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**Guess Who’s Coming to Lunch on March 29?**

MCBA is pleased to announce that its featured Membership Luncheon speaker is E.J. Montini, the well-known columnist and blogger for the *The Arizona Republic*. He has been offering his pithy, ironic and frequently humorous commentary on Arizona politics and politicians for many years, first at the *Republic* and now also on azcentral.com.

On Tuesday, March 29, Mr. Montini will be entertaining with his personal takes on all things Arizona and political at the MCBA Membership Luncheon at the Hyatt Regency Phoenix, 122 N. 2nd Street, which begins at 11:30 a.m. with check-in and networking.

Register online at www.maricopabar.org or call Lisa at (602) 682-8588. Pricing is MCBA members $40; non-members $50.

**Many Thanks to the 2011 100% Club Members**

MCBA is pleased to announce the 2011 members of the 100% Club. These 16 firms have made a commitment to the MCBA by assuring that all of their attorneys are members of the Association. Most benefit by cutting just one dues check for the entire firm and enjoy other perks for their support, such as discounted tickets to events, CLE, and promotional space in the *Maricopa Lawyer*.

- Bryan Cave, LLP
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- Cohen Kennedy Dowd & Quigley, PC
- Community Legal Services
- Dyer & Ferris, LLC
- Frazer Ryan Goldberg & Arnold, LLP
- Holme Roberts & Owen, LLP
- Jennings, Haug & Cunningham, LLC
- Kanz, Plitt, Hyland, Demlong & Klefield, PC
- Olsbom Maledon, PA
- Perkins Coie, PA
- Quarles & Brady, LLP
- Sanders & Parks, PC
- Schian Walker, PLC
- Thomas, Thomas & Markson, PC
- Zwilling Greek Zwilling & Knecht, PC

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**Supreme Court Tosses Aside Antiquated Common-Law Notion**

We got decked out.

When the supreme court granted review of a recent court of appeals decision, we thought it would decide whether a party may avoid the statute of limitations on an accrued claim by transferring the claim to another party for whom the statute is tolled. Instead, the supreme court changed a longstanding rule of Arizona law, thereby negating the timeliness issue that it had originally planned to consider. *Estate of DeSela v. Prescott Unified School Dist.*, No. CV-10-0172-PR (Ariz. Jan. 18, 2011).

The issue in *Estate of DeSela v. Prescott Unified School District*, 224 Ariz. 202, 228 P.3d 938 (App. 2010), was a parent’s right to compensation for medical expenses incurred in treating her injured child. On Nov. 10, 2004, Maddison DeSela—who was then 16 years old—badly injured herself at Prescott High School during rehearsal for a school play. According to the court of appeals, a life-threatening closed-head injury resulted when, “[d]uring an unsupervised break from the rehearsal, Maddison rode on the top of another student’s car, lost her grip, and struck her head on the asphalt parking lot.”

Under Arizona law dating back at least to the 1990s, any claim for medical expenses arising out of the accident belonged to Maddison’s parents. Two and a half months after the accident, her mother, Aissa, assigned to Maddison or her estate the potential claim for Maddison’s medical expenses. Two months later, Maddison filed a notice of claim against the school district and two employees.

Maddison turned 18 at the end of 2006, and her estate filed suit about a year later. The superior court dismissed, holding the suit time-barred. It ruled that Aissa couldn’t give Maddison more than she had, and because Aissa had to file suit within one year of the accident, so did Maddison.

The court of appeals disagreed. It held that the claim’s assignment to Maddison—a minor—activated A.R.S. § 12-502, which tolls the statute of limitations until the claimant reaches the age of majority. Because the suit was filed within a year of Maddison’s 18th birthday, the court ruled, it was timely.

The school district asked the supreme court to review the appellate court’s ruling. **See Supreme Court page** 3.
Do Something Else

MCBA PRESIDENT
David H. Benton

I have always found it odd that being a professional establishes a preconceived notion. Those who are not in the profession assume things about those who are in the profession. I may be wrong, but I doubt it. Engineers think in terms of processes; accountants are moved by numbers; athletes are merely athletic and nothing more; IT people are geeks; and lawyers like to argue.

I have always particularly hated that one. Just because I have a point of view, and don’t mind sharing it, does not mean I like to argue. I like to talk about things, hear different perspectives and try to understand something new. I ask questions, but don’t disagree for the sake of it. And I certainly don’t like being disagreeable, or being around others who are. Actually, I hate arguing. Don’t you? Whatever…you do too…. In fact…

Sorry.
The point I am making is, I continue to be amazed when someone is actually surprised to hear attorneys or judges or paralegals do (and sometimes prefer to do) other things that are non-law related. I have said it before, and I will continue to say it in this space – lawyers are people too. I think people assume, because of your chosen profession, your brain works in ways that suit it. But when I ask, “Why would you assume that?” they can’t answer, or say the ubiquitous, “Everybody knows that!”

Be a Lawyer… and Something Else

That is why I am always thrilled to hear when practitioners of our profession have other interests: cooking, painting, travel, car racing, writing, and extreme long-distance running. I want to see the lawyer who moonlights as a stand-up comic, and refuses to tell any jokes about being a lawyer, working with lawyers, or anything whatsoever about the law. Fantastic.

I am sure you have heard the often-repeated claim that we humans only use 10 percent of our brain power. Of course, that is not true, and aside from the fact that you are absolutely sure you have met someone just like that. But I submit that what we do use of our brains is only limited by what we decide to use it. It is true that each side of the brain processes different functions, both complimentary to our individual persona as a whole. I am sure you have heard it before – right brain, left brain. In fact, I further submit that deciding to use both sides of the brain (in any amount) makes us better overall. I know this for a fact. I was not always an attorney. Before this life, I was a research scientist. And among the best scientists around me, there was always a common characteristic which I strived to capture. Imagination. Not imagination that was scientifically established, constructed, and serially applied in controlled environments. But crazy, unboxed, several-dimensional resourcefulness that came from someplace that no one quite understood. And many of them did other things outside the lab – played in bands, road dirt bikes, traveled to exotic places, wrote poetry, or experimented in the kitchen with outrageous dishes. They knew they did their best when they were not thinking about it. So that is what I did, and it worked. Seeing the world better stems from, well, seeing the world. Experiencing other people, places, and things. Doing something else.

I think being someone else or doing something else is the best thing for us. Truth be told, I can’t wait for those times when I am not an attorney. When I am in the kitchen cooking or listening to live music. Walking through the museum or pulling weeds in my backyard. It is in those times I am the best I can be – as a person and as an attorney.

LETTER TO THE EDITOR

Article Last Month Reinforces Gaming Sterotype

Good afternoon,

I just finished reading the Court Watch by Mr. Schaack in the February 2011 edition of the Maricopa Lawyer. I am a member of the MCBA Paralegal Division and typically enjoy reading your publication. I was saddened to see the close of the piece titled “World of Warcraft Online Game Battles Software Maker.” Mr. Schaack closes the short piece in what I am assuming is a good bit of humor, however I think it brings down the overall quality of the piece.

“I have little knowledge of intellectual property law and don’t know whether the Ninth Circuit’s opinion is significant. I’m not even sure what the legal issues were in this case.”

While Mr. Schaack states that he finds the facts “fascinating” (but clearly not enough to research what the legal issues were) he goes on to enforce a stereotype that has long plagued the gaming industry – the basement dweller with no real life. I think Mr. Shaack would find that there are many productive professionals who entertain themselves in the world of online gaming despite age or profession. For him to imply otherwise is both offensive and unnecessary to the substance of the article. Whether this was his intent, I am unsure. This is how I personally interpreted his words.

I do not disagree with his opinion regarding the ridiculousness of the “bots” program that was the crux of the suit in this matter. A few quick strokes in Google however, could produce an article that would supply, what I assume, is the basis for this lawsuit. Third-party programs (“bots”) are expressly forbidden in the EULA agreements on almost all on-line games. This is a major issue for the gaming industry in terms of copyright protections. I don’t claim to be an expert; however, I would never assume to opine about the character or behavior of a group of people in an article in which one expects quality information on a legal matter pertinent to their interests.

Thank you for your time.

Alisha Bancroft-Turner

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A Visit from Your Psychiatrist: Q&A with Dr. Thomas Gazda

I had a client who had a lengthy battle with a relative. Even so, when the case was resolved, the client was able to put the fight behind her and hug her relative. I mentioned how nice it was that she could make up with her relative, to which my client responded, “I did it to prove I wasn’t falling for her games!” In our profession, we run into more than our fair share of mental health issues. Rule of Professional Conduct 1.14 spells out our obligations in dealing with clients with diminished capacity. When the client has diminished decision-making capacity—whether because of minority, mental impairment or some other reason—lawyers are supposed to, as far as reasonably possible, maintain a normal, client-lawyer relationship. Maintaining a normal, client-lawyer relationship could be challenging for lawyers faced with clients who have mental health issues.

Our hope in this article is to remind lawyers to be aware of the role mental health issues can play in our clients’ decision-making process. We also hope to relay some issue-spotting guidance and techniques and resources for dealing with clients who may be dealing with mental-health issues. Dr. Thomas Gazda is the immediate past chief of behavioral health at Banner Behavioral Hospital in Scottsdale, and in this article he provides lessons and resources from his years of practice.

Q: Can you generalize some common personality types that you consider prone to becoming involved in the legal system?

Dr. Gazda: A personality type that even doctors have difficulty with is people with impossible demands who are never satisfied. It’s important to set boundaries with the demanding patient but stress your intention to help. For example, you might say, “Here’s what we can do now to accomplish some of your goals.” Sometimes they may have counterproductive or unrealistic ideas. In that circumstance, a technique I use is to push back and try to explain the consequences of pursuing those goals so they can evaluate whether it is really in their best interests to pursue them.

Q: What do you find useful in dealing with people who you suspect may be experiencing a mental health issue?

Dr. Gazda: Learn Communication Style: A: I have learned a few principles, some of which lawyers are already good at. The first is to learn the way the patient communicates. For many patients, being blunt is the best approach. As I said with paranoid individuals, if you suspect they are becoming paranoid about you, you have to address the issue. With substance abuse, the only approach is to be blunt and explain that you believe there is a problem. But there are exceptions. For example, narcissistic people who are thin-skinned may require special handling and coaching to see a professional, rather than confrontation. Form a relationship with a psychiatric professional for getting tips on handling difficult clients with personality problems or major psychiatric disorders.

Co-Authored by Stefan Palys and Dr. Thomas Gazda, immediate past chief of behavioral health at Scottsdale’s Banner Behavioral Hospital

MCBA’s Sections, Divisions, Committees
Name 2011 Officers and New Board Members

SECTIONS
Melissa Lin of Righi Hernandez, is the new chair of the Construction Law Section and Jason Mullis of Righi Hernandez has moved into the vice chair position. Stephen Hopkins of Hopkins Law Offices is newly elected to the section’s board.

Robert Baumann of Baumann, Kelly, Doyle, Paytas & Bernstein continues as the chair of the 2011 Criminal Law Section.

Jeff Toppel of Jackson Lewis continues as chair of the 2011 Employment Law Section and Robert Reder is newly elected to the board.

Barbara Pawlikowski of Guert Rosenfeld is the newly elected chair of the Environmental & Natural Resources Law Section. Merging into new officer positions are Karlene Martorana of Robert S. Lynch & Associates, chair-elect; Megan Head of Polinski Stughart, secretary; and Bradley Glass of Gallagher & Kennedy, treasurer. Alana Hake of Lewis and Roca is newly elected to the board.

Leslie Satterlee of Nirenstein Garnice & Soderquist continues as chair of the Family Law Section. Elected to the position of vice chair is Nicole Siqueiros of Haller Law Firm. Moving into a new officer position is Sara Swiren, secretary. New board members are Rachel James of Nirenstein Garnice & Soderquist, Annette Cox of Cox & Ryan, DeShon Pullen of DeShon Pullen & Associates, and Tom Alongi of Community Legal Services.

John Baird of Snell & Wilmer is the new chair of the Real Estate Section.

Michele Goens of Christianson Goens is the newly elected chair of the Estate Planning, Probate & Trust Section.

DIVISIONS
Nina Targovnik of Community Legal Services is the new Public Lawyers Division president; Naomi Gaut of Schaller Anderson/Aetna continues as president of the Corporate Counsel Division.

Kelly Gray of Marix Services has moved into the presidency of the Paralegal Division; Cami Barnella of Law Office of Phoebe Moffatt has become president-elect; and Nikki Jimenez of Goldberg & Osborn and Susan Balfentine of Scottsdale Healthcare have been elected treasurer and secretary, respectively. Newly elected to the board are Erica Warne and Lynne Cooper, both of Snell & Wilmer.

Stefan Palys of Stinson Morrison Hecker has been elected president of the Young Lawyers Division. Board members who have moved into new officer positions are Leslie Satterlee of Nirenstein Garnice Soderquist, president-elect; Melissa Sloma of Doyle Law Group, treasurer; and Shauna Yoder of Burke Panzairelli Rich, secretary. New board members are Alexandra Gormley of Lewis and Roca, Amanda Sheridan of Snell & Wilmer, and Jason Wood of Ekelman & Ekelman.

COMMITTEES
These committee chairs are continuing their service into 2011:

Hon. Keelan Boudow of the Maricopa County Superior Court, Membership Committee
May Mowzoon of Quarles & Brady, Diversity Committee
Jennifer Green of the U.S. Attorney’s Office, Co-chair, Bench-Bar Committee
Hon. Christopher Whitten of the Maricopa County Superior Court, Co-chair, Bench-Bar Committee
Richard L. Klaus of the Law Office of Richard L. Klaus, Lawyer Referral Services Committee
Holly Davies of Lobet, Greenfield, and Polito, Continuing Legal Education
Aaron Nash of the Clerk of the Superior Court, Maricopa Lawyer Editorial Board
Jennifer A. Cranston of Gallagher & Kennedy, Finance Committee.

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 from attorneys referring clients outside their practice area.

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— Administrative law, SS/Social Security, workers’ compensation, and immigration.
— Spanish-speaking and West Valley attorneys are also needed.

It’s easy to join! Call Jennifer Deckert at (602) 257-4200, ext. 117.
Important Tips for Paper Filings

Since 2002, the Clerk’s Office has electronically scanned the image of adult court documents that are filed on paper and placed those images into the Electronic Court Record, which currently holds over 25 million documents. With mandatory e-filing under way now in the Superior Court in Maricopa County, there will be fewer paper documents filed with the Clerk; however, the following tips are recommended for those documents still filed on paper:

- Ensure pleadings have the correct case number to prevent delays in processing. When using templates, make sure the party names and case number match before filing.
- Avoid attaching pleadings which are already in the court file. (A copy of a previously filed document may be attached to the judge’s copy of the pleading if necessary.)
- Avoid colored paper, color printing, photographs, and highlighted text when filing paper documents: these may create images which are difficult or impossible to view after going through the Clerk’s black-and-white scanners. In some cases highlighting actually redacts (blacks out) the text underneath during scanning.
- Use only black ink for all signatures to avoid the same problems as above associated with scanning color images through black-and-white scanners.
- Avoid using pencil whenever possible. If pencil cannot be avoided, press hard to make the writing as dark as possible.
- Avoid using legal-size paper (larger than 8½ x 11). Large attachments should be reduced in size before filing.
- Avoid using tabs on divider sheets—they cannot be scanned. If tabbed dividers are preferred, use only on the copy sent to the judge.
- Avoid using blank pages as dividers. Instead of tabs or blank pages, insert a page with text such as, “Exhibit A.”
- File each document separately; do not staple multiple documents together. Clerk staff must remove staples before scanning. Binder clips may keep documents together and are easily removed.
- The upper right corner of documents must remain blank to allow for the Clerk’s filing stamp. All other document stamps, captions, letterhead, etc. must be placed elsewhere on the document. Documents with anything in the upper right corner that interferes with the filing stamp may be rejected by the Clerk.
- Avoid placing text, stamps or other information on the back side of papers whenever possible. The Clerk’s scanning equipment is set to image the back side of pages; however, if the amount of information on the back side is too small and most of the back side of the page is blank, the information may not be detected and scanned. Also, extraneous information, such as received stamps and other notations on the back side of a document not meant to be part of the document sometimes are picked up by the scanning equipment and are made part of the permanent record.
- Do not include non-standard items with paper filings, such as CD/DVDs or other items that cannot be scanned into the electronic case file. The content of non-standard items should be filed electronically, if appropriate, or be submitted in their physical format as a courtroom exhibit, depending on the item and situation.

As e-filing expands, there will continue to be exceptions that require certain documents to be filed on paper. Following these practical tips will ensure that your clients’ records are maintained in the most legible format as they enter the official record, which is created by the Clerk’s Office scanning the paper originals into the Electronic Court Record.

Four Easy Steps to Speed Up Your Service of Process

When service of process is delayed, justice is delayed. Time is crucial in a number of situations, such as family law child support modification or continuances or personal injury cases where the injured party requires immediate action to obtain medical care, for example.

The first step in speeding up your service of process is to use a private process server as opposed to law enforcement officers, who typically do not have the motivation or time to effect timely service. They usually get paid regardless of whether the documents are served or not. Not so with a professional process server, plus attorneys can have papers served more quickly.

Here are four tips for attorneys who do use process servers:

1. Share Up-to-date Information
   Perhaps most important is ensuring that all information is complete when the server receives the job. Current residential and/or business addresses, telephone numbers, vehicle descriptions, work hours, and physical descriptions, if available, make the process server more efficient. It gives them more options for how to serve the papers and how to do so in a timelier manner.

2. Get Specific with Your Instructions
   In a similar vein, be explicit with service instructions. Attorneys cannot expect the process server to be familiar with his or her personal preferences if they are not communicated clearly. Issues with substituted service—such as whether it is acceptable for the server to leave papers on the doorstep or with an apartment building doorman after due diligence—and other potentially challenging situations, should be discussed in advance.

3. Provide As Much Lead Time As Possible
   Also critical—and frequently paid inadequate attention—is giving the process server adequate time to serve the documents. Not only does this save the attorney money by not having to pay rush fees, but stress is reduced for all involved.

   If you cannot provide much advance notice, at least make sure you provide as much information as possible to assist the process server.

4. Use Software to Boost Communication
   Another tip, and perhaps the one most overlooked, is to use software to work more effectively with process servers. Now available is an innovative web-based application that facilitates communication and collaboration between process servers and attorneys through an interface that enables easier viewing of all jobs in a central location. Attorneys can input information, documents, and instructions into the interface to improve communication and speed up the process. Servers can download client documents and other instructions as necessary, as well as upload proofs of service or other affidavits for the client to download, further streamlining the process.

   Through such applications, both parties stay abreast of the status of all jobs by either logging into the interface or via automated notifications. An added benefit of such software is that it saves time and money by reducing emails, telephone status calls, and mailing fees.

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Redistricting Commission Nearing Completion

Legislators have chosen four of the five people needed to comprise the Arizona Independent Redistricting Commission, which will oversee the mapping of Arizona’s congressional and legislative districts beginning next year.

The four people include Scott D. Freeman, (Maricopa County), Jose M. Herrera (Maricopa County), Richard Stertz (Pima County) and Linda McNulty (Pima County).

By press time, the fifth commissioner had not been chosen but was to be decided at either a meeting to be held in February or within 15 days following that meeting.

In January, the Arizona Supreme Court ordered the Commission on Appellate Court Appointments to identify new nominees to replace Mark Schnepf and Stephen Soxaman, whom the court found ineligible to serve on the Redistricting Commission because their positions as directors of irrigation districts are “other public office[s]” under the Arizona Constitution article 4, part 2, section 1(3).

No more than two members of the Redistricting Commission can be members of the same political party. Of the first four appointed, no more than two can be residents of the same county.

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ASK AN ASSOCIATE
Nicole Siqueiros

QUESTION

At our firm we take an initial deposit, but it is not always enough to complete the case. There are times when clients need to replenish the amount in their trust accounts because we have to take the case to trial or otherwise. It’s my job to make sure my clients replenish their trust account on time before it becomes negative. I am a good lawyer, but asking for money is really difficult for me. Can you please give me advice on how to effectively ask a client for more money?

– Money Maven in Mesa, Arizona

I have been in your same exact position, and I understand how difficult it can be to ask clients for money. I am still working on perfecting an effective method myself! I have found that the following are helpful tips:

Good Fee Agreement

It all starts with a good fee agreement. It must contain language to allow you to request that your client pay additional fees and/or replenish their retainer. Thoroughly review the ethical rules when drafting your fee agreement. The State Bar offers a great program called the Law Office Management Assistance Program (LOMAP) which offers a wide range of services. In particular, they will review your trust account and your fee agreements, and provide you with guidance. An initial 30-minute consultation is available by telephone or in-person at the Arizona Bar Center for no charge. For more information on this program, call (602) 340-7313.

Clarify Payment Plan

When the client signs the fee agreement, make sure he/she is aware that the deposit is not payment in full. Make sure they are ready to be asked for additional fee deposits if the circumstances arise for such a request.

Replenishing Account

Assuming your fee agreement is acceptable and the deposit has been exhausted (or near exhausted) the next step is actually going to the client and asking that they replenish their trust account. Ask a client for money before their account is already in the negative. If your fee agreement does not specifically state when a replenishment is due, give yourself a percentage or a bottom line amount that makes sense given the work done, the work to do, your hourly rate, and the initial fee paid. For instance, tell yourself that you will ask your client for money if their trust account falls below $2,000 or below half the initial retainer. This will require that you keep up with your client’s trust accounts and review them on a regular basis. Of course, you should be providing your clients regular bills showing their account balance and the work done, but I’m suggesting reviewing the accounts on a weekly or daily basis.

Document Requests, Set Deadlines

Document your requests in writing, either through e-mail or mail, and keep your first request for money short, sweet and to the point—no more than a few sentences stating what you need and when you need it by. Always give a deadline for payment and keep the deadline on your calendar so you can follow up. I have seen some attorneys include in their client letter a quote from the fee agreement giving them authorization to ask for additional funds; this works too.

When Deadlines Aren’t Met

If the first deadline is not met, you may want to be more firm in a second letter and follow that up with an in-person meeting or telephone call. Make it clear why you need the money, when you need the money, and what might happen if you do not receive it.

Offering Options

If you can, offer as many payment options as possible. This might include a payment plan or using credit cards (review the ethical rules) to make payment easier for your client.

Handling Unmet Payments

At some point, you may have to move to withdraw if the client will not make payment. Of course, you will still have to do work until the court allows you to withdraw, but do not be afraid to file this motion if you are not going to be paid. However, you must be keenly aware of the ethical rules allowing you and/or a court event is pending. If this is the situation, review the ethical rules and make sure you have provided your client with the information they need regarding deadlines, dates, and their case so they can hire another attorney or represent themselves.

I think this is a good start on becoming a better business person and attorney. Good luck!

Have a Question? Don’t Be Afraid to Ask…

“Ask an Associate” is a monthly column which allows attorneys to anonymously submit questions to a real-life associate attorney. Questions cover a wide range of issues from marketing to office dynamics. To send your questions, please e-mail Nicole Siqueiros at nsiqueiros@hallierlaw.com.

The Essential Arizona Criminal Law Practitioner Handbook Now Available

The Criminal Law Section of the MCBA is pleased to announce the publication of the Handbook for the Arizona Criminal Law Practitioner. A compilation of the most frequently referenced criminal statutes, rules, guidelines, timelines, and sentencing information, among other useful information, the book is available mid-March, both in print and online at www.maricopabar.org.

The Handbook is the second edition of a booklet formerly titled My Little Arizona Rules Book published by the Criminal Law Section in August 2008. The second edition contains updates and additional sections to make it more practical and helpful for use as a portable criminal law desk reference. It now includes:

- The complete Arizona Rules of Criminal Procedure (except for Rules 30, 31 & 32, appeals and post conviction relief)
- Complete Arizona Rules of Evidence
- A current DUI Sentencing Chart
- The criminal provisions of the U.S. and Arizona constitutions
- A comparison chart of relevant U.S. and Arizona constitutional provisions
- A Rule 11 reference guide for incompe- tency and mental evaluations
- A Prop. 200 reference guide
- And a handy chart to the collateral consequences of criminal proceedings, among many other useful features

Among other uses, the section envisions the Handbook to be a quick reference during Arizona criminal proceedings. At 110 pages, with wire binding, it lays flat and is easily portable and convenient to take to court. Plus, the online version can be downloaded to your computer and can be referenced from your laptop.

Judge Christopher Whitten of the Superior Court writes: “It is an invaluable resource for resolving 95 percent of the quick issues that come up—issues that would otherwise require finding and reviewing many different volumes of many different resources.”

Pricing is $15.50 for MCBA Criminal Law Section members, $17.50 for non-Criminal Law Section MCBA members, $21 for nonmembers, and $15.50 for government and public entities who qualify. Shipping is additional. Books purchased at the MCBA office at 303 E. Palm Lane, Phoenix, are not subject to the shipping cost.

The Handbook will be available online at $11 for public and MCBA members (including non-Criminal Law Section members) and $16 for non-members. See the MCBA website at www.maricopabar.org for more information and availability.

Nix Negative Terms for Positive Effects

LEGAL WRITING
Tamara Herrera

One of my writing pet peeves is the overuse of the negative. I spot it everywhere—from municipal codes to United States Supreme Court opinions. If a writer overuses negative terms, the reader (like me) is left to perform some mental gymnastics to fig- ure out the writer’s intent. Here is an example of an overdone negative sentence:

No person shall be prohibited from giving evidence unless he fails to timely appear.

After I reread the sentence and perform mental gymnastics to get rid of the negative terms, the sentence means the following:

A person may give evidence if he timely appears.

As you can see by comparing the two sentences, the overdone negative sentence stalls the reader and causes her to pause. This pause affects comprehension. Too many negative terms also make a sentence weak and take more words.

My advice is to keep an eye open for the usual negative suspects: no, none, and never. If you need to use a negative, generally try to keep that negative with the verb and do not lead the sentence with the negative. Also, remember that negative terms come in various guises: deny, fail, prohibit, refuse, and most words beginning with the prefix “un.”

I do not mean to say that all negative terms should be eradicated. In fact, I need- ed a negative term in the previous sentence! But I do mean to say that the overuse of negative terms is poor writing, especially in documents that set forth duties and responsibil- ities such as contracts and statutes.

Think twice before using negative terms so that readers need to read the document only once.

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Community Outreach

Over the last several years, many of us have found ourselves in an unfamiliar position and we required the assistance of a friend, family member, charitable organization or government program. At our February board meeting, we discussed the division’s desire to be more active in the community.

Possibilities include working with other divisions within the MCBA to provide assistance with their events, being mindful that we, as paralegals, cannot practice law. For instance, one division is offering pro bono services, and we are looking into partnering with that division to see how we can assist with their event. Another suggestion was to work on a Saturday at the John C. Lincoln Food Bank. Do you have a favorite cause or charity? Please contact the Outreach Committee, Lynse Cooper and Julie Eslick, to offer your suggestions and sign up to volunteer. Both Lynse and Julie’s information can be found on the MCBA website.

Quarterly CLE

Our Quarterly CLE was attended by 28 participants. Nick Rayes and his paralegal, Carol Aanenson-Thomey, gave an excellent presentation on how the paralegal plays a key role in assisting the attorney in the bankruptcy practice. The attendees left with a better understanding of how they can be more effective and provide more assistance to their attorneys and firms.

Thank you Nick and Carol! I must also correct the fact that Nick has more than 40 years experience practicing as an Arizona licensed attorney.

Conference Planning

The conference planning is underway. Based on the positive response from the attendees of the conference in 2010, the Hyatt Regency will be the venue for the 2011 conference. This event takes months of planning and there are many opportunities to volunteer and assist with the event. Please contact Linda Hasseler or attend the next conference committee meeting on Thursday, March 10.

Next Board Meeting

The next Board of Director’s meeting will be held on March 7. The various committees are still in need of volunteers. All committees’ and chairpersons’ contact information is listed on the website at Maricopabar.org, under the Paralegal section. If you have an idea for community outreach, CLE, or any suggestions on assisting you in your profession, please don’t hesitate to contact the committee chairperson or send me an email at paralegal@maricopabar.org.

The next quarterly CLE will be held on May 12. Please remember to check the website for more information.
Arizona Law Librarians Join National Effort to Inventory Web Access to Government Documents

Law Librarians belonging to the Arizona Association of Law Libraries, the Arizona chapter of the American Association of Law Libraries (AALL), are joining with law librarians nationwide to inventory access to government documents on the Internet. The collaboration is part of AALL’s effort to develop a national inventory of all primary legal resources at every level of government.

Law librarians have long championed free public access to reliable government information. In March 2007, AALL published its “State-by-State Report on Authentication of Online Legal Resources,” which confirmed that many states’ core legal materials available on the Internet are considered to be official, yet are not digitally authenticated or preserved. At about the same time, the AALL Executive Board adopted “Core Values Concerning Public Information on Government Web Sites.” These core values define the organization’s commitment to “equitable, no-fee permanent public access to authentic online legal information. They include:

- **Accessibility:** Information on government websites must be accessible to all people.
- **Reliability:** Information published on government websites must be trustworthy and reliable.
- **Official Status:** Information on government websites must be preserved by the entity, such as the issuing institution (e.g., Arizona state courts), a state library, an archives division, or other agency within the issuing government that is charged with preservation of government information.

In April 2007, in Chicago, AALL convened a National Summit on the Authentication of Digital Legal Information. The AALL summit attracted the attention of the National Conference of Commissioners on Uniform State Laws (NCCUSL), which formed a study committee on the Online Authentication of Legal Materials shortly afterward. In 2009, NCCUSL approved its study committee’s recommendation to create a drafting committee which would develop a model uniform state law on the authentication and preservation of state legal materials. And in July 2010, NCCUSL held its first reading of the draft Authentication and Preservation of State Electronic Legal Materials Act.

The data collected in AALL’s National Inventory will be useful when NCCUSL’s drafting committee makes its recommendations for a uniform state law. Sarah Gotschall, reference librarian and adjunct assistant professor of legal research at the University of Arizona, and Janet Fisher, Law and Research Library Division director at the Arizona State Library archives and public records, are spearheading the collection of data for Arizona’s inventory of state and local government websites.

With a targeted completion date of July 2011, there is still a lot of data to be harvested. Not only is the inventory geared to identify each piece of government information accessible to the public over the web, it also evaluates, through a series of more than 40 questions, whether the government information provided is authenticated, whether or not the information is designated as an official version, whether the information is comprehensive, and whether there is any indication that the electronic information provided to the public is preserved and archived appropriately.

Law librarians wishing to participate in the National Inventory should contact Sarah Gotschall at Sarah.Gotschall@law.arizona.edu or Janet Fisher at jfisher@lib.az.us.

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**Legal Briefs**

By Joan Dalton

**Chief Judge Declares Judicial Emergency**

Chief Judge Roslyn Silver of the United States District Court for the District of Arizona declared a judicial emergency on Jan. 21, after having reported on the District of Arizona’s caseload emergency to the Judicial Council of the Ninth Circuit in an earlier January meeting. During a judicial emergency, the law that requires a federal criminal trial to start within 70 days of filing an indictment or criminal complaint is extended to 180 days.

The late Chief Judge John Roll had initiated the process to declare a judicial emergency before his untimely death in Tucson on Jan. 8. “The need to suspend the time limit is of great urgency due to a heavy caseload, a lack of adequate resources, and the tragic death of Chief Judge John Roll,” Chief Judge Silver said.

Although the District Court of Arizona, with a Division in Phoenix and Tucson, has the third largest caseload in the country, critical case remain unassigned. Criminal cases falling under the court’s jurisdiction have increased by 65 percent since 2008. In Tucson, three United States District Court judges handle about 1,200 criminal cases each.

The declaration will be effective until

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**MARCH 2011 CALENDAR**

All meetings at MCBA Office.

1. **2 Young Lawyers Division Board meeting**
   - Noon

2. **3 Construction Law Section Board meeting**
   - Noon

3. **4 Estate Planning, Probate & Trust Section Board meeting**
   - 7:30 a.m.

4. **Estate Planning, Probate & Trust Section Board meeting**
   - 7:30 a.m.

5. **Barriers Ball**
   - Grand Ballroom, Arizona Biltmore
   - 6 p.m. to 10 p.m.

6. **Barriers Ball**
   - Grand Ballroom, Arizona Biltmore
   - 6 p.m. to 10 p.m.

7. **Maricopa Lawyer Editorial Board meeting**
   - 5:15 p.m.

8. **Paralegal Division Board meeting**
   - 5:30 p.m.

9. **Family Law Section Board meeting**
   - Noon

10. **Executive Committee meeting**
    - 7:30 a.m.

11. **CLE: Family Law Fundamentals: Session 2 - How the Court Determines Child Custody and Parenting Time**
    - 11:30 a.m. to 1 p.m.

12. **Employment Law Section meeting**
    - Noon

13. **LRS Committee meeting**
    - Noon

14. **CLE: Planning and Defending Domestic Asset-Protection Trusts**
    - 7:30 to 9 a.m.

15. **MCBA Board of Directors meeting**
    - 4:30 p.m.

    - 11:30 a.m. to 1 p.m.

17. **Maricopa County Justice Museum & Learning Center Board meeting**
    - Noon

18. **Maricopa County Bar Foundation Board of Trustees meeting**
    - 7:30 a.m.

19. **Maricopa County Bar Foundation Board of Trustees meeting**
    - 7:30 a.m.

20. **Maricopa County Bar Foundation Board of Trustees meeting**
    - 7:30 a.m.

21. **Maricopa County Bar Foundation Board of Trustees meeting**
    - 7:30 a.m.

22. **Maricopa County Bar Foundation Board of Trustees meeting**
    - 7:30 a.m.

23. **Maricopa County Bar Foundation Board of Trustees meeting**
    - 7:30 a.m.

24. **Maricopa County Bar Foundation Board of Trustees meeting**
    - 7:30 a.m.

25. **Maricopa County Bar Foundation Board of Trustees meeting**
    - 7:30 a.m.

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*Please watch your MCBA E-News for updated information about meetings and events.*
Zachary LaPrade, a member of the YLD board, speaks with 1L students Ashley Williams from Clearwater, Fla., and Cameron Cope from Sandy, Utah, at MCBA’s annual Arizona State University law student recruitment visit on Jan. 27.

Chris Rike, Kielsky, Rike & Elgart, PLLC, back row, joins with ASU Sandra Day O’Connor College of Law students Shasta Smith, 2L; Emily Wolkowicz 2L; Mat Wadsworth, 1L; and Timea Hargesheimer, 3L, at the Family Law Mentor Reception held Jan. 27 at the MCBA.

Jennifer Rebholz, chair of the YLD Barristers Ball event, speaks at the YLD retreat. Amanda Sheridan is to her right and Casey Blais is to her left.
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To register, use the registration form on this page, go to www.marcopabar.org, or call Lisa Bivens at (602) 682-8588. Unless otherwise specified, all CLE programs will be held at the MCBA office: 303 E. Palm Lane, Phoenix, AZ 85004.
INTRODUCTION
Learn the ins and outs of family law as members of the MCBA Family Law Section take you through the "Smith" family divorce. This series of CLEs will expose you to various issues that family law practitioners face every day. The goal is to familiarize new family law attorneys with issues common to family law cases and provide tips and guidance on how to handle a family law case from the beginning to end. Join us for one session or them all!

SESSION I
FRIDAY ■ MARCH 4
How the Court Determines Child Support and Spousal Maintenance
Learn the factors that the court considers when calculating support and how to strengthen your client's case. This session will focus on the Arizona Child Support Guidelines and statute and case law on spousal maintenance.

PRESENTERS:
Nicole Siqueiros, Hallier Law Firm, PLC
Tori Harris, Johnsen Grant, PC

SESSION II
FRIDAY ■ MARCH 11
How the Court Determines Child Custody and Parenting Time
Learn the factors the court considers when making a custody and parenting time determination and how to give the court the information it needs to apply those factors. This session will focus on the Arizona custody statutes and case law every family law practitioner should be aware of.

PRESENTERS:
William Wingard, Attorney at Law

SESSION III
FRIDAY ■ MARCH 18
Identifying Property Types and How the Court Will View Each
Learn how to identify separate and community property and how the characterization affects your client and the division of property by the court. This presentation will focus on an overview of community property cases you need to know and discovery techniques pertaining to property vital to your clients.

PRESENTERS:
Leslie Satterlee, Nienstern Garnice Sodenquist, PLC
Rachel James, Nienstern Garnice Sodenquist, PLC

SESSION IV
FRIDAY ■ MARCH 25
Mental Health Interventions in Family Court
Learn about the options available for mental health interventions and evaluations in family court. The presentation will include case scenarios that explain which options are most appropriate and in what circumstances. Topics covered will include comprehensive custody evaluations, limited family assessments, extended forensic evaluations for child maltreatment, therapeutic intervention, forensically informed therapy, parenting coordinators, and independent psychological and psychiatric evaluations.

PRESENTERS:
John Moran, Ph.D., PC
Diana Vigil, L.P.C., P.P.T.
Julie Skakoon, M.C., L.P.C.

Send Us Your Events for the Community Legal Calendar
MCBA is now hosting a Community Legal Calendar on its website at www.maricopabar.org. (See right navigation bar.) Other than for dedicated CLE events, we encourage legal organizations to use the calendar as a way of avoiding overlap with other organizations’ events. Send your event to Laura Swendseid at lswendseid@maricopabar.org.
Courthouse Experience Looks to Expand, Add Volunteers

Through a program called Courthouse Experience, groups of volunteer attorneys have been teaching students about Arizona law and courtroom procedures. Since the beginning of the 2010-2011 school year, attorneys have guided 1,572 students in-and-out of courtrooms at Superior Court.

"Courthouse Experience is reaching out to a large number of students. I’m very grateful for all of the time and effort our volunteers are putting into the program," said Maricopa County Superior Court Community Outreach Director Patricia Seguin. "We are hoping to expand the program, and we are continually looking for more volunteer attorneys."

Currently, there are 163 volunteer attorneys in the program.

Judge Gerlach Investiture Ceremony

Arizona Supreme Court Chief Justice Rebecca White Berch administers the oath of office to Judge Douglas Gerlach during his investiture ceremony in the Maricopa County Board of Supervisors auditorium in Phoenix.

Courts Seeing Increase in Veterans with War Trauma

As increasing numbers of veterans return from military service in foreign wars, the courts are seeing an increasing number of offenders with service-related trauma. Such trauma has resulted in higher rates of divorce, drug and alcohol abuse, and in some cases, incarceration or suicide among veterans.

Without appropriate treatment, these veterans are at increased risk of harming themselves or others.

On Jan. 20, the court kicked off its first Veterans Court Calendar. Phase one works with veterans who are currently on probation and have absconded, or veterans on supervision who are at risk of violating their probation terms.

Veterans Court is based on a team approach. Participants include: Maricopa County Adult Probation Department, Veterans Service Outreach Specialist, Carl Hayden Veterans Hospital, Magellan Court Liaison, Maricopa County Attorney, Maricopa County Public Defender, Arizona State Bar Military Legal Assistance Committee, Private Practice Attorneys, Veteran Peer Support, Correctional Health Services and Behavioral Health Provider Networks.

Criminal Court Presiding Judge Douglas Rayes and Comr. Michael Hintze will oversee the program. Comr. Hintze, whose father served in WWII, said, "I feel it is vital that veterans be treated with compassion, conviction and deliberate justice in order to address their substance abuse, alcoholism and behavioral health issues. Veterans Court will protect the community and provide veterans with tools for success."

More Help Needed for Veterans by Craig Logsdon

An hour before court was in session, Superior Court Commissioner Michael Hintze sat at the head of a conference room table in the middle of his courtroom. One by one he called through the list of military veterans on his probation violation calendar and discussed their circumstances with the group gathered around his table.

The Maricopa County Veterans Court was born.

Comr. Hintze was flanked by the people who were going to help these veterans get on the right track to complete probation: representatives of the United States Veterans Administration, the Maricopa County Adult Probation Office, the Public Defender’s Office, and others.

These individuals carefully discussed each veteran and the role that the criminal justice system should continue in their lives. This way, the court resolved the veterans’ cases with substantially more individual attention than regular courts would afford them.

Comr. Hintze’s probation violation calendar for veterans is “Phase I” of the Veterans’ Court—a court that Presiding Criminal Judge Douglas Rayes explains allows the defendants’ combat experiences to be ‘factored into the

See Courts Seeing Increase page 14

Judicial Officers Help Vets, Homeless at Arizona StandDown

Superior and justice court judicial officers spent Super Bowl weekend volunteering to help homeless and at-risk veterans at the annual Arizona StandDown event Feb. 4 through Feb. 6 in the Veterans Memorial Coliseum at the Arizona State Fairgrounds.

The three-day event connected the valley’s homeless and at-risk military veterans with services such as healthcare, mental health services, clothing, meals, emergency shelter, transitional and permanent housing, ID cards/drivers’ licenses, court services and legal aide, showers and haircuts. This is the first time that both superior and justice courts have participated in the event.

Presiding Criminal Court Judge Douglas Rayes said that many veterans experienced traumatic events while serving in the military and, as a result, now find themselves on the streets, some facing pending court matters.

Rayes said that the volunteer judges, lawyers and staff would give these heroes “the opportunity to face their legal matters, and in most cases, resolve them on the spot” and that the volunteers were proud to have “the opportunity to help veterans find some peace of mind and deliver justice."

Superior Court staffed two courts throughout the event while Justices of the Peace C. Steven McMurry, Gerald Williams and Rachel Carrillo handled cases on behalf of the 25 justice courts in Maricopa County.

Superior and justice court judges and commissioners were ready to handle probation violations, warrants, change of pleas and possible sentencings, as well as civil and criminal traffic cases and other types of misdemeanor offenses.
Volunteer Lawyers Program Thanks Attorneys

The Volunteer Lawyers Program thanks the following attorneys and firms for agreeing to accept 30 referrals last month 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.

**PRO BONO SPOTLIGHT ON NEW APPELATE PILOT PROGRAM**

Attorneys are needed to participate in a new pilot program to serve low-income unrepresented litigants with cases in the Arizona Court of Appeals Division One. Please call Pat Gerrich or Danae Brownell at VLP at 602-254-4714.

## THIS MONTH IN LEGAL HISTORY

MARCH 3, 1879

**Woman May Practice Before High Court**

Belva Ann Bennett Lockwood becomes the first female lawyer admitted to practice before the U.S. Supreme Court. She was admitted after three years of lobbying Congress, which passed a law “to relieve certain legal disabilities of women.” A lawyer, author and women’s rights activist, Lockwood will run for president in 1884 and 1888.

## VLP ATTORNEY OF THE MONTH

Daughter of Cuban-Born Immigrants Uses Knowledge to Empower Others

Peggi Cornelius, CVA

The second of five children born to parents who immigrated to the United States as a consequence of the Cuban revolution, attorney Elena Nethers says her parents taught her that knowledge is a possession no displacement or economic misfortune can take away. Because she so generously and effectively uses her education and experience advising and advocating for people seeking pro bono assistance through the Volunteer Lawyers Program (VLP), Nethers has been recognized as VLP’s “Attorney of the Month.”

After earning her undergraduate degree in International Relations at Tulane University in New Orleans, Nethers returned to her hometown of St. Louis to attend law school at Washington University. During her first years as a lawyer, she developed expertise in insurance regulation and later focused on employment and labor law.

“My husband and I moved our young family to Arizona from Nebraska in 1995. Our children were five and two years old, and I thought I'd take a year off to help them acclimate. Well, one year quickly multiplied to 15, and we were blessed with a third child during those years” she said, smiling. “I became very active as a volunteer in my children’s schools.”

When her daughter went off to study at the University of Notre Dame, her son neared completion of high school, and her youngest child entered first grade, Nethers decided it was time to take the Arizona Bar exam. Thereafter, she contacted Community Legal Services and began a weekly commitment to pro bono work in the VLP office.

Nethers describes her work at VLP as meaningful, and says it has exceeded the expectation she had that it would expand her knowledge in areas of the law she'd not previously explored. She comments on the variety of problems presented. “Some have simple issues, such as a client whose apartment had sustained water damage when a city sewer line burst. The process for claiming damages was not difficult, but she had no idea of a remedy or where to begin. Providing people information and confidence to be self advocates is often what I do at VLP. But there are also many cases involving more complex and long-term efforts, such as advocacy I've undertaken with another volunteer, attorney Patrick Dutton, to help residents in conflict with their homeowner associations.”

VLP clients qualify for pro bono assistance according to the nature of their civil law problem and by virtue of their extremely limited financial resources. Nethers recognizes the circumstances leading them to VLP frequently involve legal matters, such as foreclosure or eviction resulting from personal hardship.

“Many of the clients I meet have serious health problems and are unable to work, or have lost their jobs. That results in an inability to keep up with their living expenses for housing, food, and medicine, not to mention their transportation, clothing, and other needs,” she said. “If I can eliminate one area of stress in their lives, then I have done my job.”

When asked what she might say to encourage colleagues to become involved in helping VLP clients, Nethers noted the tremendous need for legal assistance to low-income people and the willingness of VLP staff members to give whatever assistance they can provide to volunteer attorneys. Her enthusiastic response was, “When I started helping, I had numerous questions and was always able to find someone to answer them. I'd say, ‘If you’re reticent, just jump in and do it!’”

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Elections

Randy Nussbaum, managing partner of Nussbaum Gillis & Dinner, P.C., has been elected the Chair for the Scottsdale Center for the Performing Arts Advisory Board for calendar year 2011.

New Hires

National law firm Polsinelli Shughart PC is pleased to welcome shareholder Richard M. Amoroso to the firm’s Insurance Coverage/Bad Faith Litigation and Insurance Business and Regulatory law practices. Amoroso will be assisting clients in working through complex insurance matters involving regulatory issues, insurance planning and strategy, risk assessment and analysis, coverage and risk transfer.

Holly R. Pepi joined Hammerman & Hultgren, P.C. in Phoenix as an associate attorney in December. Pepi received her B.A., magna cum laude, from the University of Tampa in 2006 and her law degree, cum laude, from Case Western Reserve University in 2010.

Rose Law Group (RLG) is continuing their expansion into a full-service law firm in 2011 with the recent addition of Keith A. Berkshire as the head of the firm’s Family Law practice. With experience in a variety of areas, including domestic relations, family law and appellate practice, Berkshire will be spearheading the firm’s efforts in these areas.

Gust Rosenfeld is pleased to welcome Calvin J. Platten, Jr. who will enhance the firm’s litigation practice. Platten primarily practices in the areas of commercial, construction, insurance, and real estate litigation. He is licensed to practice in federal and state courts and also handles alternative dispute resolution proceedings.

Announcements

Quarles & Brady, LLP announced it has opened a Shanghai Representative office in Shanghai, China, representing the firm’s eighth office and its first outside the United States. The firm’s Shanghai office will focus on advising clients on foreign direct investment, mergers and acquisitions; securities offerings (including U.S. listings); joint ventures, intellectual property, regulatory issues, and corporate and governmental relationships. Thomas Stiebel, Jr. will serve as the firm’s chief legal representative of the Shanghai office. It will be staffed on a rotational basis with key U.S.-based attorneys from Quarles & Brady’s China Law Group, including Phoenix office partners Karen Dickinson and Geoffrey Ossias.

Recognitions

Fennemore Craig has been given the Florence Immigrant and Refugee Rights Project’s Pro Bono Leadership Award. The award recognizes Fennemore Craig’s volunteer work and help to develop Florence Project Programs. Fennemore Craig lawyers who worked pro bono on Florence Project cases are McKenzie Brown, Jason Covault, Andrew Creavington, Todd Allison, Meredith Marder, Jake Cranston, Jason Specht and Carrie Pitzer. The Florence Project provides legal assistance to people who are detained in the United States immigration system and who cannot afford a lawyer. Many refugees have fled their countries because they fear imprisonment, torture, or death because of their ethnic identity, religion or political beliefs.

Are A-B Trusts Dead Letters?

By Mark Moritz

For many years, estate planners have recommended that married couples use “A-B” trusts. An A-B trust is one that splits into two trusts (A and B) when one spouse dies. Back in 1997, when the estate tax exemption amount was $600,000, splitting the trust when the first spouse died enabled parents to leave up to $1.2 million to their children without any estate tax. Now that the exemption is “portable” and see if the increased exemptions are made non-tax reasons, or they may decide to wait and see if the increased exemptions are made permanent.

Mark Moritz is a sole practitioner in Chandler, and a member and past chair of the Estate Planning, Probate and Trust Section of the MCBA. His practice is limited to estate planning.

Bulletin Board Policy

If you are an MCBA member and you’ve moved, been promoted, hired an associate, taken on a partner, or received a promotion or award, we’d like to hear from you. Talk, speeches (unless they are of national stature), CLE presentations and political announcements are not accepted. In addition, the Maricopa Lawyer will not print notices of honors determined by other publications (e.g., Super Lawyers, Best Lawyers, etc.). Notices are printed at no cost, must be submitted in writing, and are subject to editing. Items are printed as space is available. News releases regarding lawyers who are not MCBA members in good standing will not be printed.

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Courts Seeing Increase

continued from page 12

way that they’re treated within the system.”

Founders of the Veterans Court stress the unique circumstances and needs of a growing population of veterans suffering from war-related mental injuries, such as post-traumatic stress disorder and traumatic brain injuries.

The Veterans Court does not excuse the criminal behavior of veterans. Rather, the court allows the consolidation of cases of a certain type.

With veterans’ cases funneled into one specialty court, the resolution of the cases can best serve the defendants. For example, representatives from the Veterans Administration are on hand to determine the eligibility of the veteran for services and get them enrolled; specially trained public defendants are present to offer mitigation when appropriate; and judges and court staff with knowledge of the available services hear all of the cases.

While the specialty court’s caseload now only encompasses probation violations, judges intend to expand the Veterans Court substantially so that it will soon include newly charged cases.

Although the court has received grant funding and help from a long line of public and private volunteers, the veterans need more assistance from the private bar. Their lives are often crippled by their psychiatric injuries suffered during combat. Accordingly, in order to get their lives together, there is more to be done than simply completing probation or passing through the Veterans Court.

The Maricopa County Bar Association’s Criminal Division has created a sub-committee to assist with the Veterans Court. Anyone interested should contact Lisa Browns at the MCBA: 602-682-8588, or lbivens@maricopabar.org.

Courts Seeing Increase

continued from page 12

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Note: The Maricopa Lawyer is a publication of the Maricopa County Bar Association, located at: 1901 North Central Avenue, Phoenix, Arizona 85004 (602) 262-8400. The views expressed in this publication are not necessarily those of the Maricopa County Bar Association or its members.

Caugh Logan is a partner at Swell & Wilmer who focuses on product liability litigation and other torts including premises liability and municipal liability. He is a frequent presenter for Swell & Wilmer’s in-house litigation training and a presenter for litigation training with MCBA.
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BAXTER ENGINEERING


Supreme Court Tosses Aside Antiquated Common-Law Notion

CourtWatch, continued from page 1

The supreme court agreed to do so because, according to Justice W. Scott Bales, "determining the limitations period for recovery of medical expenses resulting from injuries to minors is an issue of statewide importance." But the court ended up not deciding that issue.

The controversy was based on Arizona cases holding that a parent is the proper party to sue for medical expenses resulting from a child’s injuries. Pearson v. Dickerson Construction, Inc. v. Harrington, 60 Az.2d 354, 137 P.2d 381 (1943), and S. A. Gerrard Co. v. Coach, 43 Ariz. 57, 29 P.2d 151 (1934). In the supreme court, Maddison's estate argued—for the first time—that Pearson should be overruled. It argued for a rule that the claim belongs to both the parents and the child, as long as no double recovery occurs. The supreme court declined to follow its own general rule against considering issues not raised below because the lower courts would have had to reject any plea for them to deviate from established supreme-court authority.

Bales noted that Pearson’s rationale for holding that only the parents own the claim for the child’s medical expenses was “to protect a defendant against having to pay such expenses a second time.” But in Pearson the supreme court had refused to apply the rule to bar a suit that the parent had filed on the child’s behalf as guardian ad litem. As Bales noted, “the parent was deemed as a matter of law to have assigned the action to the child, thereby allowing recovery in the child’s name.” The child’s recovery prevented the parents from their own recovery, thereby protecting the defendant.

The Pearson and Gerrard rule grew out of the notion that a minor’s services and earnings belonged to the parents. “Gerrard,” Bales wrote, “treated the parent-child relationship in economic terms, much like the relation between master and servant.”

But Arizona law has outgrown this notion, Bales continued. “[W]e have since observed that the common law master-servant analogy is clearly antiquated and long overdue for judicial burial,” he wrote, quoting a 1986 case. Furthermore, the courts can accomplish the goal of avoiding double recovery—the only rationale for Pearson's rule—simply by not allowing it to occur.

The school district argued that the Pearson rule should nonetheless be retained. Holding that the claim belongs only to the parents, it argued, serves three functions. By providing a single limitations period, the law is clearer. It helps avoid stale claims by motivating claimants to promptly seek compensation for all of the child’s damages. And finally, it improves governmental entities’ ability to assess potential liability and make better-informed budgetary decisions.

Bales rebuffed the arguments as “tenuous,” and found their benefits outweighed by the disadvantages. “Although the Pearson rule may encourage the bringing of claims for medical expenses within the parents’ limitations period,” he wrote, “it does so at the cost of promoting piecemeal litigation, at least in the absence of an effective assignment. It also poses a potential trap for the unwary that can insulated defendants from liability for the child’s medical expenses for reasons unrelated to the defendant’s fault,” he added.

Joining Bales in overruling Pearson and Gerrard were Chief Justice Rebecca White Berch, Vice Chief Justice Andrew D. Hurwitz, and Justices A. John Pelander and Michael D. Ryan (retired).

Well, duh!


After Gina M. Holmes left her job, she sued her former employer, Petrovich Development Company, LLC, for sexual harassment, retaliation, and wrongful termination. The trial court entered the California equivalent of summary judgment, and she appealed. This is Holmes’s story.

Holmes became pregnant shortly after she was hired as Paul Petrovich’s executive assistant. She told him that her due date was in December, about five months hence, and that she planned to take maternity leave.

In an exchange of emails discussing the need to find someone to help out during Holmes’s leave, Holmes took offense at Petrovich’s expression of frustration about the situation. This was the beginning of a series of events that eventually led Holmes to leave. Before she left, she contacted her attorney several times to discuss the possibility of suing the company.

Holmes had read the company’s handbook, which specifically prohibited employees from sending or receiving personal e-mails and warned that employees had no expectation of privacy in their e-mail. She nevertheless communicated with her attorney through company e-mail. Her attorney advised Holmes—via e-mail—to delete their correspondence from her computer so that the company could not access it. The two nevertheless continued to correspond through the company’s e-mail.

During the litigation, Holmes’s attorney sought a protective order to prevent the company from accessing and using their e-mails. The trial court denied the motion holding that they were not protected under the attorney-client privilege because they were not private. Holmes appealed.

The California Court of Appeal affirmed.

Retired Presiding Justice Arthur G. Scotland wrote that Holmes and her attorney were responsible for their own failure to keep their communications private. He noted that Holmes had “used ‘defendants’ computer, after being expressly advised this was a means that was not private and was accessible by Petrovich, the very person about whom Holmes contacted her lawyer and whom Holmes sued.”

“This is akin,” he continued, “to consulting her attorney in one of defendants’ conference rooms, in a loud voice, with the door open, yet unreasonably expecting that the conversation overhead by Petrovich would be privileged.”

Holmes believed that the emails were truly private because she had used a personal password when using the company computer and had deleted the files after sending them. That belief was unreasonable, Scotland ruled, because she had been warned that the company would monitor her e-mail usage.

Furthermore, he pointed out, “she was told that she had no expectation of privacy in any messages she sent via the company computer.” He added that several people had access to Holmes’s computer information, including Petrovich, the company controller, and the “IT guy.”

Scotland summed up: “Just as it is unreasonable to say a person has a legitimate expectation that he or she can exceed with absolute impunity a posted speed limit on a lonely public roadway simply because the roadway is seldom patrolled,” he offered, “it was unreasonable for Holmes to believe that her personal e-mail sent by company computer was private...”

Concurring in Scotland’s opinion were Acting Presiding Justice Harry Hull and Justice M. Kathleen Bizu.
$311K GOAL FOR 2011

“LAWYERS REALLY DO CARE.”

[Letter text]

THE MARICOPA COUNTY BAR FOUNDATION... LAWYERS CARE; THEY REALLY DO CARE!

Thirty-one years ago, when I became the president of the Maricopa County Bar Association, I made it a priority that the minds of Maricopa County lawyers, because those lawyers really do care. In 1980, the MCBA’s partnership with the Community Legal Services Corporation was formalized, and the Volunteer Lawyers Program was established. Because lawyers “really do care,” our Volunteer Lawyers Program became, and remains, the preeminent pro bono lawyer’s program in the United States.

With the start of the Volunteer Lawyers Program, a charitable arm for the MCBA was not far off. In 1983, the highly dedicated board of directors of the MCBA founded the Maricopa County Bar Foundation. In 1994, I was privileged, along with many other Maricopa County lawyers, to become a charter benefactor of the newly established foundation’s initial endowment fund. By the end of 1987, a sizable endowment fund had been established to support the MCBA’s charitable purposes. Over the last 23 years, our foundation has funded, in excess of $615,000 for charitable purposes in Maricopa County, all because “lawyers really do care.”

Recently, the Trustees of the Foundation and the Board of Directors of the MCBA announced a bold new financial campaign to replenish the original endowment fund. “LAWYERS REALLY DO CARE.” I am reconvening with the Founders of the Foundation, those inspiring men and women, who have reached the pinnacle of their professional endeavors, to ask their help in making this financial effort a ringing success.

By this open letter to you, the members of the MCBA, I am asking that you join us with your cooperation and financial support. When someone from the Bar Foundation asks for a few minutes of your time, when they ask for a contribution, and when they remind you that “lawyers really do care,” please give them a helping hand.

Sincerely,

Ted F. Warner

[Signature]

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