell & Wilmer, LLP
Mr. Domingos R. Santos Jr.
Snell & Wilmer, LLP
Mr. Patrick Dutton
Sole Practitioner

GUARDIANSHIP OF MINOR CHILDREN
Mr. Thomas A. Morton
Bruce Brown, PLLC
Jane A. Proctor
Fennemore Craig, PA (2 cases)

GUARDIANSHIP OF NEPHEWED ADULTS
Ms. Lyzzette M. Bullock
Quarles & Brady

ITALIAN MARRIAGE SERIES
Mr. Juan F. Moreno
Bryan Cave LLP
Ms. Terry Morris Roman
Snell & Wilmer, LLP
Ms. Renee Gerstman
Gerstman Holden, PLLC
Mr. Marvin C. Rush
Lewis and Roca
Mr. Patrick Dutton
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** PRO BONO SPOTLIGHT ON GREATEST CURRENT NEED THIS MONTH**
VLP needs volunteer attorneys who specialize in Bankruptcy and/or Family Law and attorneys who speak Spanish to interview, advise or represent individuals and families. In addition, Bankruptcy Specialists who are interested in mentoring other attorneys or law students in reaffirmation hearings for Chapter 7 pro se debtors.

TENANTS’ RIGHTS
Ms. Christina E. Deschamps
Sole Practitioner
Ms. Renee Gerstman
Sole Practitioner
Ms. Lyzzette M. Bullock
Sole Practitioner

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Commercial Real Estate Specialists
2009 PRO BONO GOLF CLASSIC
Saturdays Nov. 6
At the Legacy Golf Resort
Registration 6:30 a.m. Shotgun Start 7:15 a.m.

The Golf Classic benefits the Maricopa County Bar Foundation and Volunteer Lawyers Program, which supports victims of domestic violence and legal services for low-income families. To register or for more information, please contact Laurie Williams (602) 682-8585 or lwilliams@maricopabar.org.
Law Schools Face Changes to Job Security Standards

The American Bar Association’s Standards Review Committee is considering a proposal to eliminate the term “tenure” from its standards concerning job security and academic freedom. A second proposal is also being considered that would end a requirement for law schools to provide clinical faculty members with job protections usually afforded to full-time professors.

Organizations that represent law professors and clinical faculty oppose the proposals, concerned that they will weaken the requirements regarding tenure.

“A school has the policy regarding academic freedom is insufficient. The security that comes with tenure is the only way to ensure that faculty will remain free to teach, research, participate in governance decisions, and speak on matters of public concern without fear of reprisal,” said Dean Paul Schiff Berman, of the Sandra Day O’Connor College of Law at Arizona State University.

The Committee recently considered for the first time a draft of revised standards concerning the employment status of deans, law library directors and faculty members and this draft has created considerable controversy among law school educators and administrators. The current standards provide that the law school dean must be a member of the faculty “with tenure” while the library director must be a member of the faculty “with security of position.” However, Standard 405, which concerns appointment of members of the faculty, states that an accredited school must have “a policy concerning tenure…” This somewhat ambiguous statement has led to misunderstanding of what the standards require, if anything, in terms of security of employment for full-time faculty. The new draft intends to clarify the ABA’s position on faculty tenure rights.

“A draft of revised standards would delete references to ‘tenure’ and employment contracts of law clinical faculty members and would send it to individual schools to determine the appropriate security of position for each group of faculty members.”

Associate Salaries in a Holding Pattern, NALP Survey Shows

Associate salaries stagnated last year at large law firms, according to data released on Thursday by the National Association for Law Placement (NALP).

NALP said that while $160,000 remained the prevailing starting salary at large firms in major cities such as New York and Los Angeles, a higher percentage of associates last year started with salaries of between $130,000 and $145,000.

The median salary for first-year associates at law firms of all sizes in 2009 was $115,000, compared to $150,000 in 2008, according to NALP. That figure dropped to $100,000 for associates in Detroit, Indianapolis, New Orleans and St. Louis.

Compared to what many in the legal profession feared during the recession, the news was relatively positive, said NALP Executive Director James Leipold.

“The 2010 associate salary survey makes it clear that associate salaries have come down in a small but measurable way — more so in some markets than others — but they have not come down nearly as much as we thought they might at the height of the recession,” Leipold said. The real story on associate salaries is that they have been largely flat during the recession, and that is actually better news than we might have hoped for.”

As for public interest and public sector starting salaries, they too largely remained flat between 2008 and 2009. New attorneys at civil law firms, said Leipold, “had a policy concerning tenure…” This somewhat ambiguous statement has led to misunderstanding of what the standards require, if anything, in terms of security of employment for full-time faculty. The new draft intends to clarify the ABA’s position on faculty tenure rights.

The official accreditation agency for American legal education is the Council of the ABA’s Section of Legal Education and Admission to the Bar. All accreditation agencies are required by the U.S. Department of Education to periodically review and revise the standards for approval of accredited programs and schools. The ABA’s comprehensive review began two years ago and is being conducted by the Section’s Standards Review Committee, which expects to have its review done by July 2011. The Committee recently considered for the first time a draft of revised standards concerning the employment status of deans, law library directors and faculty members and this draft has created considerable controversy among law school educators and administrators. The current standards provide that the law school dean must be a member of the faculty “with tenure” while the library director must be a member of the faculty “with security of position.” However, Standard 405, which concerns appointment of members of the faculty, states that an accredited school must have “a policy concerning tenure…” This somewhat ambiguous statement has led to misunderstanding of what the standards require, if anything, in terms of security of employment for full-time faculty. The new draft intends to clarify the ABA’s position on faculty tenure rights.

Further, current Standard 405 has provisions that single out legal clinical faculty members for special treatment: If they do not have the ability to earn tenure at their law schools, they must be provided with long-term contracts or other arrangement sufficient to ensure academic freedom.

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The draft of revised standards would delete references to “tenure” and employment contracts of law clinical faculty members and would send it to individual schools to determine the appropriate security of position for each group of faculty members. The proposed Standard 405 would significantly increase the requirement that approved law schools actually protect the academic freedom (that is, the ability of faculty members to express their views and opinions in their teaching, scholarship, activities in legal clinics and in other law school related activities) without fear of termination or discipline. Perhaps more importantly, the proposed Standard 405 would clearly provide what is the accreditation policy concerning employment and tenure.

The proposed changes to the standards are not premised on the notion that tenure is unimportant in American legal education; it is a very important way for law schools to attract and retain a competent and qualified faculty and to protect the right of academic lawyers to speak freely in their work as scholars and teachers. Currently, all approved law schools have tenure-earning systems for some or all full-time faculty members. Proper accreditation matters do not include requirements on the precise relationship between the school and its faculty members but rather address accredited schools’ ability to attract and keep good faculty members and to protect their abilities as teachers, scholars and community servants to speak freely and without fear of reprisal.

Requirements of tenure for some or all law faculty members are a proper role for a learned society, such as the Association of American Law Schools, but not for an official accreditation agency. Further, no other professional discipline accreditation agencies (such as those for medicine, architecture, pharmacy, etc.) requires accredited schools and programs to have tenure earning rights for any or all faculty members.

Finally we expect there will be several more drafts before a final one is sent to the council. If the council agrees with the Standard Review Committee’s changes to the standards, then the draft will be noticed for public hearings and comment. Following the public comment period, the council will consider final adoption, subject to acquiescence of the ABA’s House of Delegates, of the proposed standards.

* The Committee’s website is: http://www.abanet.org/legaled/committees/comstandards.html

ABA Standards Committee Chair Addresses Revisions

Donald J. Polden
Dean and professor of law, Santa Clara University

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State Seeks Members for Redistricting Commission

Applications are being accepted by the Commission on Appellate Court Appointments for the Independent Redistricting Commission, which will oversee the mapping of Arizona’s congressional and legislative districts beginning in 2011.

Residents of all Arizona counties are eligible to apply. To be eligible, applicants must be registered Arizona voters who have been continuously registered with the same political party or as unaffiliated with a political party for the last three years. People who have held or run for a public office (other than a school board), served as an officer of a political party or a candidate’s campaign committee, or worked as a registered paid lobbyist during the past three years are not eligible.

Longtime Arizona Attorney

continued from page 13

With his experience researching death penalty cases and working as an assistant special prosecutor during Watergate and a deputy assistant attorney general in the Office of Legal Counsel at the Department of Justice, Hammond came to believe that the death penalty legislation of that period was deeply flawed.

He found a number of issues with the death penalty, including the inability to distinguish the “worst of the worst” among persons accused of malicious crimes and a “horrible” lack of funding to provide competent defense for all.

Hammond said he thinks great strides have been made regarding capital punishment, but more work must be done. “I don’t think we’re doing it better in America. We’re definitely not doing it better in Arizona,” he said.

What makes the death penalty so troubling in the last 10 years, he said, is that DNA evidence has proved so many accused people to be innocent. “It makes you wonder whether there should be the death penalty.”

Though he acknowledges the seriousness and emotional trauma experienced by family members of crime victims, Hammond said the suffering experienced by falsely accused persons is equally painful and devastating.

Hammond currently travels back and forth from his home in Phoenix to Prescott to represent a man accused of killing his ex-wife. In May, the state notified the court that it was dismissing the death penalty allegation. The case, State v. DeMocker, proceeded to trial one month later.

Hammond said he is humbled when his clients are set free from a life-ending sentence. “There’s a lot of humility and joy that comes along with showing that somebody is either innocent or should not be a candidate for the death penalty because of mental problems,” he said.

Men vs. Women

COURTWATCH continued from page 1

but they did not stop Munoz. One of them called his complaints a joke and told Lamas that he should be singing “I’m too sexy for my shirt.”

The harassment went on for months and Lamas started seeing a psychologist. His job performance suffered. This, his superiors noticed: they demoted him and then eventually fired him.

Lamas complained to the Equal Employment Opportunity Commission. Having determined that the company had subjected him to a sexually hostile work environment, the commission sued Prospect Airport Services under Title VII of the Civil Rights Act of 1964. But the district court tossed its claim, granting summary judgment for the company.

Ninth Circuit Says No

The Ninth Circuit rejected the district judge’s conclusion that Munoz’s conduct was not severe or pervasive enough to create a hostile work environment. In his opinion, Judge Andrew J. Kleinfeld wrote that there was no question that Munoz’s conduct was sexual in nature: “Her proposition was for sex, not a cup of coffee . . . .”

Kleinfeld rejected the district judge’s comment that most men in Lamas’s position would have welcomed Munoz’s sexual advances, calling it a stereotype. “[W]elcomeness is inherently subjective,” he wrote. “[W]ether one person welcomes another’s sexual proposition,” Kleinfeld continued, “depends on the invitee’s individual circumstances and feelings.”

“Title VII,” he wrote, “is not a beauty contest, and even if Munoz looks like Marilyn Monroe, Lamas might not want to have sex with her, for all sorts of possible reasons.”

Kleinfeld cataloged reasons why Lamas might have rejected Munoz’s come-ons. “He might feel that feminism is wrong, and that adultery is wrong . . . . He might fear his wife. He might feel a sexual harassment complaint or other accusation if her feelings about him changed. He might feel fear of his preoccupation with his deceased wife would take any pleasure out of it. He might just not be attracted to her. He may fear eighteen years of support payments. He might feel that something was mentally off about a woman [who was] sexually aggressive toward him.”

“Some men might feel that chivalry obligates a man to say yes,” Kleinfeld concluded, “but the law does not.”

Summary judgment was inappropriate, Kleinfeld ruled, because Lamas had at least established a disputed issue of fact about whether Munoz’s conduct was welcome. “It made him cry, both at the time and repeatedly in the deposition.” He sought medical services to deal with the anxiety . . . . He told her expressly and plainly that he did not want a relationship with her.

“Some recipients of sexual advances doubtless have difficulty coming up with a tactful way to refuse them without damaging their ability to get along at work, so unwelcomeness may in some cases be unclear,” Kleinfeld wrote. But that was not so here. “Lamas repeatedly told Munoz ‘I’m not interested’ . . . yet she kept making the sexual overtures she knew were unwelcome.”

Joining Kleinfeld in reversing the summary judgment were Circuit Judges Milan D. Smith, Jr., and Sandra S. Ikuta.

On the Other Hand...

A different panel of the Ninth Circuit seemed not to share Kleinfeld’s reasoning in another case involving workplace sexual harassment. They upheld a company’s firing of a female coworker. But not only had she not voiced any objection to their sexual banter, she had actively and voluntarily participated in it. Hawn v. Executive Jet Mgmt., Inc., No. 08-15903 (9th Cir. Aug. 16, 2010).

Gregory S. Hawn, Michael R. Prince, and Ari A. Aldrich, worked as pilots for Executive Jet Management, stationed at Williams Gateway Airport. The company fired them based on complaints by female flight attendant Robin McRea. She claimed that they had sexually harassed her and created a hostile work environment by engaging in “sexualized banter, crude jokes, and the sharing of crude and/or pornographic emails and websites.”

McRea’s allegations took the pilots by surprise, as it did other coworkers—both male and female—in part “because she had participated in, and often encouraged, the banter and joking of which she complained.” Prince said that McCrea had “hit him on the butt twice.” Aldrich said that she had frequently asked about his sex life. And there were allegations that McCrea had participated in similar behavior with other female flight attendants.

EOC Gets Involved

McCrea filed an EEOC charge of discrimination against Executive Jet, after which the company hired an independent investigator. He found that “there have been confirmed instances of a few of the behaviors indicated in Ms. McCrea’s . . . complaint.” Nevertheless, he continued, “there are also a greater number of incidents that she has alleged happened that have been unconfirmed, denied or told to me in a different light, implying that Ms. McCrea either participated in the actions or in some instances initiated them.”

After Executive Jet later fired the pilots, they complained to the EEOC that the company had discriminated against them. But the commission rejected their claims, and the pilots then sued the company, alleging discrimination under Title VII.

They asserted that Executive Jet had treated male and female employees differently. The company, they alleged, knew that McCrea and other female flight attendants had engaged in conduct similar to their own: its response to the EEOC’s charge accused McCrea of participating in or initiating the conduct. Yet it imposed no discipline on the women, while it had fired the men.

The district court rejected the pilots’ allegations and granted summary judgment to the company. In an opinion by Circuit Judge J. Clifford Wallace, the Ninth Circuit agreed that they had not established a prima facie case of discrimination.

According to Wallace, the male pilots and the female flight attendants were not similarly situated. How so? The answer rested with McCrea. The cases were different, Wallace wrote, “because plaintiffs’ conduct gave rise to a complaint of sexual harassment, while the female flight attendants’ alleged conduct did not.”

The pilots, he pointed out, “never complained of discriminatory treatment or sexual harassment to Executive Jet contemporaneous to the alleged conduct by the female flight attendants.” They only did so in response to McRea’s accusations, and they never formally complained that “they found the female flight attendants’ alleged conduct harassing or unwelcome.” By contrast, McRea had complained about the pilots’ conduct.

In the face of McCrea’s evidently willing participation in the pilot’s sexual banter, Wallace did not say whether she had ever told them that their conduct was unwelcome. But her later formal complaint to management was enough to justify Executive Jet in treating the pilots differently than it treated the flight attendants for similar conduct, he ruled.

Joining Wallace in affirming summary judgment for the company were Circuit Judges Alex Kozinski and Judge William H. Alsup of the Northern District of California.
Appointments
Lewis and Roca is pleased to announce that Scott Brown has been appointed as the Education Director for the American Bankruptcy Institute’s Bankruptcy Litigation Committee. His position began in June 2010 and will last for two years. Brown is a partner in Lewis and Roca’s Bankruptcy and Creditors’ Rights group and the Commercial Litigation group. He practices primarily in the area of bankruptcy law, but devotes a significant amount of his time to commercial litigation, pre-bankruptcy workouts and collections. Brown also represents both secured and unsecured creditors, as well as trustees, committees and debtors, in all aspects of Chapter 11 business bankruptcy cases, including workouts and litigation. He is also the co-editor and a regular contributor to the Chapter 8 column for the American Bankruptcy Institute Journal.

The national law firm of Quarles & Brady is pleased to announce that Dawn C. Valdivia, a partner in its Phoenix office, has been selected to the Inaugural Class of the Hispanic National Bar Association (“HNBA”) and the Association of the Corporate Counsel’s (“ACC”) Pilot Project on Value-Based Skills: Equipping the Next Generation of Latina Corporate Practice Leaders. Valdivia practices in the Labor and Employment Group. She represents clients regarding issues of workplace discrimination, employee discipline and termination, employer policies, and compliance with state and federal labor and employment laws, and has extensive experience representing clients before the National Labor Relations Board (NLRB) and the Equal Employment Opportunity Commission.

Elections
John Doran, an attorney with Greenberg Traurig, LLP, has been elected to the Actors Theatre Board of Directors. Doran will serve a three-year term. He focuses his practice in the areas of labor and employment, appellate and litigation. He is listed in Best Lawyers in America and Chambers USA for labor and employment.

Greenberg Traurig attorney Michael C. Mason has been elected as secretary of the board of directors for the Federal Bar Association’s Phoenix chapter. This position automatically accedes to president of the board in three years. Mason has served on the Federal Bar Association’s Board of Directors since 2007. In addition to his role as secretary of the Federal Bar Association, Mason serves on the City of Tempe Judicial Review Board and was appointed by the State Bar of Arizona Board of Governors as a delegate to the American Bar Association. He also serves on the board of directors of the Boys and Girls Clubs of the East Valley. Mason focuses his practice on labor and employment issues and general litigation matters. He represents employers facing claims of discrimination, sexual harassment, retaliation, wrongful termination, breach of contract, and wage and hour violations. Mason also has experience creating and enforcing employment contracts and non-compete and non-solicitation agreements.

Lewis and Roca is pleased to announce that Stefan Palys has been elected District 23’s Representative for the American Bar Association Young Lawyers Division. District 23 includes all of Arizona and New Mexico. Palys’ term began in August 2010 and will last for two years. Palys is an associate in Lewis and Roca’s Bankruptcy and Commercial Litigation practice groups and is admitted to practice in Arizona and Nevada. His practice is focused on representing corporate creditors and debtors in bankruptcy proceedings, and handling a variety of commercial litigation matters. Palys is also the President-Elect of the Maricopa Bar YLD and is on the board of the Arizona Bar YLD.

The national law firm of Quarles & Brady is pleased to announce that Wendy Kemp Akbar, an attorney in the firm’s Phoenix office, has been re-elected to a one-year term as chair of the Arizona State Bar Committee on Persons with Disabilities in the Legal Profession. Akbar represents clients in all aspects of complex commercial litigation, with a focus on intellectual property litigation, particularly patent litigation, trademark, trade dress and copyright litigation, trade secrets, false advertising and licensing disputes. In 2009, she was recognized by the Greater Phoenix Chamber of Commerce as its 2009 Young Professional Athena Award winner.

Lewis and Roca is pleased to announce that Emily Bayton has been elected chair of the Intellectual Property Section of the State Bar of Arizona. Bayton is a partner in the firm’s Intellectual Property and Technology practice group. She focuses her practice primarily in the areas of trademarks and copyrights. Bayton counsels clients on trademark selection, clearance, registration and prosecution in the United States and around the world. Her practice also includes representing clients in federal court in cases involving trademark infringement and dilution, copyright infringement, trade secret misappropriation, unfair competition and cybersquatting.

Gust Rosenfeld is pleased to welcome back Raul Abad, an associate to our Phoenix office. Abad focuses his practice on commercial real estate transactions, including development, leasing, real estate financing, and acquisitions and dispositions of various real estate assets. He works with both public and private clients on complex commercial real estate matters on a local, regional and national basis. Before joining Gust Rosenfeld, Abad routinely served as lead real estate counsel for clients around the country. He negotiated and closed a multi-million dollar credit facility for a client. He also completed numerous multi-million dollar real estate deals, including representing clients in the acquisition of a $400 million, 26-property portfolio of shopping centers in Massachusetts and a 13-property portfolio of restaurant leases in California and Michigan.

Attorney Victoria E. Ames has joined the law firm of Jabag & Wilk, P.C. in Phoenix as an associate. Her practice areas are commercial litigation and intellectual property. Ames was a law clerk for the Hon. Michael J. Brown of the Arizona court of Appeals and was a summer associate at Jabag Wilk in 2008. In 2007 she was a legal intern for the Arizona Attorney General. Outside the office Victoria has been a Chief Executive Officer of the Make-A-Wish Foundation, where she was in charge of global business development with a focus on worldwide expansion under terms of franchise license for a renowned children’s charity.

Jennings, Strouss & Salmon, P.L.C., a leading Phoenix-based law firm focused on a variety of practices for business and individual clients, is pleased to announce today that William A. Clarke has joined the firm as a member in the firm’s Phoenix office. Clarke, a Phoenix resident, will practice in the Corporate & Business; Estate Planning & Probate; and Tax Departments. Clarke is a veteran practitioner having provided counsel to international, national, and local businesses and individual clients for more than thirty years. He has worked with numerous Arizona business families in estate planning, general business matters including business succession planning, corporate transactions, and real estate transactions. Additionally, Clarke has represented clients in contested probate matters and surviving spouses and heirs in estate disputes with family members over the allocation of assets.

New Hires
Attorney Jo Ellen Schumacher has joined Scottsdale-based Lang Baker & Klein as a litigation associate. Schumacher, who is admitted to practice in Arizona and California, is a former clerk for Arizona Court of Appeals Judge Peter B. Swann. She earned her undergraduate degree at Trinity University and her law degree at the University of Arizona, where she was an Executive Note Editor of the Arizona Law Review.

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ATTORNEY WANTED

A BOUTIQUE LAW FIRM in Phoenix, Arizona is looking for a talented mid-25 (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, persuasion advocacy skills, and an entreprenurial spirit. Salary is commensurate with experience. Please submit cover letter, resume, writing sample, and transcripts to hiring@lawfirm.com.

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THE CITY ATTORNEY OF THE CITY OF SCOTTSDALE is seeking an experienced attorney to represent the City of Scottsdale. The position includes responsibility for providing legal services to the City Attorney’s Office, the Finance and Accounting Division of the City of Scottsdale. The position will involve providing comprehensive legal services to the City in all matters affecting the City’s operations and interests. The successful candidate must possess excellent research and writing skills, as well as strong oral advocacy skills. The City of Scottsdale offers a competitive salary and comprehensive benefits package. Please submit a cover letter, resume, and writing sample to C. Kevin Dykstra, BENNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C. E-MAIL: kydyktra@bfbt.com; FAX: 602-788-5806.

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By Jennifer Cranston

Most residential contractors who conduct their business through a corporate structure assume that their personal assets are shielded from the company’s liabilities and debts unless they are found to have committed a crime or misused the business for personal gain. Likewise, subcontractors and suppliers who work with such contractors may believe that their ability to seek payment is limited to claims against the business and not against the individual(s) controlling the business. Earlier this year, the Arizona Court of Appeals confirmed that individual officers and directors of a corporately structured residential contractor can be held personally liable for the company’s failure to pay its subcontractors and suppliers. Anyone who represents residential contractors, subcontractors or suppliers should take note of Arizona Tile, LLC v. Berger, 223 Ariz. 491, 224 P3d 988 (2010).

The case involved a countertop fabricator and installer, Design Surfaces, Inc., and its supplier, Arizona Tile. After Design Surfaces failed to pay, Arizona Tile sued the company as well as its officers and directors, Howard Berger and John McCarthy. After obtaining a judgment against Design Surfaces and gaining what remained in its bank account, Arizona Tile pursued claims against Berger and McCarthy for breach of fiduciary duty arising out of A.R.S. § 33-1005.

The statute requires a “contractor” who receives payment from an “owner-occupant” for “labor, professional services, materials, machinery, fixtures or tools” to hold the money in trust for the subcontractor’s or supplier’s part of the labor or materials. The statute also prohibits the contractor from using the money for any other purpose than to satisfy the subcontractor’s or supplier’s claim. The Court of Appeals found that Design Surfaces was obligated by the statute to hold funds it received from residential customers in trust for Arizona Tile. The court then addressed the more difficult issue of whether the officers and directors could be held personally liable for the company’s failure to pay.

In analyzing the personal liability issue, the court relied on a general principle of trust law which holds that an officer who causes a corporate trustee to breach its trust obligation is personally liable to the trust beneficiary for any loss caused by the breach. The court confirmed that the officer is personally liable even if he or she did not personally benefit from the transaction. Thus, in the residential contractor setting, the court found that, while officers and directors are not automatically liable for the company’s conduct, an officer or director is personally liable for failure to pay under 33-1005 if he or she participated in the decision(s) that led to the breach. Because Berger and McCarthy decided which accounts should be paid with the money received from Design Surfaces’ customers, the court affirmed the judgment against them for the company’s failure to pay Arizona Tile.

The court’s interpretation of A.R.S. § 33-1005 clears a path for recovery against individual officers and directors of corporately structured contractors under the following circumstances:

1. The project for which the subcontractor or supplier provided labor or materials was an owner-occupied residential project.
2. The contractor received payment for the subcontractor’s or supplier’s part of the job.
3. The officer or director personally participated in the decision to use the money for some other purpose.

As a practical matter, it should be noted that the court also held that attorneys’ fees were not available to the successful party because the claims against the officers and directors arose from statute, not contract. Thus, while the court’s ruling may invite more claims against corporate officers and directors, attorneys fees are not available for personal injury claims. In addition, parties may have to consider potential issues concerning the financial feasibility of such litigation.

Jennifer Cranston is a shareholder at Gallagher & Kennedy, PA. She practices in the areas of general litigation, with an emphasis on real estate disputes, including condemnation and valuation matters, as well as insurance coverage analysis.

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