Expert Panelists Discuss Law’s Legal Implications

A group of renowned legal experts offered their ideas of what might transpire in the days and weeks following SB 1070’s first day of enforcement, which is set for July 29.

At press time, hearings were being held at the U.S. District Court for the District of Arizona on a number of lawsuits that had been filed against SB 1070, including one filed by the U.S. Department of Justice. Pending the outcome of the hearing involving the Justice Department suit, SB 1070 may or may not go into effect on its scheduled date. The suits were filed over concerns the law will lead to racial profiling and is intended to override federal immigration law.

Approximately 100 attorneys and others attended the July 14 MCBA-sponsored forum on the law’s legal implications.

The panelists were Prof. G. Jack Chin from the James E. Rogers College of Law at the University of Arizona, Prof. David Cole from the Phoenix School of Law and attorney Julie Pace with the Cavanagh Law Firm. Each is an expert in the field of law and gave their understanding of SB 1070 and how it relates to both the federal and state constitutions; other state immigration laws, including some being disputed in court; and the law’s possible ramifications.

Arizona Republic Reporter Richard Ruelas, who acted as the forum’s moderator, presented

Candidates for MCBA Board of Directors Invited to Declare

Members interested in running for one of five available seats on the MCBA Board are invited to declare their candidacy.

Incumbents are: Brian M Bergin, Comm. Keelan S. Bodow, LaShawn Jenkins, T.J. Ryan, and Jenny Winkler.

Each of the five positions consists of a two-year term beginning in 2011. Board members attend monthly meetings, liaise with one or more MCBA sections, divisions, or committees and support the work of the Association.

Candidates must be licensed Arizona attorneys, active members of the MCBA, and in good standing with both MCBA and the State Bar of Arizona.

See Candidates for MCBA Board page 15
Summer Potpourri

MCBA PRESIDENT
Jennifer E. Green

Two topics duked it out for the headline of this August article, one serious and the other more fluffy, and I finally decided that although they make strange bedfellows, they could share space under a Jeopardy!-inspired “potpourri” banner: paralegals’ need for CLE and summer time. So here goes, for the first time in print (and probably the last) I finally decided that although “It’s a Small World” can be mind-boggling for anyone between the ages of five and eighty-five, it is fun to sing “Yo Ho, Yo Ho, a pirate’s life for me” at any age. Head up north to Flagstaff or east to Green, and play Frisbee around NAU or walk alongside a bubbling creek. Grab your girlfriends and head to the Surf Diva school in Jolte Colve (and watch your surfing career begin and end in the same afternoon).

Speaking of America’s Finest City, San Diego has become an annex for our profession during the dog days of summer. If the halls of your office are anything like mine, it seems that sultry San Diego has stretched out her evil tentacles with promises of 80-degree afternoons and welcoming sound of ocean waves, and lured many of our colleagues to the coast. So many of us have happily packed up sunscreen and beach towels for the gritty sand-in-our-flip-flops-feeling. Outstanding.

I would like to take this opportunity to encourage attorneys to encourage paralegals to attend this very worthwhile conference. For more information on the 11th Annual Arizona Paralegal Conference, go to www.maricopabar.org, and click on “For Paralegals.”

The Blessings of Summer
It’s a little rude to discuss anything in October right now when leather car seats smell unsuspecting thighs at 9:00 a.m. Ah, summer. Our good friend. For the natives and almost-natives, the drill is ingrained in us. It’s the most un-subtle of seasons, rudely rearing its 115-degree head and sending us diving for our windshield blockers before we turn off the engine to park. Summer used to be broken up by a glorious August monsoon season, but somewhere that fell off the Arizona wagon, along with people putting out campfires up north and using blinkers to change lanes.

For the fine government attorneys among us, summer brings us treat like “the air conditioning calendar” on Outlook where we request A/C on after hours or on the weekend. My running group backed up our Saturday meeting time to 5:30 a.m. My personal 8th level of hell is hearing the “spanish guitar” alarm on my phone ringing at 5:00 a.m. on Saturday. On purpose. Good gravy.

So this blessed stretch of three-ish months seems that sultry San Diego has stretched out like our knowledge outside of our normal area of expertise and practice. By expanding their knowledge base in other areas of the law, paralegals are increasing their value not only to us, the attorneys, but to our clients and future clients.

But for the paralegals it is often times difficult to find CLE geared specifically to their needs. The Annual Conference presented by The Maricopa County Bar Association Paralegal Division fills this important need.

On October 1, the Maricopa County Bar Association Paralegal Division will hold our 11th Arizona Paralegal Conference: “Where the Paralegal Community Connects.” This annual event is attended by paralegals from across the state and gives them a chance to attend CLE formatted specifically for paralegals. This annual conference also gives paralegals the chance to network with their peers and meet various vendors that serve the legal community.

For more information on the 11th Annual Arizona Paralegal Conference, go to www.maricopabar.org, and click on “For Paralegals.”

Law’s Unintended Consequences Will Take Their Toll

By Nina R. Eargovan

When I taught at ASU West, I would always discuss the intended and unintended consequences of any action. For example, politicians get elected because they are tough on crime. No one would vote for a candidate who is for shorter prison sentences or weak punishments. So we need to come up with a system that examines the big picture. Being tough on crime has many unintended consequences, as does SB 1070. The unintended consequences of this law will take their toll on the legal and illegal residents of Arizona.

I cannot imagine what our politicians were thinking when they decided that creating a state immigration policy was the correct way to handle individuals and families who are not here legally. I believe these politicians failed to examine the unintended consequences of their actions. All people who are here illegally eat and shop at grocery stores. This activity is now taxed and helps pay the police who round illegal immigrants up. All people who are here illegally buy perishable items, buy cars and live in apartments or houses. They pay rent or mortgages; they send their children, who may or may not be here legally, to school. Schools receive money for these children. Schools hire

See Unintended Consequences page 18
Mother on a Quest to Teach Son Value of Volunteerism

By Marla Crown, attorney at Crown Law Offices and MCBA member

I have been on a personal quest to teach my 9-year-old son, Matthew, the value of volunteerism. Over the last few months, we have headed a school-wide pet food drive to benefit a local pet food bank. We collected athletic footwear to donate to a charity assisting children affected by the recent earthquake in Haiti, and we even adopted a homeless kitten. But perhaps our most meaningful activity was experienced through Matthew’s passion for the sport of yo-yoing.

Matthew has become an accomplished yo-yo player through his attendance at classes run by the founder of a local yo-yo organization and plenty of practice. He was invited to join this group for a day-long yo-yo show and teaching session for the 85-plus campers, counselors and staff at “Camp Courage,” which is the annual recreational camp held in Prescott for children ages six to 15 and teens ages 16 to 19 in the camp’s leaders in training program affected by severe burns and traumatic injury. Camp Courage is sponsored by the Foundation for Burns and Trauma Inc., based in Phoenix, which is a wonderful organization dedicated to rehabilitating children and teens victimized by fire-related injuries and educating the public about fire prevention. (For more information, please see their website at www.azburn.org).

Matthew was the youngest of the performers/teachers. I watched him and his fellow yo-yo players with tremendous pride that day as they performed jaw-dropping yo-yo tricks, handed out free yo-yos and brought smiles to the faces of so many deserving young people. There is no question in my mind as to whether my son now understands the value of volunteerism, making this summer very special for me.

“Camp Courage,” which is the annual recreational camp held in Prescott for children ages six to 15 and teens ages 16 to 19 in the camp’s leaders in training program affected by severe burns and traumatic injury. Camp Courage is sponsored by the Foundation for Burns and Trauma Inc., based in Phoenix, which is a wonderful organization dedicated to rehabilitating children and teens victimized by fire-related injuries and educating the public about fire prevention. (For more information, please see their website at www.azburn.org).

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The Arizona Supreme Court has approved rules making 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.

On July 1, via Administrative Order No. 2009-73, the court established the Attorney Discipline Task Force and directed the Task Force to draft and file a rule petition to improve the current attorney discipline system, consistent with the court’s strategic direction.

The Task Force was specifically directed to include in its review, attorney discipline system best practices currently being used in Colorado and in other states and to examine methods that would maintain due process, and yet reduce the time and cost to process a case, especially those that proceed to formal complaints. Based on the findings of the Disciplinary Task Force, rules changes have been recommended and adopted by the Arizona Supreme Court. The new rules will go into effect on January 1, 2011.

The new system reflects 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 by 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 and;
- Establishment 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.

“Lawyers serve as representatives of clients, officers of the legal system, and public citizens. For the past several years, the Arizona Supreme Court, the State Bar of Arizona, and Arizona lawyers have worked together to improve the processing of attorney discipline cases in an effort to create and ensure a fair and efficient system of lawyer discipline,” Chief Justice Rebecca Berch commented. “The changes to the system will help promote the goal of protecting the public and will streamline the process for all involved.”

For information about attorney discipline in Arizona or the work of the Attorney Discipline Task Force, visit www.azcourts.gov/attorneydiscipline.

For information on how to apply for the position of the Presiding Disciplinary Judge, visit www.azcourts.gov/judicialjobs.

### Change is the Only Constant

**CLERK’S CORNER**

Michael K. Jeanes
Clerk of the Superior Court

If there is a slower season in the legal community, it is the summer. Continuing education courses wind down and the temperature ratchets up. Change continues, however, even during the summer. Judicial rotations have been made across case types and Judge Norman Davis began his tenure as presiding judge. Other changes taking place this summer include new ZIP code boundaries for case assignments, access to family court records, electronic filing and passport changes.

Superior Court Administrative Orders 2010-061 and 2010-064 detail new lists of which regional court facilities will hear cases that are filed and initiated on and after July 1, 2010. Case assignments are usually based on the ZIP code of the filing party who initiates a case. To balance judicial workloads, improve caseload and reduce delay, it was necessary to develop separate ZIP code boundaries in Family and Civil cases. As a result, a Family Court case may be assigned to a different regional court facility than a Civil matter (including probate cases) originating from the same ZIP code. Certain Civil and Family Court filings are not assigned according to administrative boundaries, including orders of protection, Federal Title IV-D cases filed by the office of the Arizona State Attorney General, complex civil litigation, transcript of judgment, injunctions against harassment and tax filings.

The Administrative Orders detailing the ZIP code boundaries effective on and after July 1, are posted on the Superior Court’s website at: http://www.supercourt.maricopa.gov/SuperiorCourt/AdministrativeOrders/2010.asp

**Making New Family Court Filings Non-Public**

The Superior Court in Maricopa County has implemented a procedure to keep new Family Court filings non-public for the first 45 days after filing. In the first 45 days of a Family Court filing, parties and their attorneys will have access to case information but the general public will not. This procedure allows the petitioner time to serve the respondent and for the parties to take action before the case becomes available to the public. This limited restriction of access to records in initial Family Court cases has been discussed for several years in response to domestic violence and other safety, privacy and confidentiality concerns. Clerk staff will verify the identity of customers before providing information in the first 45 days of a case. Because identity cannot be verified over the phone, information will only be provided telephonically after the 45 days have passed. The new procedure took effect in Maricopa County in cases filed or initiated on and after July 1.

**AZTurboCourt Usage Expected to Increase**

Throughout the summer and fall the courts anticipate more attorneys will learn about and use AZTurboCourt, the statewide eFiling portal. Though still in various stages of development and release, AZTurboCourt is envisioned as a comprehensive eFiling website for limited and general jurisdiction courts throughout the State of Arizona. In the coming months the Administrative Office of the Courts will provide more information and training to take advantage of the next generation of electronic filing.

**Passport Fees Raised**

The Clerk’s Office is one of several agencies in Arizona that acts as an acceptance agent for passport applications to the Department of State. In July, the federal government followed through with a long-standing promise to raise the fees for issuing a passport. Based primarily on the cost of technological advancements and security capabilities in creating passports and backlogs in processing them, the fees were anticipated to recover some, but not all of the existing expenses surrounding passport applications. The general forms and requirements for passport applications have not changed.

**Technology Changes, Values Remain the Same**

Change is easier for some than others. The underlying values, precedent and processes of the courts remain steady, but the daily processes for filing, monitoring and calendaring cases continue to change over time. The Clerk’s Office will continue to seek ways to leverage technology, more efficiently support the court and to provide outstanding customer service to the public and the legal community.

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Return That Phone Call Within 24 Hours

Perhaps some of the greatest advice I ever received years ago as a younger attorney is simply to “nip it in the bud.” Obviously the expression alludes to the literal de-budding of plants, but in other words, stopping something while it remains early development. In the legal world, I would say this means dealing with a problem while it still is small and before it grows into a serious one. Unfortunately, for most, it is these “problems” that we tend to avoid. It’s far more enticing to set dilemmas aside for a later date. Let them brew awhile. Phone calls we have no desire to return, shoved-aside dates. Let them brew awhile. Phone calls we have no desire to return, shoved-aside dates. If you can’t return a phone call or respond to a request, someone will question how you can be trusted to handle the work. It is no secret that clients, bosses and our mothers all expect timely responses. So we probably should just nip it in the bud.

Although sometimes painful, we rarely have anything to gain by delaying small, unpleasant tasks. In fact, in my experience it seems that procrastination on these presumably small issues usually results only in the development of larger problems: an unhappy client, a miscommunication, or inevitably the snowballing into an even more unpleasant task. Also, in my experience, I have learned that these budding problems usually are not as bad as they seem. Not to mention that you have removed one more worry from the back of your mind when it’s dealt with at the outset. Subconsciously, the stress would have made its mark, somehow.

Of course, aside from the fact that budding problems only grow more significant over time, responsiveness and promptness just build better relationships. The risk, otherwise, is that if you can’t return a phone call or respond to a request, someone will question how you can be trusted to handle the work. It is no secret that clients, bosses and our mothers all expect timely responses. So we probably should just nip it in the bud.

Young Lawyers Staying Busy in the Dog Days

Despite being our hottest, most sultry days of the summer, the Young Lawyers Division has been busy. The American Bar Association and the MCBA recently awarded our Domestic Violence Committee a generous grant to support funding of the Legal Assistance to Women in Shelters Program (“LAWS”). Specifically, the grant will contribute to the translation of written and other materials into Spanish. The LAWS Program, led by Chair Leslie Satterlee, provides victims and survivors of domestic violence various informative handouts, points of law so that they may represent themselves in the justice system, and lists of resources. The MCBA YLD also provides a “Survivor’s Guide” pamphlet that outlines the rights of domestic violence victims; pertinent contacts, including emergency contacts; steps on obtaining orders of protection; and other relevant information. Thanks to this grant, the YLD can offer materials in Spanish, something that had been requested by various shelters across the valley.

The YLD also is in the process of preparing the 6th Annual Race Judicata. This year’s Race Judicata – a 5K Walk/Run – will take place on Sunday, October 3 at 7 a.m. at the Kiwanis Community Park located at 5500 S. Mill Ave. in Tempe, 85283. The Race Judicata Committee, chaired by Rachel James, has been hard at work. Come walk, run or stroll your way through the race to benefit survivors of domestic violence. After another exciting and successful race last year, we are thrilled to continue the tradition. The event is open to the entire community and is family and dog friendly and includes a Kids Dash. Special medals will be awarded to the fastest runners, as well as the fastest judge, criminal and civil practitioners; para-legal law student or professor; and legal assistants.

Support the legal community and domestic violence shelters by registering for the 5K Walk/Run – will take place on Sunday, October 3 at 7 a.m. at the Kiwanis Community Park located at 5500 S. Mill Ave. in Tempe, 85283. The Race Judicata Committee, chaired by Rachel James, has been hard at work. Come walk, run or stroll your way through the race to benefit survivors of domestic violence. After another exciting and successful race last year, we are thrilled to continue the tradition. The event is open to the entire community and is family and dog friendly and includes a Kids Dash. Special medals will be awarded to the fastest runners, as well as the fastest judge, criminal and civil practitioners; para-legal law student or professor; and legal assistants.

Support the legal community and domestic violence shelters by registering for the great event at www.maricopabar.org.

Get Involved!
The Young Lawyers Division is always looking for new members and new ideas. Please consider becoming involved and connecting with wonderful people throughout the community. If you have any questions, please contact me at richard_siever@metros.com.

Annual Race Judicata Happening Oct. 3 in Tempe

October is the perfect time of year to put on some athletic shoes, step outside and join dozens of others in a race to benefit the community.

The Race Judicata 5K/1 Mile marks its sixth year of raising funds and awareness for survivors of domestic violence through participants running, walking or strolling their way to the finish line.

The race, sponsored by the MCBA Young Lawyers Division, will be held at Kiwanis Park in Tempe on October 3.

Proceeds will benefit the Legal Assistance to Women in Shelters (LAWS) Program and the YLD’s annual necessities drive supporting various domestic violence shelters all over the valley.

A 5K and Kids Dash are the primary races and draw a number of participants, including attorneys, judges and justices. There will also be a bounce house for the little ones, music and refreshments.

Last year’s event was a big success, drawing more than 300 registrants thanks to the McBA’s generous sponsors and participants. Check-in and registration for the race begins at 6 a.m. The 5K race begins at 7 a.m. followed immediately by the Kids’ Dash.

Entry fees are $20 for MCBA members and immediate family members and $25 for non-members. Teams of 10 or more are $20 per participant (team registration closes September 24); Sleep-In (Donation Only): $20; Kids (under 15): $10 (after September 24, 2010: $15.00); Late registration (after September 24, 2010): $30.

Every paid entrant receives a goodie bag, a Race Judicata t-shirt, and free food and drink after the race. Please also bring a new toothbrush or tube of toothpaste for donation to local Domestic Violence Shelters.

The Kiwanis Community Park is located at 5500 S. Mill Ave. in Tempe, 85283. Follow the signs to parking at the All American Way Bridge. The race begins and ends at the Sister Cities Garden Area of the park.
Register for the 2010 Paralegal Conference in October

Don't miss out! On Friday, October 1, the 11th Arizona Paralegal Conference, “Where the Paralegal Community Connects,” will be held at the Hyatt Regency in downtown Phoenix. This year’s conference co-chairs, Sara Neily and Felice Wortman, along with their committee, have been working very hard to make this a special event. Speakers have been arranged, the menu has been chosen, vendors have signed up and door prizes have been collected. It is time for your registration forms to be filled out and sent in.

This year’s conference topics are: The Arizona Jury, Past Present and Future Reform; Employee rights in Arizona; Factual Investigation and Interviewing in Criminal Cases; and everyone’s favorite speaker, Josh Woodard presenting Myspace, and Civil Cases; and everyone’s favorite speaker, Josh Woodard presenting Myspace, and Civil Cases.

During the conference, the presentation of the Paralegal Day Proclamation will take place, the winners of this year’s MCBA Paralegal Division Scholarship will be introduced, the division retrospective will be shown and you will have a chance to win some fantastic door prizes or maybe even the grand prize laptop. Plus, you will have the opportunity to meet and network with other paralegals from around the state and visit with the vendors in the exhibit hall.

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

Please visit our website to register online, download conference registration forms and a Member of the Year nomination form and award criteria, and for more information regarding the conference speakers and topics at www.maricopabar.org.

See you all at the conference on Friday, October 1!

Gust Rosenfeld Moves to New CityScape Building

Gust Rosenfeld P.L.C announces its Phoenix office has relocated to the new CityScape development in downtown Phoenix. The firm occupies 45,000 square feet spanning two floors in the impressive mixed-use office tower.

“The CityScape is an ideal setting for our firm and a convenient location for our clients,” said Tom Chauncy II. “It offers great amenities, proximity to courthouses and government buildings, and a unique urban atmosphere. We are proud to call it home.”

From the new space, Gust Rosenfeld attorneys continue to provide legal counsel to individuals, businesses and governments in the areas of public law, litigation, finance, real estate, corporate, environmental, employment, creditors’ rights, franchise law, estate planning and tax.

The firm’s new Phoenix address is: One East Washington Street Suite 1600 Phoenix, AZ 85004-2553 The CityScape building is located on the southeast corner of Central Avenue and Washington Street, and the parking garage is accessible from both Washington and Jefferson streets.

Gust Rosenfeld’s phone numbers, fax numbers and email addresses remain the same.

Calendar of Events

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<td>Conference Committee Meeting</td>
<td>11th Annual Paralegal Conference</td>
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<td>12 Thursday</td>
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<td>Board of Directors Meeting</td>
<td>Board of Directors Meeting</td>
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<td>SEPTEMBER</td>
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Lawyer Referral Service Needs You

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

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

It’s easy to join! Call Don Burns at (602) 682-8590.

CITY OF PHOENIX MUNICIPAL COURT JUDGE

The Judicial Selection Advisory Board is accepting applications for the position of Judge of the Phoenix Municipal Court.

DUTIES: Applies relevant state statutes, city ordinances, Supreme Court Rules, and case law when presiding over a variety of court cases including criminal misdemeanor complaints, traffic charges, jury and non-jury trials, pre-trial conferences, arraignments, motions, and other court proceedings. This position is filled by appointment of the City Council to a specified term.

REQUIREMENT: Admission to the Arizona State Bar and a minimum of five years practical experience in law or equivalent legal experience is required, with preference to at least five years of practice in Arizona.

Applications are available through the Phoenix Municipal Court’s web site at http://phoenix.gov/COURT/judges1.html or through the Judicial Selection Advisory Board c/o Phoenix Municipal Court, 300 West Washington Street, Phoenix, AZ 85003 (602) 262-1608.

Applications must be received no later than 5:00 PM on Friday, August 13th, 2010.

Successful applicants will be required to take and pass a drug test and employment will be contingent upon successful completion of any required drug test and consideration of background, references, and other job-related selection information.

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AA/EEO/D Employer
Most everyone agrees that first impressions count (and last a long time). Yet, legal writers fail to take that maxim to heart when writing to courts. Many legal writers begin their writing with a form, and chances are that this form begins with archaic and repetitive language.

Unfortunately, it is easy for legal writers to copy from these forms without giving the writing process much thought; thus, the archaic and repetitive language cycle perpetuates. Following is the classic example of archaic and repetitive introductory language in a court document:

COMES NOW the Plaintiff, ABC Manufacturing, doing business as XYZ Company, and files this Motion in Limine to exclude Defendant's witness's testimony on the grounds that such testimony constitutes hearsay.

This language is archaic because it includes language that is not plain (“on the grounds that such testimony constitutes hearsay”) and language that is not required by any modern court (“COMES NOW”). This language is also repetitive because it repeats the parties’ information from the caption and the motion information from the title. A judge likely skims over this introduction looking for the main point or argument summary, which hopefully appears somewhere on the first page. Why waste the judge’s time and this opportunity at making a first impression that counts?

To make the most of the introduction, start with the main point or summary up front. This summary should ideally take about one or two sentences. Avoid the urge to use legalese and repeat information from the caption or title as the first sentence. Instead, think of telling the court directly what you would like it to do and why. Also, avoid the urge to write the introduction first. Good legal writers know that the argument comes together during the writing process; it is impossible to know the exact summary of the argument until the argument is finished.

Compare the following rewritten introduction with the typical introduction above:

Random Witness was not in the room when the parties discussed the delivery date, thus this Court should exclude his testimony as inadmissible hearsay. Motion granted.

MCBA Members Selected for Leadership Institute Class

MCBA Secretary David Funkhouser III (Quarles & Brady LLP) and YLD President Richard Siever (Rural/Metro Corporation) are among the 50 individuals selected to participate in Class 32 of the Leadership Institute program sponsored by Valley Leadership for 2010-11. Other attorneys selected include Lori Higuer (Fennemore Craig PC), Daniel Seiden (Gallagher & Kennedy PA) and Charlene Tarver (Tarver Law Group PLLC). Executive Director Allen Kimbrough recently completed the program as a member of Class 31. Valley Leadership is pleased to announce the members of Leadership Institute Class 32. The Leadership Institute is Valley Leadership’s legacy program designed to inspire a new generation of local leaders to understand and appreciate community service and diversity, work for the common good, and inspire and empower others. The program offers increased awareness and understanding of our community, leadership skills development, cultivation and opportunities for engagement and a broader network of personal and professional relationships.

The members of Class 32 are:
David Funkhouser, III, Quarles & Brady LLP
Lori Higuer, Fennemore Craig, PC
Daniel Seiden, Gallagher & Kennedy PA
Charelne Tarver, Tarver Law Group PLLC
Richard Siever, Rural/Metro Corporation

Legal Briefs

New Fee Schedule for PACER

Last March the Judicial Conference of the United States approved a modification to its PACER (“Public Access to Court Electronic Records”) fee schedule. Under the adjusted fee schedule, users are only billed if they accrue charges exceeding $10 in any quarterly billing cycle. Although previously users were not billed until their accounts totaled $120 in a one-year period, the new fee schedule is thought to increase the number of users who will not be billed for PACER usage from 50 percent to 75 percent.

New law allows superior courts to exchange Columbus Day for “Black Friday”

A bill signed into law April 9 (HB 2109) will allow a presiding judge of a county to approve keeping a superior court open for business on Columbus Day and instead treating the day after Thanksgiving (aka “Black Friday”) as a state holiday. Last year HB 2236 was signed into law and allowed a county’s board of supervisors to adopt a resolution designating the fourth Friday in November a legal holiday in place of Columbus Day. But superior courts went unaffected by this law because they are under the administration of the state. HB 2109 allows the superior court of a county, upon the approval of the county’s presiding judge, to transact business on Columbus Day if the county’s board of supervisors declares Black Friday a legal holiday.

Ninth Circuit provides video recordings of two en banc arguments

The Ninth Circuit Court of Appeals has provided video recordings at its website (www.ca9.uscourts.gov/mediavideo) of two en banc cases argued earlier this year. The two cases are:

- Chapman v. Pier 1 Imports, 07-16126: in which Pier 1 Imports appeals the summary judgment of the U.S. District Court for the Eastern District of California in an action brought against Pier 1 Imports pursuant to the Americans with Disabilities Act; and
- Cassier v. Kingdom of Spain, 06-56325: in which a ruling by the U.S. District Court for the Central District of California denying motions to dismiss an action seeking to recover a painting allegedly taken in 1939 in violation of international law by an agent of the government of Nazi Germany is appealed.

En banc cases are argued in front of 11 court of appeals judges rather than the standard three-judge panel and are instituted to resolve intra-circuit conflicts deemed to be of exceptional importance.

In addition to these two video recordings, a schedule of Ninth Circuit cases also is available on-line at the court’s website: http://www.ca9.uscourts.gov.

Legal Writing

Tamura Herrera

legal writing

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.

Maricopa Bar Association

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New Superior Court Commissioner Appointed

Former Presiding Judge Barbara Rodriguez Mundell appointed Cynthia Gialketsis as a Superior Court Commissioner. Commissioner Gialketsis is assigned to a probate calendar in the Old Courthouse.

For the past 15 years, she served as a Deputy County Attorney in the Maricopa County Attorney’s Office, working in the Vehicular Crimes and Training Bureau and training new prosecutors in the Preliminary Hearing Bureau where she served as Bureau Chief since 2005. Commissioner Gialketsis is a graduate of the University of Nebraska College of Law. She earned her undergraduate degree from Florida State University.

Cynthia Gialketsis

CASA’s Website Wins Award

The Court Appointed Special Advocate (CASA) program has been awarded the National Association for Court Management (NACM) 2010 Justice Achievement Award for the CASA Volunteer-centric Website Design. In collaboration with Court Technology Services (CTS), the CASA program developed a website through which volunteers and staff perform all their required duties. By using an Internet-based application, the program reduces program costs significantly and allows volunteers to perform better advocacy for children and staff to work within the community while remaining connected to the office.

Further, it reduces time and costs for many community stakeholders. The Maricopa County CASA Program is the first in the nation to use this level of technology and programming sophistication.

The NACM Justice Achievement Award was established in 1988 to recognize outstanding achievement and meritorious projects that enhance the administration of justice. This prestigious award will be presented at the NACM Annual Conference in New Orleans on Friday, July 23.

Judge Steinle Honored For Victim Presentation

The Governor of the Commonwealth of Kentucky Steve L. Beshear commissioned Judge Roland Steinle as a Kentucky Colonel. Judge Steinle was awarded this honor for speaking at the statewide Victim Compensation Fund conference. The Kentucky Colonels are a charitable organization that provides financial support to Kentucky charitable and educational institutions and organizations. Many celebrities have held the title Kentucky Colonel over the years, including Muhammad Ali, Elvis Presley, Bob Hope and Wayne Newton.

Gov. to Choose New Judges

The Maricopa County Commission on Trial Court Appointments has recommended six candidates to Gov. Jan Brewer for two openings on the Maricopa County Superior Court. Nominees for the opening created by the retirement of Judge Barbara Mundell are James T. Blomo, 48, Republican, of Phoenix, a commissioner for the Maricopa County Superior Court; Janice K. Crawford, 53, Republican, of Chandler, of counsel with the law firm of Steptoe and Johnson, LLP; and, Douglas Gerlach, 59, Democrat, of Mesa, a partner in the law firm of Jennings Strouss & Salmon, PLC.

Nominees for the opening created by the retirement of Judge James Keppel are Joan M. Sinclair, 48, Democrat, of Scottsdale, a commissioner for the Maricopa County Superior Court; Mark H. Brain, 46, Republican, of Phoenix, a commissioner for the Maricopa County Superior Court; and, Peter A. Thompson, 53, Republican, of Mesa, a commissioner for the Maricopa County Superior Court.

Gov. Brewer will make the appointments.

Vacancy on Ariz. Supreme Court

Applications are being accepted for a vacancy created on the Arizona Supreme Court when Justice Michael D. Ryan retires on August 6. The Commission on Appellate Court Appointments will review applications, interview selected applicants, and recommend at least three nominees to Gov. Jan Brewer.

Applications must have been admitted to the practice of law in Arizona for at least three nominees to Gov. Jan Brewer.

Applications must have been admitted to the practice of law in Arizona for at least three nominees to Gov. Jan Brewer. The new justice will be paid $155,000 annually.

The original completed application and 17 copies must be returned to the Administrative Office of the Courts, Human Resources Division, 1501 W. Washington, Suite 221, Phoenix, AZ, 85007, by 3 p.m. on August 20. The commission may, at its discretion, use the applications filed for this vacancy to nominate candidates for any additional vacancies known to the commission before the screening meeting for the vacancy is held.

All meetings of the Commission on Appellate Court Appointments are open to the public. Meeting dates will be announced in August. The new justice will be paid $155,000 annually.

www.supreme.state.az.us/hr/jnc

www.terminate.az.gov or at the Judicial Department web site:
Train the Trainer Before Training Others

By Jim Hopkins

One of the biggest misconceptions in the learning development world is if you are a subject matter expert in something that you can be a trainer. Not everyone who truly knows their stuff makes a good trainer, facilitator, teacher or even the person that designs training materials. Just because you know about something does not mean you know how to help others learn it well enough to perform the same tasks. The secret to successful training is training the trainers before they train others.

There is an entire skill set that belongs to the person conducting the training that includes knowing how adults prefer to learn and the best ways to build the bridge from knowing to doing. We call these “adult learning principles” and they are the keys that will open both the door to success if applied correctly and the door to failure if they are ignored. The people who design training programs must also understand these principles so that they can be incorporated into the appropriate learning activities that train the skills and then reinforce or apply the skills to the work environment.

The good news for both training roles are that these skills can be taught and learned if they are included in the professional development plans of a training department. If they are left to chance, then the results of all training are left to the roll of the dice.

Many of us in the training and development profession began our careers coming straight from line functions in the organization and were tapped because we were good at our jobs. The common thought was: if you were good at something (a subject matter expert) you could then be taught how to be a trainer. Although I agree pretty much with that statement, I later modified that approach when I began running training functions and needed to hire staff. In addition to hiring for subject matter knowledge, I looked at something I called heart. I knew I could teach someone how to train another person, but I also wanted to see if they had the desire to share what they knew with another person.

Some humans are downright stingy with their knowledge and abilities. They feel that what they know how to do is only valuable if they keep it locked up inside and they are the only one who benefits. Finding people with the right heart means that they see the value in more people knowing what they know, and thus are willing to share. The only caveat I have discovered that prevents training a subject matter expert to be a great trainer or instructional designer is a lack of a heart willing to share.

So let’s assume you find the right person who not only wants to train others to do what they can do, but has the right knowledge to pull it off; it is very important you arm them with trainer skills either in instructional design and/or training facilitation before you let them loose on your employees.

Let’s look at the need first to train the trainer before training others. Think back to recent training events at work and ask yourself if you were engaged. Did the activities make you interact with the subject being taught, or could you multi-task at the same time? After the event, were you able to implement the new skills rather quickly, or did the new skills leave you rather quickly? Did the training materials used in training add to your learning process before, during or after the event, or are you asking yourself right now, what training materials?

If your answers to these questions were positive, then the people involved in your training are skilled in not only the subject, but in the ways of adult learning. They are also being managed by people that make sure that training events support learning objectives and training department employees are being trained, coached and mentored to be on a continual learning path themselves. This is outstanding news, and you should be most pleased with your company’s training efforts.

However, if your answers were not positive, and you actually look for reasons to avoid training events at your company, then you have a dysfunctional training department. Yet, sadly I need you to realize that you are not alone. Nearly every time I conduct an audit of a training function, I must note a lack of professional development in the training team. When I discover training materials that are a bunch of handouts, or worse a four-inch manual of text, I know that there are no instructional design skills around. When I hear trainers detail stories of their training experience, I see a lack of learning as the result. And when any of these poor practices are in place, there is usually a manager running the function without a clue that they, too, are missing a complete skill set.

So before you worry too much about the color of the next binder that holds your training program materials, take the time to make sure that the contents will add value to the learning process. Before you pluck an all-star employee from the line and expect magic to occur in the classroom or webinar, give them the skills to facilitate an engaging event. Before you even consider closing a training function because you cannot identify a return on the investment, see if the manager of the department has the skills to lead adult learning.

Taking the time to train your trainers before you let them train others will not only yield better results, but make the learning experience for everyone a lot more enjoyable.

Train the County Attorney’s Office

Paul Ahler, Chief Deputy County Attorney for the Maricopa County Attorney’s Office, said the office has begun to rebuild its own training program since the appointment of Interim County Attorney Rick Romley.

Romley, who was County Attorney before Andrew Thomas (now a candidate for Arizona Attorney General) and who is also running for County Attorney, instituted a very extensive training program, Ahler said.

The program led to vast improvements for the MCAO by creating different training modules for staff, paralegals and attorneys; it was disbanded in 2005 after Thomas became county attorney.

Ahler said it’s been challenging to rebuild what was lost.

“It’s frustrating because we had such a good training program in place,” he said. “Our plan is to eventually get back to that same level.”

Between 2000 and 2001, Ahler said the office hired someone with a professional training background, unrelated to the legal field, as head of a division within the office.

A couple of benefits of the program was that when the need arose to hire secretaries, instead of going outside to hire employees, the office was able to train existing staff members with the requisite skills. It was also a great recruitment tool for more people learned about it and became interested in working for the office.

Though the MCAO has not hired many people in the past year and a half, Ahler said having the training program in place will come in handy once hiring picks up again.

Don’t Overlook the Speculative Builder Tax

By H. Curtis Keller

If you have not heard of the speculative builder tax, keep reading this article. If overlooked, the speculative builder tax could end up costing you a significant amount of time and money in your next commercial real estate purchase.

Under Section 416 of the Model City Tax Code (prepared by the League of Arizona Cities and Towns and adopted by numerous municipalities in Arizona) (the “Code”), a speculative builder must pay a transaction privilege tax (i.e., a “sales tax”) ranging from 1 percent to 5 percent of the total selling price derived from the sale of improved real property. Under Section 416(A)(3) of the Code, a “sale of improved real property” includes any form of transaction, whether characterized as a lease or otherwise, which in substance is a transfer of title of, or equitable ownership in, improved real property . . . .

Under Section 100 of the Code, an owner builder who sells improved commercial real property is a speculative builder subject to this particular transaction privilege tax in the following transactions: the sale of improved real property (i) consisting of “improved . . . commercial lots without a structure . . . .”; (ii) sold “prior to completion,” or (iii) sold within twenty-four (24) months after substantial completion of the improvements.

So why would a purchaser of improved commercial real property be concerned with the speculative builder tax? Significantly, such a purchaser could be liable for the speculative builder tax. Indeed, in the current economic climate, purchasers are buying commercial property from owner-builders who are often insolvent, and lenders are taking back property via a trustee’s deed or a deed in lieu of foreclosure. If a speculative builder tax is due in such a situation, and the owner-builder fails to pay the tax, who pays for it?

Section 595 of the Code provides for successful liability: “Any person who purchases or who acquires by foreclosure, by sale under trustee’s deed or warranty deed in lieu of foreclosure, or by any other method improved real property or a portion of improved real property for which the Privilege Tax imposed . . . has not been paid shall be responsible for payment of such tax as a speculative builder or owner builder . . . .”

Thus, if an owner-builder fails to pay the speculative builder tax assessed by a city in connection with a transfer of improved real property, then the purchaser would be liable for the entire amount of any such tax.

A real-life experience serves to illustrate this conclusion. Recently, in lieu of foreclosure proceedings, a financially distressed developer transferred partially improved real property to its nationally-recognized lender (the “Lender”). The Arizona town (the “Town”) in which the improved real property was located assessed a speculative builder tax against the developer in the amount of approximately $131,000 (plus $35,000 in penalties and interest).

The insolvent developer failed to pay the speculative builder tax. In accordance with Section 595 of the Code, the Town assessed the total tax, with penalties and interest, against the Lender and demanded to be paid.

Regardless of whether or not a purchaser is purchasing improved commercial real property from an insolvent purchaser, the purchaser must consider the speculative builder tax in its negotiations. If there is any possibility that the municipality can assess a speculative builder tax, the purchaser should take measures to protect itself against the possibility of successor liability, including consulting with a real estate attorney to examine any applicable strategies.
The Benefits of Appointing a Receiver to Achieve an Equitable Remedy and Asset Protection

By Kevin Singer

**Part I of a Two-Part Series**

The appointment of receiver is an “equitable” remedy that allows judges to protect and preserve assets while parties are in legal disputes. The use of receivers can be traced back to England during the rule of Queen Elizabeth when they established courts to deal with equitable issues. These courts were called chancery courts. The American colonies gave the courts the same equitable powers to use receivers with the adoption of the Constitution in 1787. Receivers are most commonly appointed over real estate but they can also be appointed over businesses, health and safety issues, environmental issues, family estates, government regulatory matters and to enforce judgments.

In Part I of this two-part series, I will discuss five benefits for using a receiver to achieve an equitable remedy and protect assets. For the purpose of this article, the term “asset” could mean real or personal property, a business and/or inventory. The term “opposing party” could be taken to mean a borrower in default or a defendant in an underlying legal action.

1. **Just Petitioning a Court for a Receiver Often Triggers a Settlement**

In my full-time practice as a court-appointed receiver, it is quite frequent that no sooner than an attorney petitions a court to have me appointed as a receiver over a matter, I receive a phone call from that attorney informing me that the debtor promptly reinstated the loan or the opposing party agreed to settle the matter. “What made the debtor or opposing party act so quickly?” you might ask. Here are three of the reasons I’ve experienced for that phenomenon:

a) Petitioning a court for a receiver signals to the other party that you mean business. Once you petition a court for a receiver, you’ve crossed the line from “talk” into “action” and forced the opposing party to respond or incur the potential consequences. Once you file that petition, if the opposing party plans on opposing it, they are forced to hire legal counsel and challenge your request. That means spending time, money and effort opposing a motion that might be better spent settling the issue.

b) Many business owners and property owners don’t like to lose control of their asset. The nomination of a receiver signals to the other party that they will most likely lose control of their business, property or other asset during the receivership. Although it’s quite often the case that such asset and its income stream are best protected in the hands of a receiver, just the thought of losing control of this income stream and/or the management of the asset itself is enough to make the opposing party soften their position and move towards settlement.

c) Petitioning a court for a receiver triggers the fear of incurring legal fees and receiver fees in the mind of the opposing party. Money isn’t the only motivating factor in legal disputes, but when most parties realize that their actions could potentially cost them in terms of legal fees and receiver fees, it’s surprising how quickly settlement becomes an attractive option. We frequently see delinquent borrowers become more responsive and less demanding once they realize that they could be held liable for the cost of a receiver under their loan documents and/or personal guarantees. If an aggrieved party does not file a lawsuit and petition the court for the appointment of a receiver, quite often the opposing party has little incentive to promptly cooperate and work towards settlement.

2. **A Receiver is in a Good Position to Mediate a Settlement amongst the Parties**

Settling a legal dispute can be challenging when faced with the common scenario that the parties to a matter are distrustful of each other and the other side’s representatives. As a neutral third party appointed by the court, a receiver is in a unique position to work out a settlement in this scenario. A receiver doesn’t answer to the parties, but rather to the judge who appointed him or her. Often in litigation, settlement is made difficult because both the parties are entrenched in their position and the clients are instructing their attorneys to take positions that are unsubstantiated and unrealistic. This often makes settlement difficult without a neutral third party intervening.

Since a receiver is neutral, the parties will often feel more comfortable communicating with the receiver when exploring potential settlement. We find this to be true when one or more of the parties is not represented by legal counsel. Although mediators are often used to try and mediate settlement, a mediator will often lack the rapport with the parties, an understanding of the parties’ “hot buttons,” the personal knowledge of the asset in question and an insight into the core issues of a dispute that a receiver handling a matter will have. Keep in mind that, depending on the scope for which the receiver has been appointed, a receiver usually has to communicate regularly with both parties and their attorneys, personally evaluate the condition of the asset at issue, obtain a valuation of the asset and prepare an analysis of the issues of the case. As such, the receiver has a hands-on working knowledge of the parties, their positions, the asset and the issues. This all lends credibility to the receiver’s recommendations when leading the parties towards settlement that a mediator won’t usually have.

Between the receiver’s neutral status and credibility with the parties, a receiver can often bring the parties together for an expedited settlement, saving the parties time and money. In addition, a receiver has great incentive to facilitate settlement because a receiver knows that some judges appreciate working with a receiver that can resolve disputes and help lighten his or her overburdened court calendar (and it’s the judge that is ultimately responsible for appointing the receiver on future cases in his or her courtroom).

3. **The Receiver Protects the Property**

The receiver can stop the theft of copper piping, electrical wires/panels, heating units, air-conditioning units and building materials. They can prevent the pilfering of trade fixtures or the dumping of hazardous waste at the property. When the property is not being responsibly managed, city and county inspectors often take note and issue citations that are costly to resolve. Insurance companies also take action when buildings are not maintained and will often issue correction notices, increase premiums or cancel the policy. If an insurance policy is cancelled for failure to maintain, it will become difficult to get a new insurance policy placed. As such, the appointment of a receiver helps to protect a property’s structure and value.

4. **The Appointment of a Receiver Can Bring a Fresh Approach to the Management of an Asset**

A receiver will often put new and fresh management in place. This brings a fresh perspective and approach as to how the asset can be run more efficiently and profitably. The appointment of a receiver will strip the opposing party of their management and control of the asset and their ability to continue business practices that could be putting the asset deeper into its distressed condition. Depending on the court issued receivership order, part of a receiver’s duties is often to conduct an analysis of the management currently in place. An experienced receiver will have the resources to conduct this type of analysis and determine what’s working and what’s not working as far as the asset’s performance and how it’s being managed. We’ve had receiverships where bringing in new management quickly got a business back in the black, leased vacant space that wasn’t being properly marketed, needed capital improvements made that had been overlooked and a repositioning of the marketing of the property that quickly lead to a higher sales valuation. In addition, a receiver will monitor this new management team, since the receiver is usually required to submit monthly status reports to the parties and the court informing them of the progress on the asset. A receiver will keep the current management in place, when he or she determines that it’s in the best interest of the asset and receivership estate to do so.

5. **A Receiver Can Improve the Value of the Asset**

On a real estate receivership, from the time that a lender records a notice of default, it will take approximately 90 to 180 days to reach a trust deed sale, depending on the state where the action is being filed. While the lender is waiting for the trust deed sales date, a Court Receiver can be working to increase the value of the property. Most investors that attend a trust deed sales or purchase after a sale, will make their offers based on the condition and value of the property.

A receiver can be instrumental in using this valuable time to improve the condition of the property and increase its value. A receiver can oversee the leasing of vacant space; complete necessary capital improvements; work with the city to resolve any outstanding permit or entitlement issues; help resolve title issues that might be plaguing the property; borrow funds and complete unfinished construction; and prepare an asset repositioning plan, benchmarking studies, expense audit analysis, portfolio analysis and a strategic marketing plan that incorporates a complete exit strategy.

If the asset is a business, bringing in new management can quickly stabilize the business operation, gain control of the cash flow, conduct an inventory of the business assets, and reevaluate the business practices that were compromising the success of the business. All these matters lead to an improvement in the health of the business and its value.

A receiver is always looking for ways to increase the value of the asset. Increasing the value or income stream of the asset makes for happy parties and also helps increase the likelihood of appointments for the receiver in the future. In addition, protecting and increasing the income stream of the asset helps insurers that funds are available to pay investors and/or litigants.

Kevin Singer is founder and president of Receivership Specialists, which specializes in state and federal court receiverships, referee assignments and partition sales. For more information, Singer can be reached at (877) 755-9064 or www.ReceivershipSpecialists.com.
CLE Programs a Success in 2010 Despite Setbacks

By Laura Swendsen

Despite the challenges of 2009, including a fire that destroyed the MCBA office – not once, but twice in its existence – MCBA staff, members, speakers and organizers helped make this year’s offering of CLE programs a success. Thankfully, the MCBA team was able to move back into its headquarters by March and offer a much more spacious place for attorneys to earn their credit hours.

Laurie Williams, CLE director, said she was very happy with this year’s CLE programs, and especially pleased to be back in the MCBA office. “It was nice this year being back in our new and improved building,” Williams said.

Nonetheless, the show went on and the start of 2010 through June 30 – the last day to earn CLE credit hours – was spent in much more convenient learning quarters. Williams said she was happy with the programs put on this year, including the fundamental series, such as Bankruptcy 101 and Family Law 101.

“We’re going to expand on that next year. We’re going to try incorporating more all-day advanced programming for our advanced practitioners, specific to meet their needs,” she said.

Some of the comments about the Trial Advocacy included: “This was a great program!” and “You should offer more like this with different key topics like relocation, custody (when parents don’t agree) and business experts.”

Williams said that not only was the CLE interesting and well attended, but it was also well-organized, which she credits the Family Law Section Board with making happen.

Upcoming Year in CLEs

Williams said she is looking forward to the coming year, which will include a fundamental series each month, all-day seminars presented by each of the sections and divisions, and more programs for solo and small firms, such as an all-day practice management program. Also, on the not too-distant horizon, is the Arizona Paralegal Conference happening in October.

“We have big plans for 2011, and we hope to see a lot of folks at the programs,” Williams said.

Attorneys and MCBA Members DeShon Pullen, left, of DeShon Pullen and Associates; Leslie Satterlee, of Nirenstein Garnice Soderquist, PLC; and Andi Lawrence, of the Hallier Law Firm, react to the Family Law Trial Advocacy CLE.

Stasy Click, of the Law Office of Stasy Click P.C., plays the part of an attorney grilling a husband, played by Jason Castle, of the law office of Mariscal, Weeks, McIntyre & Friedlander, P.A., during a trial.
PSL Dean Stepping Down to Become Consortium Provost

Gene Clark has stepped down as interim dean at the Phoenix School of Law to become the first provost for the Infilaw Consortium of Law Schools, which includes Phoenix School of Law, Charlotte School of Law and Florida Coastal School of Law.

Before taking on his new role, Clark will spend the next year teaching in Australia at Griffith University in Gold Coast, Queensland. While there, he and his wife will await the arrival of their first grandchild, as well as celebrate their 40th wedding anniversary.

“I have never worked with a more wonderful, dedicated and caring group of students, faculty, staff and board,” Clark said. “They are very special and together we have each played a role in creating something very special at Phoenix School of Law. It has been my honor and joy to be a part of it, and I look forward to continuing that involvement in various ways over the years ahead.”

During Clark’s year and a half at PSL, he led the school and administration to obtaining full accreditation from the American Bar Association. The law school, which received ABA provisional accreditation in June 2007, is only the fourth for-profit law school in the country to be granted full accreditation, and was the only school to achieve this in less than six years, the shortest timeframe possible.

While Clark was interim dean, Phoenix Law also received the American Bar Association’s E. Smythe Gambrell Award for Professionalism in 2009, as well as the Law Student Admissions Council’s Diversity Matters Award. The award is given to schools that are seriously committed to diversity, and who demonstrate this by directing their recruitment efforts toward racial/ethnic underrepresented minority candidates.

Before Clark joined Phoenix School of Law as interim dean in January 2009, he served as dean and professor of law at the Charlotte School of Law in Charlotte, North Carolina.

College of Law Receives Grant for Major Television Project

A creative multi-media project being co-produced by the Sandra Day O’Connor College of Law, which seeks to educate Americans about emerging technologies and engage them in the technology choices that will shape their lives, has received funding from the Nathan Cummings Foundation.

The $250,000 grant will be used to fund phase two of “Future Tense,” which will investigate, via a three-hour national documentary series, interactive online presence and multi-year educational and public outreach component, three issues that are vital for the American public:

- The enormous potential benefits of the emerging GRINN technologies – Genomics, Robotics, Information Technology, Neuroscience, and Nanotechnology.
- The serious ethical, social and legal dilemmas posed by their use, and
- The search for possible strategies and solutions to address these dilemmas.

“Future Tense” will examine the social implications presented by transformative emerging technologies such as drugs that enhance cognitive function, virtual reality, surveillance technologies, genetic profiling, designer babies, brain scanning and others.

The project will further introduce underlying themes such as the role of and mechanisms for democratic decision-making and public participation in governing such technologies, the tension between beneficial and harmful applications, the gap between the poor and the wealthy, and the capability of existing regulatory systems to keep pace with rapidly accelerating technologies.

The two-year grant will be used to produce the script and initial computer-generated imagery and to assemble a content board of scholars and scientists within ASU and outside the university. Terry McManus, Executive Director of Institutional Advancement at the College of Law, said it swings open the door for further interest.

The documentary, website and other educational programming are expected to launch in 2012. For more information about “Future Tense,” contact McManus at tmcmanus@asu.edu or call (480) 727-0645.

Phoenix School of Law Honored for Diversity Efforts

The Phoenix School of Law was honored as one of the top three law schools in the country for its diversity efforts with the 2010 Law School Admissions Council’s Diversity Matters Award at the organization’s annual meeting in Florida on June 7.

PhoenixLaw was among 214 LSAC member schools that were considered for the award. The two other law schools that received recognition at the event for their diversity efforts were Nova Southeastern and Cleveland Marshall College of Law.

The award is given to schools that are seriously committed to diversity, and who demonstrate this by their recruitment efforts directed toward racial/ethnic underrepresented minority candidates.

For the 09-10 academic year, diverse students made up 17 percent of PSL’s total enrollment. For the incoming Fall Class to date, 21 percent of pre-registered students are considered diverse. (*Diversity includes multicultural.)

In addition to the LSAC award, The Princeton Review has ranked the Phoenix School of Law as number eight among all law schools for the most diverse faculty. The diversity of PSL’s faculty is 36 percent as of April 2010.

The American Bar Association recognized PSL’s efforts by appointing Assistant Professor Mary Dolores Guerra as a liaison to the ABA’s Council for Racial and Ethnic Diversity in the Education Pipeline. The council works to increase the number of diverse students who are on track to becoming lawyers.

PhoenixLaw has made diversity an integral part of its mission through the creation of the Diversity Committee and Dean’s Diversity Council which provide external and internal opportunities to identify and resolve challenges facing our diverse student body, staff, and faculty. The Diversity Committee and Dean’s Diversity Council seek to promote programs that influence and effect social change and to promote and advance the goal of diversity in the legal profession.

In 2009, Phoenix School of Law began a partnership with the Arizona State Bar’s Diversity Section for the Diversity Pipeline Project. The State Bar adopted Cloves C. Campbell, Sr. Elementary School (7th and 8th grades) in south Phoenix to start the project. With more than 10 student volunteers from PhoenixLaw, the pipeline project exposes students from diverse backgrounds to the benefits of higher education in an effort to encourage them to attend law school, pass the bar, and become attorneys.

Project volunteers mentor the youngsters and guide them through the pipeline from entry to advancement in the legal profession.
VLP ATTORNEY OF THE MONTH

Lopour Lends Listening Ear, Legal Help to People in Need

Peggi Cornelius, CVA

When asked about her chosen area of practice and her pro bono work in the area of creditor/debtor and bankruptcy law, attorney Laura Lopour reflects on a childhood memory. “In the 1980s, I witnessed my father lose a four-generation business. The experience has resonance in every meeting I have with a client. Anything I can do to bring practical solutions to people experiencing such emotionally wrought challenges in their lives is my privilege.”

Not surprisingly, in less than a year since she enrolled as a member of the Maricopa County Volunteer Lawyers Program (VLP), Lopour’s outstanding assistance to more than 20 low-income clients has earned her distinction as VLP’s “Attorney of the Month.”

As an economics major at Loras College in Dubuque, Iowa, Lopour didn’t dream of becoming an attorney. “I was the first in my family to be able to attend college, and having grown up around my family’s plumbing shop, I gravitated toward small business matters. I became a tax consultant.” She said. Although her future as an attorney wasn’t a part of her reality at that time, she describes volunteer work as a steadfast part of her education. In college, she wrote community grants and began providing volunteer income tax assistance through VITA. She continued participating in VITA as a tax consultant and as a law student.

Lopour attended the Sandra Day O’Connor College of Law at Arizona State University, where she became aware of Community Legal Services (CLS) and the VLP. Her internship and first position following graduation were at a large accounting firm in Phoenix, and she later lived for a short time in Yuma County. Upon her return to the Valley in 2009, she “Googled” to locate CLS. “Within a week of our first conversation, VLP director, Pat Gerrich, was at my office with an urgent case,” quips Lopour.

After accepting her first VLP case for representation in a Chapter 7 proceeding, Lopour also agreed to assist VLP by providing intake screening and advice clinics for people seeking help with debt-related problems. She regularly donates a morning or afternoon in her office to call applicants for VLP services. When the interviews are concluded, she prepares case summaries, detailing advice she has rendered and/or recommending further consideration by VLP. Following the initial interviews, it is also not uncommon for her to provide further advice or assistance to applicants whose cases she has evaluated.

Lopour explains the process and its benefits well. She notes, “Much of what I do with VLP applicants is listen to fears and ‘what if’s’. Clients worry about what creditors can do to them. Before VLP assistance, their only source of information is the creditor. A 30- minute discussion of options can allow them to take a breath and make a plan.”

For her, allaying fears is an important and gratifying part of pro bono work. So, too, is giving people a fresh start when the time is right, and Lopour readily engages in representing VLP clients petitioning for no-asset bankruptcies. She gives an example. “In one case where bankruptcy was appropriate, I was able to bring relief to a father of young children. During a long and serious illness, he had incurred significant medical bills and tax assessments he and his wife could not pay. All their life problems were not addressed by the bankruptcy, but they were able to deal fairly and openly with their creditors, and he is now able to work and bring home his full wages.”

Commenting that VLP is “organized and flexible,” Lopour encourages her colleagues, especially newly admitted attorneys, to give time to VLP as they are able. “In my practice and in my pro bono endeavors, I have found satisfying work. I hope to be involved in VLP for many years to come,” she said.

If you would like further information about pro bono opportunities through the Volunteer Lawyers Program, contact director Patricia Gerrich at (602) 258-3434, ext. 2630.

Laura Lopour

Volunteer Lawyers Program Thanks Attorneys

The Volunteer Lawyers Program thanks the following attorneys and firms for agreeing to accept 58 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 MCBA for a CLE discount. For information about cases and other ways to help, please contact Pat Gerrich at VLP at 602-254-4714 or pgerrich@claz.org.

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Metadata Rules – Are You Complying?

By Randall Farrar

In states across the U.S., the debate surrounding an attorney’s professional responsibilities regarding metadata continues. Historically, opinions on whether there is a significant risk with metadata and, if so, what must be done to address that risk have varied between attorneys, IT departments, management, bar associations, and other governing entities.

In the last few years, a multitude of governing bodies have drafted and issued opinions regarding metadata. The State Bar of Arizona has issued an opinion specifically addressing an attorney’s ethical obligations regarding metadata. Law firms should address their management of metadata and develop specific policies or update existing policies to ensure they are in accordance.

As more states sound off on metadata and an attorney’s responsibility, Arizona firms with practices in multiple states should also make sure that their policies are acceptable in every jurisdiction in which they practice.

The State Bar of Arizona’s Committee on the Rules of Professional Conduct released Opinion 07-03: Confidentiality; Electronic Communications: Inadvertent Disclosure, which deals with a lawyer’s ethical obligations regarding metadata, as follows:

“Lawyers who send communications or other documents electronically must be aware that such activity has inherent risks. Therefore, the lawyer must take reasonable measures to prevent the inadvertent disclosure of confidential client information.”

For the full draft of the opinion, including the applicable rule and other published opinions on metadata, visit http://www.azbar.org/Ethics/Opinionview.cfm?id=695.

Interestingly, the Arizona Supreme Court ruled on Oct. 29, 2009 that the metadata attached to public records is itself public and cannot be withheld in response to a public records request.

According to the ruling “The metadata in an electronic document is part of the underlying document; it does not stand on its own. When a public officer uses a computer to make a public record, the metadata forms part of the document as much as the words on the page.”

The supreme court’s unanimous decision is believed to be the first by a state supreme court on whether a public records law applies to so-called “metadata.”

What is Metadata?

Sucessfully defined, metadata is “data about data.”

Microsoft Word, Excel and PowerPoint include automated features to aid in document production and collaboration. These features embed electronic information (metadata) in a file that can reveal the identity of those who edited the document (revision authors); track the time, date, and frequency of edits (track changes and revisions); reveal inserted comments and the document template; and other data employed to control the document’s text and format.

It is the commonly held opinion that this information should be removed before a file is shared outside the firm’s electronic walls to avoid violating attorney/client privilege, disclosing sensitive information to third parties and so on.

Many people think of tracked changes when they think of metadata. There have been numerous high profile cases where tracked changes inadvertently left in a document have had embarrassing, not to mention legal and ethical consequences. This mistake can be easily made. An attorney switches on the “Track Changes” function to make edits to a document. After collaborating with his assistant and associates, he is satisfied with the changes. He decides to send it to the client for review by changing the document to “Final” in the “Tracking” section.

The tracked changes disappear from the document. He assumes they are no longer there, clicks on “Send” via e-mail and sends the document to his client. The client opens the document to see all of the tracked changes displayed. This happened because the attorney did not accept all of the changes in the document. He merely hid them from view. When the client opened the document, her “Display for Review” settings were set by default to “Final Showing Markup,” thus revealing all of the changes in the document. If the firm had a metadata policy in place that detailed when and how documents should be “cleaned” before being sent externally, this situation would have been avoided.

A rule of thumb when understanding metadata is that every time a document is opened, edited and saved, metadata is added by the application, the operating system or the user. While track changes may provide an obvious example, many other metadata scenarios can cause problems for a law firm.

For example, an attorney is creating a contract for a new client. The contract requires some standard language. Since she has prepared similar contracts before, the attorney opens up a contract created previously for another client in Microsoft Word when she worked at a different firm. Using “Save As” she saves the document under a new name, makes edits as needed and e-mails it to her client.

Upon receipt the client opens the document and, since they have heard about metadata,

See Metadata Rules page 16

Expert Panelists Discuss Law’s Legal Implications continued from page 1

a set of prepared questions and questions posed by the audience to the panelists throughout the hour-and-a-half-long discussion.

The topics included federal versus state enforcement of immigration, what SB 1070 enforcement could look like and the possibility of race being used in enforcing the law, and the role of the law’s preamble.

Cole said presumption places Arizona in a position of strength in asserting its right to enforce SB 1070.

“I think the state does start from a position of strength in that virtually every court that’s dealt with issues of constitutionality, ordinances or statutes has to start with the presumption.”

He said that the challenger to the statute — in this case SB 1070 — bears the burden of showing that the statute is in fact unconstitutional through equal protection, privileges and immunities or due process of law. However, the law also presents a sliding scale with preemption — wherein the federal government has the supreme power to uphold federal laws — becoming a “very close question” in recent years.

Pace said it will be up to the U.S. Supreme Court to provide guidance regarding the topic of federal versus state enforcement of immigration.

“We need guidance, the Supreme Court needs to give it, and whether LAWA answers it or the next 1070 case, we’ll find out soon whether states can start taking over these areas of immigration.”

LAWA, or the Legal Arizona Workers Act (LAWA), was signed into law in 2008 and imposes severe sanctions on employers who knowingly hire undocumented immigrant workers.

Pace, who has been challenging LAWA since its enactment, said it’s possible that the Court will decide that immigration is preeminent, which could have an influence on SB 1070 and other immigration laws throughout the country that are similar to Arizona’s law.

On the question of whether immigration laws are being enforced by the federal government, which many say is not happening or has been very minimal, Chin said he believes evidence points to the contrary.

“I believe that, at this point in 2010, the largest single category of federal prosecutions is immigration offenses. I think it beat out drugs. But, if it didn’t, it’s close.”

Chin said that the most prevalent federal enforcement agencies are immigration agencies.

“So you can say we need much, much more, but you can’t say that it’s nonexistent because there’s an enormous federal bureaucracy — civil and criminal — that’s devoted to immigration enforcement.”

Some parts of law will stand, others won’t

All three experts agreed that some parts of the law most likely will stand while other parts may be thrown out.

“I think there are parts of this law that will stay in effect. I think there are some that are a problem,” said Pace.

Chin said he believes that the law’s criminal prosecution of illegal immigration will be problematic in the courts.

Whereas the federal Immigration and Nationality Act provides a range of response to those who are undocumented in the U.S., including criminal prosecution, Arizona’s law takes a more direct approach to that type of prosecution.

“I find it very hard to believe that by the time the 9th Circuit reviews that they’re going to say, ‘Oh, it’s just fine for Arizona to take control of those decisions,’” Chin said.

However, Chin said that just how officers go about deciphering who is and isn’t here illegally — as long as the Federal Constitution is applied — will be less of an issue in the courts.

“The other parts of the bill that deal with investigation and information-sharing, to me, and I probably am going to lose some friends for saying this, but it looks to me like they’re authorized by the Immigration and Nationality Act,” he said.
Courts Define Arizona Victims’ Rights

A person’s status as a victim does not grant him the privilege of disqualifying either defense counsel or the judge presiding over the criminal proceedings. That was the conclusion of Martin-Costa v. Kiger, No. 1 CA-SA 10-0099 (Ariz. App. July 6, 2010).

During legislative sessions associated with their parents’ divorce proceedings, two children disclosed facts that led authorities to charge their father, Ricardo Costa, with sexual assault and molestation. Attorney Bruce Grissen, a partner in the Flagstaff firm of Aspey, Watkins, & Diesel, appeared on behalf of two of his partners who had represented the mother, Angela Martin-Costa, in the divorce proceedings.

Martin-Costa complained to the firm that Grissen had had a conflict of interest that precluded him from representing Costa. The trial judge held a hearing at which Grissen testified that he had no knowledge of Martin-Costa’s case and had never seen her file. Costa stated that he wanted Grissen to represent him despite any potential conflict.

The judge refused to disqualify Grissen. He concluded that nothing in Martin-Costa’s legal files could help Costa’s position. He also ruled that Martin-Costa lacked standing to challenge Grissen’s representation.

Martin-Costa later sought to disqualify the trial judge, arguing that he had violated her rights as a crime victim in connection with the disqualification proceedings. Another judge denied that motion, finding no authority to grant it.

Martin-Costa turned to the court of appeals, but it sided with the trial court in an opinion by Judge Philip Hall. Hall agreed with the lower court that the VBR did not give Martin-Costa standing to challenge either her ex-husband’s attorney or the trial judge.

Hall noted that the VBR and its implementing legislation granted victims numerous rights, including the right to be notified of criminal proceedings; and to attend those proceedings; and “the right to refuse interviews and depositions.” He also noted that victims “are granted certain privacy rights, including the right to appropriate safeguards to minimize contact with the defendant and members of his family, and to prevent the release of personally identifying information.”

But, Hall concluded, “none of the provisions . . . grant her the right as a crime victim to seek disqualification of the judge or counsel for one of the parties.” “Nor can such a right be fairly implied as a necessary attribute of a crime victim’s right to justice and due process.”

Hall also ruled that Martin-Costa’s status as a former client of her ex-husband’s law firm did not give her standing. She could not have intervened to do so because private parties may intervene in criminal cases in exceptional circumstances. None existed here because the attorneys for both Costa and the state agreed that nothing in Martin-Costa’s legal files would be disclosed to the defense.

Because Martin-Costa lacked standing, Hall dismissed her petition for special action. Joining him were Judges Diane M. Johnsen and Patrick Irvine.

A. General policies
1. Required election material must be submitted electronically, as detailed in Section B (with the exception of the formal letter of candidacy, which may be mailed), and all materials must be received by Sept. 15.
2. Submitted biographies that exceed the 200 word limit may be edited by staff.
3. Position statements and any other campaign or election materials may not refer to other candidates nor include defamatory or inappropriate language, as determined by an ad hoc Election Review Committee appointed by the President of the Association.

B. Candidate Election Materials
The following requirements are applicable to candidates no later than Sept. 15:
1. A signed letter formally declaring candidacy for the Board of Directors, with the candidate’s signature and addressed to the Executive Director. This document may be submitted electronically as a pdf document, but a mailed paper version is also acceptable.
2. A 200-word biographical statement. This bio may include an optional “position statement” of the candidate’s vision and priorities for the MCBA. This information must be submitted electronically as an attachment to an e-mail, preferably in MS Word. Regardless of what is included in the biography, the word limit total is 200 words as counted electronically in MS Word. MCBA staff may edit bio exceeding the limit. (Please note that a standard-form resume or curriculum vitae are not acceptable.)
3. A color photograph in JPG format, sent as an attachment to an e-mail. The photo format must be JPG, no other types of files or format can be accepted. Please note that photos taken directly off a website are of very poor quality and normally unusable.
Metadata Rules – Are You Complying?

By Laura Swendsen

The Environmental and Natural Resources Group at the law offices of Quarles & Brady in Phoenix has a busy team of attorneys.

Staying apprised of current issues and new laws, representing companies and organizations in a multitude of cases, and keeping their heads above water – that is, what little exists in the Arizona desert – are all part of a day’s work for the group.

No one understands the evolution of the team better than its director, Roger Ferland, who was hired by the firm more than 30 years ago.

Ferland started practicing at Quarles & Brady in 1975 when only the environmental law practice existed. Just 12 years earlier, the Clean Air Act was passed as the first federal legislation to address air pollution control. Arizona’s own environmental protection programs didn’t really grab a hold, Ferland said, until about the mid-70s, when Raul Castro was governor.

After that, Ferland said the group had its hands full catching up with federal law and “putting [its] own programs in place.”

Today, the team comprises five attorneys – each of whom addresses specific areas of environmental law.

Helping Businesses Go Green

Ketaa Ravega, an associate, is one of few LEED (Leadership in Energy & Environmental Design) certified lawyers in the state and works with companies who want to market the environmental aspects of their products and services. Some companies are seeking to decrease the environmental impact of their operations and to market themselves as more environmentally friendly; while others might work business to business and want to describe what they do in a way that is legally compliant and presents them in a positive light.

Ravega also works on matters involving dust control, renewable and traditional energy sources, defending industrial manufacturers and mining companies and representing national home builders and developers in addressing oil and mineral reservations.

AN ENVIRONMENTAL EVOLUTION

Quarles & Brady Environmental Team Keeping up with the State’s Changing Regulations, New Laws

By Laua Swendsen

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Working with Tribal Governments

Michelle De Blasi, a partner, started out in marine biology but decided to pursue ocean law instead.

For six years De Blasi worked for the National Oceanic and Atmospheric Administration (NOAA), a federal agency focused on the condition of the oceans and the atmosphere, where she was a lead attorney for the agency’s superfund sites and handled issues such as oil spills. She said the BP spill is “driving [her] crazy” and wishes she could be onsite.

A large part of De Blasi’s practice involves working with Ferland on air quality and partnering with both tribal and county governments.

The tribal governments include the Salt River Pima and Gila River Indian communities, both of which are pioneers in environmental regulation.

“We helped them write the regulations. It was just like it was a new thing all over again because you had to not only comply with the law, but also be responsive to their cultural, political and other drivers,” Ferland said. “It continues to just be a great deal of fun because you get to be creative.”

Another renewable energy project that is big on the radar is solar, which Quarles & Brady tackles through its solar core team.

De Blasi said the team has a robust renewable energy program and represents many entities in the solar fields, including manufacturers of solar equipment, for whom they do contracting work, and developers in responding to RFIs (Requests for Proposals) and helping clients put together RFIs to acquire vendors.

From an economic standpoint, De Blasi said the solar industry in Arizona is doing well. “Sun Tech’s here and they’re bringing their supply chain and some of the other manufacturers are looking at Arizona,” she said.

Even tribes are looking at big utility scale projects, which is very exciting, she said.

Big Cases

Joseph Drazek, a partner with Quarles & Brady, is working on several big cases, including one that involves a large groundwater plume that is migrating from the Motorola 52nd Street Superfund Site to the west valley. That area has been deemed the West Van Buren study area.

The Roosevelt Irrigation District, located in Buckeye, filed a lawsuit in February that identifies more than 100 parties believed to be responsible for groundwater contamination that is allegedly affecting their wells. RFD plans to convert the well water from irrigation water to drinking water, Drazek explained.

RDF is expected to file and serve a First Amended Complaint soon, as their deadline is August 9. Drazek said, Judge Roslyn O. Silver, of the U. S. District Court of Arizona, granted RDF a 60-day extension, in addition to an initial 120 days, giving them time to work with ADEQ and DWR to resolve some issues.

Another case Drazek is working on is the Goodyear Airport North Superfund Site. The airport is under consent to agree with the EPA to clean up a TCE plume that involves several municipalities, including Goodyear, Avondale and Litchfield Park.

Drazek said he enjoys combining his science background, including a Master’s in biology, with the environmental practice of law.

“I enjoy that part of it. I enjoy, sort of the scientific aspects of the projects we work on.”

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Moving forward, review your policy on a regular basis to address any new rulings on metadata.

Educate yourself about metadata and review Arizona’s opinion (and other states’ and entities’ opinions and guidelines, as needed) regarding metadata.

Review firm documents (on internal networks and published on external networks). Is your firm inadvertently sharing confidential information?

Involves attorneys and your IT department and establish a firm approach based on your findings.

If necessary, bring in a consultant to advise your firm on a metadata policy.

Moving forward, review your policy on a routine basis to address any new rulings on metadata.

Enforce the Policy

Consider purchasing metadata management software. The software you choose should be flexible enough to execute firm policy, automated enough to enforce firm policy and easy enough for users to understand and utilize.

The latest Microsoft Office program includes a metadata tool called “Document Inspector.” Since Microsoft applications add metadata to files, it presents a somewhat contradictory position for Microsoft to provide a tool for removing that metadata.

Firms who already practice a metadata policy have found that the main weakness with Document Inspector is the lack of automation. The onus is on individual users to “inspect” documents and then decide the metadata to remove, proving to be ineffective in enforcing a metadata policy throughout an organization.

Metadata management software, on the other hand, removes metadata more thoroughly and is designed to help firms automate and therefore enforce metadata policies. The most popular products available for metadata management can be found by searching for “metadata management software” in Google.

Educate

The success of any policy hinges on the execution. A firm’s metadata policy will be more successful if staff can grasp what metadata is, when it can be used, when it can be harmful and how to manage the metadata in documents. Consider bringing in outside trainers to help educate your firm with hands-on training.

Randall Farrar is the president and co-founder of Esquire Innovations, Inc. (eqinc.com), a software company that develops Microsoft Office integrated applications for the legal market, located in Temecula, CA. He can be reached at randall.farrar@eqinc.com.
Appointments

Bryan Cave LLP Phoenix Associate Megan Lennon has been appointed as a member of the board of directors for Valley Forward. This follows key involvements in Valley Forward by other Bryan Cave attorneys who have previously served as board members. Lennon’s practice includes representing clients regarding compliance with federal and state environmental regulations and enforcement defense throughout the country. In particular, she has assisted clients in resolving regulatory compliance issues under RCRA, CERCLA, the Clean Air Act, the Clean Water Act, OSHA and MSHA. She also has counseled clients on compliance obligations under European Union environmental regulations, including RoHS, WEEE, REACH and similar foreign programs.

Elections

Attorney Julianne C. Wheeler has been elected to the board of directors of the Tempe Sports Authority Foundation. The foundation promotes sports education and youth activities in the Tempe community. Wheeler is a construction lawyer and a partner at the Scottsdale law firm Sacks Tierney PA.

Helme Roberts & Owen LLP (HRO) is pleased to announce that Danelle Kelling, a senior associate in the firm’s Scottsdale office, has been elected to serve as First Vice President of Women in the Golf Industry, a national trade association. Kelling will serve a two-year term. Kelling is a member of HRO’s Real Estate Practice Group. Her practice focuses on real estate transactions, with an emphasis on golf club equity conversions, acquisitions and turnover transactions. She has experience in representing both developers and members on matters involving due diligence, corporate compliance, drafting and negotiating agreements and CC&Rs.

Judge Gerald A. Williams, who is the Justice of the Peace for the North Valley Justice Court, was recently reelected as the president of the Maricopa County Justice of the Peace Association. He was also recently named by the State Bar of Arizona to the Civil Jury Instructions Committee.

Recognition

The national law firm of Quarles & Brady is pleased to announce that David E. Funkhouser III, an attorney in the firm’s Phoenix office, has been selected to take part in Valley Leadership’s Class 32 Leadership Institute.

Funkhouser practices in the firm’s Commercial Litigation Group. He concentrates his practice in real property disputes, construction disputes, consumer lending, contract disputes and other commercial torts. He also serves on the Executive Committee of the Maricopa County Bar Association, currently serving as secretary, and also volunteers for the Voluntary Lawyer’s Program of Maricopa County. Funkhouser previously served in the Arizona House of Representatives to complete the remaining term of a vacated seat in Arizona’s 11th Legislative District.

New Hires

Pobinielli Shughart PC welcomes the addition of Christine M. McAuliffe as shareholder and Yu Cai as associate. McAuliffe and Cai have been involved in life sciences research and development each for over 17 years — first as researchers, then as attorneys. McAuliffe and Cai predominantly represent life science and other technology clients ranging from major universities, research institutions and large corporations to startup and emerging companies.

McAuliffe’s professional experience includes assisting clients with creating and protecting intellectual property assets; strategically managing those assets through intellectual property portfolio development, audits and assessment; exploiting those assets through technology acquisition and transition; licensing arrangements, joint ventures and strategic alliances; and then enforcing those rights through intellectual property litigation. Both attorneys are experienced in the commercial enforcement of intellectual property rights. McAuliffe has been involved in all aspects of intellectual property litigation in the federal and state courts, including the U.S. Supreme Court, and has argued before the U.S. Court of Appeals for the Federal Circuit.

The national law firm of Quarles & Brady LLP is pleased to announce that Phoenix-based attorneys Simone Colgan Dunlap, Andrea Tazioli and Jon Howard have been named recipients of the Top 50 Pro Bono Attorneys in Arizona award by the Arizona Foundation for Legal Services & Education. Simone Colgan Dunlap practices in the Firm’s Health Law Group. Her practice includes regulatory compliance, related risk management and corporate and contracting matters. She provides counsel in the areas of federal health privacy laws — including HIPAA — and has experience with FDA compliance, clinical trials, the pharmaceutical industry and the Anti-Kickback Statute and Stark. Colgan Dunlap is a member of the American Health Lawyers Association. Andrea Tazioli is a member of the Firm’s Commercial Litigation Group and also practices in the White Collar Crime/Special matters area. She has extensive litigation experience with representing banks and financial institutions and local and national corporations as well as defending individuals with both felony and misdemeanor charges. She is also a member of the Maricopa County’s Volunteer Lawyer’s Program. Jon Howard practices in the Firm’s Corporate Services Group. His experience includes representing buyers and sellers in merger and acquisition transactions, forming business organizations and advising clients regarding corporate governance and securities law issues.

Firms are ranked according to the number of trademark registrations issued in 2009, where the firm or individual is listed as the legal representative on the registration. Lewis and Roca was listed as the legal representative on 462 registrations.

Lewis and Roca’s Intellectual Property and Technology Practice Group provides a broad range of services and experience to help their clients develop and protect intellectual property rights. The dedicated team of intellectual property attorneys is committed to providing excellent service to clients in the areas of trademark, copyrights, patents and trade secrets, including litigation prosecution and transactions.

Andrea Tazioli

The national law firm of Quarles & Brady LLP Phoenix is pleased to announce that Phoenix-based attorneys Simone Colgan Dunlap, Andrea Tazioli and Jon Howard have been named recipients of the Top 50 Pro Bono

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By Laura Swendsen

Since 2002, the Arizona Supreme Court is where Justice Michael Ryan has spent many of his days. On August 6, after nearly 25 years as a judge, Ryan will lay down his gavel.

Ryan, who turned 65 on Aug. 3, is the most experienced of the justices, having been a prosecutor, a Superior Court judge and an Appeals Court judge. As a Superior Court judge, Ryan presided over several high-profile trials, including the Phoenix Suns’ drug trial in 1987 and the 1988 felony trial of former Arizona Gov. Evan Mecham.

From 1967 to 1969, after graduating from college, Ryan served in the United States Marine Corps as an infantry platoon commander. He received a medical retirement because of wounds received in combat in Vietnam. For his service, Ryan was awarded two Purple Hearts and a Bronze Star with a Combat “V” for heroism in combat.

Ryan said he’s not tired of his job but felt that now was time to say goodbye and join his wife, Karen, a former occupational therapist, in retirement.

“I can’t say I’m tired of it because it’s very interesting work. I just felt it was the right time for me. I think you have to make a decision some time. If you delay it too long or if you keep going on after a while, I think some people, it may affect their work. I can’t say – I hope it hasn’t happened to me at this point. I want to avoid that,” he said.

There is still much to be done, including maintaining a well-functioning court amid severe budget cuts that have made it difficult to fill positions. Ryan said the court has been “cut to the bone.”

Yet, despite the challenges, he credited Chief Justice Rebecca White Berch and former chief Justice Ruth McGregor with presenting the legislature detailed fiscal plans that provided best options for budgetary cuts. The goal is to do the same for fiscal year 2011-2012.

Berch said she is proud to have served alongside the retiring justice.

“Arizona is losing a wonderful judge who is thoughtful, patient, courageous, and kind. He is a quiet, considerate colleague, who has a wonderful sense of humor and has been an absolute pleasure to work with. It has been an honor to serve with him.”

Though Ryan may be stepping down from the bench, he said he intends to stay active in the legal community.

Currently he is on the Maricopa County Bar Association’s Diversity Committee and serves on the State Bar Task Force on Persons with Disabilities in the Legal Profession. He has also volunteered as a judge for the Arizona High School Mock Trial Program, sponsored by the Arizona Foundation for Legal Services and Education for more than 15 years.

Ryan said he really wants to reach out to young people, including high school and law school students, and help them develop the skills needed to be successful in the legal field.

Recently, he was spotted at the Summer Social, sponsored by the MCBA, which brought together interns, externs, and prospective and new attorneys with seasoned lawyers and judges.

The purpose of the annual event is to help further the attorneys’ and students’ careers and opportunities in the field.

When asked what Ryan was most proud of professionally, the outgoing justice answered that he hopes he did the best job he could for the state and the judicial system.

For those who are studying to be lawyers and judges, or already are, Ryan said he offers these words of advice:

“Be professional. Be civil. Be honest. Integrity is so important. Once you lose your credibility you have a real problem with other lawyers and with judges.”

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From 1967 to 1969, after graduating from college, Ryan served in the United States Marine Corps as an infantry platoon commander. He received a medical retirement because of wounds received in combat in Vietnam. For his service, Ryan was awarded two Purple Hearts and a Bronze Star with a Combat “V” for heroism in combat.

Ryan said he’s not tired of his job but felt that now was time to say goodbye and join his wife, Karen, a former occupational therapist, in retirement.

“I can’t say I’m tired of it because it’s very interesting work. I just felt it was the right time for me. I think you have to make a decision some time. If you delay it too long or if you keep going on after a while, I think some people, it may affect their work. I can’t say – I hope it hasn’t happened to me at this point. I want to avoid that,” he said.

There is still much to be done, including maintaining a well-functioning court amid severe budget cuts that have made it difficult to fill positions. Ryan said the court has been “cut to the bone.”

Yet, despite the challenges, he credited Chief Justice Rebecca White Berch and former chief Justice Ruth McGregor with presenting the legislature detailed fiscal plans that provided best options for budgetary cuts. The goal is to do the same for fiscal year 2011-2012.

Berch said she is proud to have served alongside the retiring justice.

“Arizona is losing a wonderful judge who is thoughtful, patient, courageous, and kind. He is a quiet, considerate colleague, who has a wonderful sense of humor and has been an absolute pleasure to work with. It has been an honor to serve with him.”

Though Ryan may be stepping down from the bench, he said he intends to stay active in the legal community.

Currently he is on the Maricopa County Bar Association’s Diversity Committee and serves on the State Bar Task Force on Persons with Disabilities in the Legal Profession. He has also volunteered as a judge for the Arizona High School Mock Trial Program, sponsored by the Arizona Foundation for Legal Services and Education for more than 15 years.

Ryan said he really wants to reach out to young people, including high school and law school students, and help them develop the skills needed to be successful in the legal field.

Recently, he was spotted at the Summer Social, sponsored by the MCBA, which brought together interns, externs, and prospective and new attorneys with seasoned lawyers and judges.

The purpose of the annual event is to help further the attorneys’ and students’ careers and opportunities in the field.

When asked what Ryan was most proud of professionally, the outgoing justice answered that he hopes he did the best job he could for the state and the judicial system.

For those who are studying to be lawyers and judges, or already are, Ryan said he offers these words of advice:

“Be professional. Be civil. Be honest. Integrity is so important. Once you lose your credibility you have a real problem with other lawyers and with judges.”

By Laura Swendsen

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Law Offices Focused on Operating Cost Effectively

Law firms and corporate legal departments are progressively redefining the way they provide and use legal services, and the recent economic crisis is adding impetus to this transition, according to a just-released industry report from Robert Half Legal, a specialized provider of lawyers, paralegals and other highly skilled legal professionals.

The report, Delivering Maximum Value in a Cost-Conscious Legal Era, presents the latest research from Robert Half Legal's tenth annual Future Law Office project. Key Future Law Office findings include:

- Attorneys are focusing outside legal spending to be top priority for corporate legal departments. Twenty-five percent of in-house counsel surveyed by Robert Half Legal said their legal department plans to decrease its work with outside firms in the next 12 months.
- Law firms are rethinking many service-delivery processes to align their operations with how much corporate clients are willing to pay. Twenty-two percent of lawyers polled said the greatest challenge for their firms today is dealing with increased competition for business, while 19 percent cited meeting revenue goals.
- To increase value to clients and control expenses, firms are focusing on traditional operational models such as billable hours and lockstep compensation, including flexible fee arrangements and performance-based compensation.

A Period of Unprecedented Change

"Among all the trends we have identified for our Future Law Office, the increasing need for law offices to provide more value-added and cost-effective legal services is the most prominent," said Charles Volkert, executive director of Robert Half Legal. "Legal departments are being pressured to reduce their spending on outside counsel and boost efficiency. In response, law firms are revamping their legal services delivery processes to retain clients and improve profitability."

Law Firms Re-examine Their Worth to Clients

The research identified the most pressing issues facing law firms. Twenty-two percent of lawyers surveyed said the greatest challenge for their firms today is dealing with increased competition for business, while 19 percent are most concerned about meeting revenue goals. Lawyers also are focused on finding ways to effectively market and advertise their services (17 percent); managing and developing practice groups (12 percent); hiring and retaining highly skilled staff (11 percent); and dealing with the effects of the recession (5 percent).

"Law firms are balancing the need to keep fees competitive while still providing a high value to clients," Volkert said. "In an effort to control expenses and operate more like the businesses they serve, firms are adopting more flexible strategies in the way they compensate employees and bill clients. For instance, it’s not uncommon for firms to offer performance and merit-based pay instead of basing compensation solely on seniority."

Corporate Legal Departments Focus on Efficiency and Savings

Legal departments are implementing cost-cutting measures that include bringing in additional work in house and doing as much as possible in-house. This is particularly true for firms looking for top projects or their outside counsel. One-quarter (25 percent) of in-house counsel surveyed said their legal department plans to decrease its work with outside firms in the next 12 months, while 61 percent predict no change. Ten percent forecast increased work with outside firms.

"While handling more work internally reduces outside counsel costs, there is a point of diminishing returns," Volkert said. "To avoid stretching staff too thin, he suggests employing more flexible models to include legal project professionals, and taking advantage of the unusual amount of top talent in the market by making strategic hires."

Tenants also enjoy access to a law library, two conference rooms (one with large granite table and large wall-mounted computer monitor) and other amenities, all in a professional and collegial environment. This arrangement is perfect for the sole practitioner. Limited reception services included and client referrals are possible. Please call 480-820-1421 to discuss further and to arrange a visit.
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