MCBA To Host Community Legal Calendar

Beginning on January 1, the MCBA will create and maintain a Community Legal Calendar that will contain important and relevant dates for the entire Maricopa County legal community. These will include major meetings of the MCBA, the State Bar, the judiciary, and regional and specialty bar associations.

A major goal of the Calendar is to aid in the avoidance of scheduling conflicts, as well as to make the entire legal community aware of events that may be of interest.

There will be a link to the Calendar on the MCBA’s home page (www.maricopabar.org), and we request that anyone having items to include should forward them to Laura Swendseid (lswendseid@maricopabar.org). Should you have any questions about the content of the Calendar, feel free to contact Executive Director Allen Kimbrough (akimbrough@maricopabar.org).

Benton Assumes Presidency, Board Takes on New Look

David H. Benton, general counsel to Maricopa County, is the president of the Maricopa County Bar Association for 2011. Benton moved into the position after previously serving as president-elect.

In the MCBA Board of Directors election, incumbents Comr. Keelan S. Bodow and T.J. Ryan of Frazer Ryan Goldberg & Arnold were reelected and three newcomers joined the board. They are Lyzzette M. Bullock, Jennings, Strouss & Salmon.

Lyzzette Bullock practices primarily in commercial litigation. She holds a B.A. in political science and Spanish from Wellesley College and a J.D. from the University of Michigan Law School. She is active in several legal and nonprofit community organizations.

Hirsch, a 2005 graduate of Arizona State University’s Sandra Day O’Connor College of Law, practices in the bankruptcy, creditors’ rights, and litigation arenas. He was named the Children’s Law Center Attorney of the Year for 2009 by the Volunteer Lawyers Program.

LaFave focuses her practice on a broad range of commercial litigation matters and has experience in tort liability defense in both state and federal courts. She has undergraduate degrees in social work and psychology and received her J.D. from ASU’s Sandra Day O’Connor College of Law in 2000.

The newly composed 2011 board will meet for the first time during its annual retreat on Jan. 8.

MCBA Honors Retired Judges Ryan and Mundell at Membership Luncheon

Approximately 100 people attended the MCBA’s Dec. 1 Membership Luncheon, which honored recently retired Justice Michael D. Ryan and Presiding Judge Barbara Rodriguez Mundell.

The luncheon was held at the Hyatt Regency Phoenix and featured remarks by MCBA President Jennifer Green, retired Arizona Supreme Court Chief Justice Ruth McGregor, and Supreme Court Chief Justice Rebecca White Berch.

Through the Storms

Mundell, who retired in May as presiding judge of the Maricopa County Superior Court, said she received the honor not only for herself but for her colleagues at the court. Through many challenges, especially related to former Maricopa County Attorney Andrew Thomas and the county sheriff’s office, she said the court has maintained its integrity and honor.

She lauded Presiding Criminal Judge Gary Donahoe, who was sued by Thomas in 2006, for implementing a master calendar that decreased case backlogs and for cutting the number of death penalty cases in half.

Mundell said she never forgot the words of the former superior court Presiding Judge Colin Campbell: “Your tenure as presiding judge will be based on events you cannot now foresee.”

Mundell joked that no one could have predicted all the obstacles she and the court would face not long after her appointment.

Retired But Still Working

Chief Justice Berch introduced her former colleague and honoree Justice Ryan, being
Where Are You?

MCBA President

David H. Benton

Because WE are here and involved.

Were you at the Hall of Fame Luncheon in October, which honored the likes of attorney Jose Cardenas, Justice Frank Gordon, and U.S. Senator Jon Ky? Is it safe to assume you are familiar with the myriad of CLE offered by the Maricopa County Bar Association? Or did you, by chance, attend the Dec. 1 membership luncheon, which put a well-deserved spotlight on Arizona Supreme Court Justice Michael Ryan (still trying to retire, we hear) and retired Presiding Judge Barbara Mundell Rodriguez of the Maricopa County Superior Court, both of whom made exemplary contributions to this state and our county.

The very next day, the MCBA hosted a reception for those newly admitted to the bar. And by the by, the entire Arizona Supreme Court attended the luncheon honoring Justice Ryan and Judge Mundell, and Chief Justice Rebecca White Berch presented at the luncheon and attended the new admits reception.

Lone Wolf or Actively Involved?

I am one who thrives on being involved.

I will spare you the Woody Allen cliché, but I think you know where I am going with this. I have not always been a lawyer, so being a “member of the bar” took some getting used to.

I used to conduct aerospace research and development and a great deal of success came from just being out in the lab—talking to other scientists, watching and tinkering with the unknown. We had a saying: If we knew what we were doing, it wouldn’t be research. I have carried that sentiment with me, and I assume everyone, in their own way, did too.

So when I became a member of the bar, I was somewhat surprised at the isolated nature of some lawyers. OK, lawyers don’t toil in silent obscurity by any means, but you have to admit the dogged advocacy for the client often takes on the demeanor of a lone wolf. Which may be one source of the repeatedly noted decrease in civility in our profession, but there is room for that in another column. My point is: I think I do what I do well because I can be among other professionals who share what they do well.

Are You Taking a Stand?

Where are you on the independence of judiciary? Rumor has it our celebrated merit selection system may be facing a significant attack at the Legislature. Are you going to be with us when we defend one of the most respected benches in the country?

Where are you on our just barely new law allowing medical marijuana? Not an employ-

ment lawyer! Well, you are if you do work in a place of business that employs someone who is under a doctor’s care and is prescribed purple haze. MCBA just put on a CLE about it.

And I am sure you know that the social impacts of our new law have yet to be fully realized. MCBA will be right there, talking about it and educating our members. Great Things Ahead

Where are you going to be in 2011?

Hopefully at the Barristers Ball, this year hosted at the extraordinary Arizona Biltmore Grand Ballroom and benefiting the Maricopa County Justice Museum & Learning Center Foundation. Did you just say, “What is the Justice Museum?” Slated to be constructed inside a space steeped in history, the Old Courthouse, the Maricopa County Justice Museum & Learning Center is intended to educate children and adults about the bedrock principles of the American justice system. It will be designed to be interactive and teach visitors about the significant contributions from Arizona’s justice system, such as Miranda.

So, where are you? Are you with me? With us, the Maricopa County Bar Association?

Are you ready to take a stand, draw a line in the sand, and make a difference?

Are you ready to stop hoping things get better and start to make them better—yourself?

Are you ready to get involved? I am here—where are you?

The Jury Will Decide: Court of Appeals Panel Creates New Proceeding in Accident Case

When the parties dispute whether a plaintiff filed a timely notice of claim against a public entity, how should the facts be determined? Should there be an immediate hearing before the judge, or should the jury decide the issues at trial?

Facing that question recently, a panel of Division One of the Arizona Court of Appeals crafted a novel compromise. Holding that the jury is the factfinder but that the issues should be tried up front, the court in essence created a new proceeding: the jury hearing.


The case arose from a one-car accident that injured the driver, James L. Lee. His wife, Teresa C. Lee, died in the accident, as did Hyeon Bae Kim and Kyung Nim Beak Kim. James Lee and the Kim’s children sued the state, asserting that it had contributed to the accident through negligent highway design and maintenance. The state moved to dismiss, arguing that the plaintiffs had not complied with the notice-of-claim statute, A.R.S. § 12-821.01.

In support of its motion, the state asserted that there was no notice of claim from the plaintiffs in its files. The plaintiffs responded that their attorney had prepared the notice and that her secretary had timely placed it in the mail. The trial court nevertheless dismissed, and the court of appeals affirmed. Lee v. State, 215 Ariz. 540, 161 P3d 583 (App. 2007).

The supreme court reversed. It held that the plaintiffs’ evidence of mailing raised a question of fact that the notice had been delivered to the Attorney General’s Office, as required, and that this question had to be decided by the factfinder. Lee v. State, 218 Ariz. 235, 182 P3d 1169 (2008). Two dissenting justices argued that the opinion left unanswered who—judge or jury—should be the factfinder. The majority declined to decide that question because it had not been preserved for appeal.

Back in the superior court, the trial judge ruled that the issue was for the judge, not the jury. He was hearing.


So, Where Are You? Are You With Me? With Us, The Maricopa County Bar Association?

Are You Ready To Take A Stand, Draw A Line In The Sand, And Make A Difference?

Are You Ready To Stop Hoping Things Get Better And Start To Make Them Better—Yourself?

Are You Ready To Get Involved? I Am Here—Where Are You?
**OPINION**

A New Year’s Wish List

By Jack Levine

Rarely does one have their New Year’s wishes granted. Mine have been unfulfilled for many years, but I am still waiting and hoping. Here they are.

**New Disciplinary Rules**

The New Year will usher in fundamental changes in the way that our disciplinary system functions and promises to be to be a great improvement over the old system. However, whatever the process, unless those who are involved in the investigation, prosecution and decision-making roles in disciplinary matters have a truly neutral mindset in their approach to their tasks, nothing much is going to change from the results of the old system.

Absent clear and convincing evidence to the contrary, lawyers, by virtue of their office and the respect due them, should be presumed to be honorable and ethical professionals and the burden should not be on them to prove that they possess these traits, as has sometimes been required in disciplinary cases in the past.

Also, it is distressing to see how frequently it is that sole practitioners are the targets of disciplinary proceedings, while large-firm lawyers rarely receive any attention, despite the appearance of serious ethical violations.

“Captive Clients” and “Pay to Play”

Public utilities and corporations whose governing boards have been taken over by members of their law firms are frequently referred to as “captive clients.” Because such clients, in every sense of the word, are controlled by their law firm, they cannot object to the fees charged by the law firm for legal services, nor can they even make such fundamental decisions as to whether they need legal services at all and who is to provide them. Who would argue that this arrangement does not constitute an egregious conflict of interest and should not be permitted?

Also of concern are those law firms that bundle large sums of money for political contributions to city, county and state officials at election time, and, in return, receive lucrative legal service contracts without competitive bidding.

**Lawyer Advertising**

I would like to see a complete ban on advertising for personal injury cases. There are many who mistakenly believe that such advertising is entitled to absolute protection by the First Amendment. However, commercial speech is only entitled to protection when it does not harm the public or our important institutions.

The impact of lawyers advertising for personal injury cases encourages people to bring claims when they otherwise might not and portrays lawyers as greedy vultures hovering to take advantage of people who have been injured.

Such advertising has all but destroyed the confidence of the public in our tort system and has made it near impossible for an injured person to get a fair trial before a jury. In addition, it has driven the public’s respect for the legal profession down to a new low. Why do we continue to put up with this?

**Merit Selection**

Merit selection is clearly an improvement over the old system of electing judges; however, as good as it is, it could be so much better. How about requiring competitive examinations in the law and the rules of evidence for judicial applicants? We don’t admit applicants for admission to the bar based on personality, having friends in high places or on letters of recommendation; why then do we permit this for candidates for judicial office?

Also, a judge’s ability to competently preside over issues of law that he or she is unfamiliar with becomes exacerbated by the rotation system which removes judges from their initial area of assignment after gaining knowledge and experience in a given area of law and placing them in an entirely new area of the law for which they may not be sufficiently equipped.

Similarly, the retention side of our merit selection system is also flawed. If we go to the trouble and expense of polling lawyers, litigants, jurors, witnesses and court staff to give ratings to the judges that they have appeared before, the individual voter should be permitted to make their wishes granted. Mine have been unfulfilled for many years, but I am still waiting and hoping. Here they are.

This page includes an advertisement for Receivership Specialists, highlighting their services and contact information.
YLD’s New Year’s Resolution (and Yours): Increased Participation

The recent YLD board member election was encouraging because it showed that there is growing interest in participating in the YLD. We had more candidates than we had board spots to fill. While there are a limited number of board seats, there is no cap on the number of people that can participate. In fact, the YLD’s focus this coming year will be on increasing participation and finding new members. So on behalf of the board, I’d like to take this opportunity to outline some of the opportunities we have to participate.

First: a refresher. The MCBA Young Lawyers Division consists of attorneys in their first five years of practice or who are under the age of 36. If that’s you, read on for ways to get involved. If that’s not you, read on to see for which activities you can “volunteer” your firm’s younger attorneys.

Chances are you’ve already heard of, or participated in, at least one YLD event. This past year we had record-setting participation in our annual Race Judicata 5K run and 1K walk, which raised $6,700. That money goes directly to fund our yearly “Necessities Drive” which provides supplies for local domestic violence shelters.

Our division doesn’t just provide sundries to the shelters — we recently started a program called “Legal Assistance to Women in Shelters” that sends volunteer attorneys to shelters to help the residents learn the basics of how to represent themselves in civil proceedings.

We also provided training for lawyers and law students this past year. We sent volunteers to train law students to be better interviewers through our mock interview program. Among the free and reduced-cost CLEs we offered this year was a “Bridge the Gap” CLE program to help new admittees transition from law school to practice (to start at the job they got with their enhanced interviewing skills).

The YLD also provides social and networking opportunities for its members. The Barristers’ Ball, which benefited the Justice Museum, actually outgrew the W Hotel this year. Thanks to all of the support from both the bench and the bar, the Barristers Ball will be moving to a larger venue at the Biltmore this coming March.

The YLD recently teamed up with the American Bar Association YLD to host a happy hour downtown that was attended by more than 75 lawyers and new admittees. We also welcomed those newly admitted lawyers to a reception featuring Arizona Supreme Court Chief Justice Rebecca White Berch.

The point is that the YLD Board is extremely dedicated — and extremely busy — with these projects. Even with all that we’re already doing, there’s more the board would like to do. We’ve discussed reviving the popular Statue of Limitations guide that the YLD used to publish and we’d like to increase the number of networking opportunities we provide to our members.

To further these goals, we have decided to create a new board position for a “Membership Chair,” whose sole job will be to focus on recruiting and increasing participation.

As this article has hopefully shown, there are any number of ways to get involved in the YLD. You could do something as easy as volunteering to answer calls at our phone-a-lawyer event. Or you could volunteer to join a committee. Have an idea for a CLE or program that does not currently exist? You can make it happen. If you’re interested in getting involved, please contact me at spalys@stinson.com.

The board meets the first Wednesday of each month at the MCBA. The meeting is open to everyone. We hope to see you there!

Former County Attorney, Others, Face Formal Disciplinary Action

A judge decided Dec. 7 there’s enough evidence to file a formal complaint against former Maricopa County Attorney Andrew Thomas after reviewing a private investigator’s report alleging he used county officials as a means of retaliation and political gain.

Retired Arizona Supreme Court Chief Justice Charles E. Jones ruled there was probable cause to let the ethics investigator appointed by the year campaign of corruption and power and determination whether the Bar should take further action.

In the State Bar of Arizona’s probable cause orders Judge Jones wrote:

“Ethical violations by respondent, as described by Independent Bar Counsel, are far-reaching and numerous. Evidence thus far adduced portrays a reckless, four-year campaign of corruption and power abuse by respondent as a public official, undertaken at enormous and mostly wasteful cost to the taxpayers. Motivation for much of the alleged impropriety appears retaliatory, intended to do personal harm to the reputations of judges, county supervisors and other county officials.”

Colorado attorney John Gleason, the ethics investigator appointed by the Arizona Supreme Court, alleges in a 76-page report that Thomas, Aubuchon and Alexander violated 33 ethics rules involving conflicts of interest, filing a frivolous suit, misrepresentation and filing charges against county officials and judges to burden, embarrass and intimidate them.

In his report he also alleges that Thomas and Aubuchon engaged in criminal conduct and “conspired with each other and with others to injure, oppress, threaten or intimidate (Maricopa County Superior Court) Judge (Gary) Donahoe” by filing a criminal complaint against him.

Gleason wrote that according to the American Bar Association standards, “the allegations of misconduct committed by Thomas and Aubuchon, if proven, warrant disbarment.”

In February, a judge determined that Thomas prosecuted a county official for political gain, which prompted the State Bar of Arizona to seek an independent counsel to investigate Thomas on his ethical merits.

What’s Next?

Jennifer Liewer, Arizona Supreme Court spokesperson said Gleason will likely be filing a formal complaint with the court’s Disciplinary Clerk sometime in January, which makes it possible that the earliest a trial will be held is in July.

The clerk will then assign the complaint to the recently appointed presiding disciplinary Judge William O’Neil, a judge at Pinal County Superior Court, and the respondents — Thomas, Alexander and Aubuchon — will file their responses with Judge O’Neil.

Thereafter will be discovery, a pre-trial conference and filing of motions. A hearing must be held within 150 days after the parties have been served and responded, although the judge may grant extensions.

Once a hearing is set, a three-person hearing panel will be formed, which will be composed of Judge O’Neil, an attorney, and a member of the public, the latter two of whom will be appointed by Chief Justice Rebecca White Berch.

Based on their findings, the panel may choose any number of disciplinary actions, including admonition, admonition with probation, a formal reprimand, suspension of licenses to practice law, or disbarment.

Each party may appeal the decision to the Arizona Supreme Court. Chief Justice White Berch has recused herself from the trial due to her handling of administrative duties in relation to the parties.
Change remains a constant for the practice of law in Maricopa County and 2011 will be no exception. The changes referenced here were brought about by technology, court rules and local practice. Like legal practitioners, the Clerk’s Office has to adapt and plan to accommodate change.

AZTurboCourt to Become Mandatory

The Administrative Office of the Courts (AOC) announced its implementation of AZTurboCourt. This e-filing system is ultimately intended to be a single portal for all electronic filing in Arizona state courts (municipal, justice, superior, appeals and supreme courts).

Now available for use, AZTurboCourt will become mandatory for attorneys under a phase-in schedule throughout the first half of 2011. The mandatory use of AZTurboCourt for e-filing will apply to attorneys filing adult civil actions in the Superior Court in Maricopa County. Civil complaints will still need to be initiated with the Clerk’s Office on paper, but subsequent pleadings will be e-filed through AZTurboCourt.

Specific details appear in a letter sent from the AOC directly to attorneys in November and in Supreme Court Administrative Order 2010-117, available on the Court’s website at http://www.azcourts.gov/Portals/22/adminord er/Orders10/2010-117.pdf. Training and information related to AZTurboCourt is available from the AOC.

New Subpoena Format and Rules

The Supreme Court approved a new format and rules for subpoenas effective Jan. 1, 2011. Civil Rule 45 and the new form that appears in Civil Rule 84, Form 9, detail the changes.

The type of subpoena to issue will depend on the information sought. There will be different processes to issue a subpoena for an in-person appearance versus a subpoena for documents or inspection. The new rules also allow a combined subpoena where personal appearance and documents or inspection are required. One noteworthy change is that subpoenas for documents or inspection, if separate from a subpoena for personal appearance, must issue from the county in which the production or inspection is to be made.

The Clerk’s Office will issue subpoenas in the format in which they are presented, leaving the responsibility for accuracy with the attorney or submitting party. One part of law office management in changing times is the need to periodically update forms that are regularly filed with the court.

### Barristers Ball at the Biltmore Promises a Grand Night Out

The holidays may be over, but don’t put away your fancy apparel just yet. You’ll want it for the MCBA’s annual legal gala of the year, the Barristers Ball, coming up on March 5, 2011. To be held in the Grand Ballroom of the Arizona Biltmore, the Ball is annually the premier social event for the legal community. It will afford everyone an opportunity to socialize and enjoy a formal night out in a beautiful and historic Arizona resort.

2011 Barristers Ball Committee Chair Jennifer Rebholz reports the Ball will feature a raffle, silent auction, formal dinner, a presentation about this year’s beneficiary, and dancing to a variety of DJ-spun tunes. Ball tickets are $125 per individual and $1,250 for a table of 10. You can save $125 if you reserve a table of 10 by January 31. You may reserve now at www.maricopabar.org (see front page text or click on “Calendar of CLE & Events” at the top), call Laurie at (602) 257-4200, or fill out and mail in the form on the back of this issue.

The Barristers Ball once again benefits the Maricopa County Justice Museum & Learning Center Foundation. If you are interested in making additional contributions to the museum or becoming a Founding Member, please contact Laurie Williams at lwilliams@maricopabar.org or (602) 257-4200.

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www.transperfectlegal.com
Civil Rights Activist, Professor, Attorney Mourned

By Joan Dalton

The All Saints Catholic Newman Center in Tempe bulged at its seams Saturday, Dec. 11, as family and friends of Cecilia Denogean Esquer mourned her passing and Dec. 11, as family and friends of Cecilia Denogean Esquer mourned her passing and her passing...
It’s time to get involved in your professional organization. As your new president, I would like to extend an invitation to each and every member of the Paralegal Division to make a commitment to your professional organization. There are many reasons we choose to volunteer our time; for me the commitment started in 2006. I wanted to get involved and I had met a few board members who suggested that I start by getting involved in the conference committee and join the division.

Your commitment can be as simple as attending board meetings, volunteering and committing to the conference or outreach committees, participating in the annual bowling event, or attending the paralegal career day. I would like to hear from you. We have established an email for the division, so please feel free to send your suggestions for what you would like to see the division do or how to improve the division to paralegal@maricopabar.org. We need your participation in order to provide an organization that will promote the paralegal profession, continue to provide a forum for the development of the paralegal, and provide networking opportunities.

Our first board meeting is Monday, Jan. 10 at 5:30 p.m. All members are encouraged to attend. All division meetings and events will be held at the Maricopa County Bar Association Office, located at 303 E. Palm Lane, unless otherwise noted. Please refer to the website, www.maricopabar.org, for upcoming events and updates throughout the month.

Save the following dates: Paralegal Division’s Quarterly Meeting/Lunch (including CLE), February 10, 2011, topic TBD; Paralegal Career Day, April 9, 2011; and the 12th Annual Arizona Paralegal Conference, September 30, 2011. The conference takes months of planning and is a great way to get involved if you are wondering what you can do to get active. The conference committee will be forming and could use your participation. Please plan on attending the January 10 board meeting to find out more.

I challenge each and every member of the Paralegal Division to get active in our professional organization! Remember, it’s easy to register and become a member, but it takes your initiative and enthusiasm to be active once you are a member. I look forward to serving as your president in 2011.

Calendar of Events

10 Monday
Board of Directors Meeting

14 Monday
Board of Directors Meeting

9 Saturday
Save the Date: Paralegal Career Day

29 Thursday
Paralegal Conference

All Board of Director meetings are held at 5:30 p.m. unless otherwise specified.
All Conference Committee meetings are held at 5:30 p.m. unless otherwise specified.
All Board of Director, Conference Committee and Quarterly Division Meetings are held at the MCBA Offices unless otherwise specified.
For more information on Paralegal Events please visit our web site at: www.maricopabar.org click on the “Paralegal Lask”.

Lawyer Referral Service Needs You

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

Among the areas needing coverage are: administrative law, SSI-SSD/Medicare law, workers’ compensation, and immigration.

Spanish-speaking and West Valley attorneys are also needed.

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

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Or visit us on the web at: www.klkcpa.com
Arizona Supreme Court Chief Justice Rebecca White Borch, center, speaks to several new lawyers at the New Admittee reception, held Dec. 2.

2011 MCBA president, David Benton, presents the commemorative gavel plaque to outgoing president, Jennifer Green, at the Board's December meeting Dec. 16.

Roger Ferland, right, of Quarles & Brady and an Arizona Audubon Society board member, chats with Joseph Miklosh of the Maricopa County Attorney General's Office, center, and Bill Wiley (back to camera), director of the Arizona Department of Environmental Quality, at the Dec. 7 Environmental and Construction Law sections' holiday party.

Donna Heller, left, Nicole Siqueiros, Family Law Section board member, and Norma Izzo Milner, also a Family Law Section board member, take a moment to smile for the camera at the Family Law Section annual Judges and Commissioners reception held Dec. 1.

Julian Beresky, 5, fills his cup with ice at the Dec. 8 MCBA Lawyer Referral Services holiday reception.

Fellow MCBA members share conversation and laughs.

There was plenty of food and fun to be had.

Geoff Pashkowski and 2011 Environmental Law Section Chair Barbara Rodriguez-Pashkowski enjoy the festivities Dec. 7 at the Nina Mason Pulliam Rio Salado Audubon Center in Phoenix.

Sandra Erikson, left, Lisa Spahn, left center, Alana Hake, right center and Brad Glass, right, share some laughs Dec. 7 at the 2010 Environmental and Construction Law sections' holiday party.

Amber Manns, left, Cathy Knapp, center, and Casey Blair smile for the camera at the Dec. 2 New Admittee reception.

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And The ‘2010 Judge of the Year Awards’ Go To…

Judge Cohen Lauded

The Arizona Family Support Council recognized Judge Bruce Cohen as its 2010 Judge of the year. Judge Cohen received the award for his significant impact in the area of child support and employing innovative methods to efficiently and fairly adjudicate child support cases.

Also awarded was Judge J. Richard Gama who was selected by the Phoenix Chapter of the American Board of Trial Advocates as the 2010 Judge of the Year.

Applications Being Accepted for Superior Court Judicial Position

Applications are being accepted for a vacancy on the Maricopa County Superior Court created by the retirement of Judge Paul A. Katz.

The Maricopa County Commission on Trial Court Appointments will review applications, interview selected applicants and recommend at least three nominees for the vacancy to Gov. Jan Brewer, who will appoint the new judge.

Applications must be at least 30 years old, admitted to practice law in and a resident of Arizona for the past five years, and a resident of Maricopa County for the past year.

Applications can be obtained from the Administrative Office of the Courts, Human Resources Division, 1501 W. Washington, Suite 221, Phoenix, AZ, 85007, by 3 p.m. on Friday, Jan. 7, 2011.

Applications for the recent vacancies in Maricopa County must supply to the commission the screening meeting for this vacancy is held.

All meetings of the Maricopa County Commission on Trial Court Appointments are open to the public. The meetings will be announced next month. The new judge will be paid $145,000 annually.

A New Family for a New Year

Superior Court Sets New Adoption Day Record

On Saturday, Nov. 20, Maricopa County Superior Court broke its own National Adoption Day record.

During this year’s event, families adopted 310 kids, breaking last year’s nation-wide record of 278 adoptions.

Without question this event generates more positive recognition for the courts and our legal system each year than any other. It is a great opportunity to showcase the many caring individuals and families in our county and most importantly reminds us all of the importance of caring for the most vulnerable children in our society,” said Presiding Judge Norman Davis.

National Adoption Day helps raise public awareness about the plight of children without families. The children, ranging in age from newborns to teenagers, are victims of neglect, abandonment and abuse.

The Phoenix Suns Gorilla, Scorch of the Phoenix Mercury, the Arizona Cardinals Big Red, Captain America, Spiderman and Santa Claus made special appearances while children enjoyed a day of face painting, games, taking photos with their new families, and cake and ice cream.

A record number of judicial officers—46—volunteered their Saturday to preside over the hearings.

Maricopa County’s event is part of National Adoption Day, a nationwide effort to raise awareness that more than 120,000 children need permanent families.

Tax Court Braces for Case Increases

Superior Court’s Tax Department has a plan in place to gear up for another busy tax year.

According to a report published by Presiding Tax Judge Dean Fink, the number of tax cases should not exceed 2011.

“In attempting to analyze trends in tax filings, it is necessary to consider the effect the current recession has had on the increase in filings and how long current economic conditions will continue,” Judge Fink said.

From 2000 to 2008, the number of tax filings remained relatively constant with an average number of 1,041. But during the last two years, Superior Court experienced a 160 percent increase in tax cases. In 2009, tax case filings climbed to 1,989, and in 2010 that number skyrocketed to 3,382.

“The uncertainty of both the economic landscape as well as its impact on Tax Court filings makes it imperative that Tax Court develop plans and strategies to ensure that all tax cases can be heard within mandated time frames,” Judge Fink said.

In the report, Judge Fink noted that in the second quarter of 2010 new home builders purchased the most new land of any quarter since 2006.

“There is no way to accurately predict if and when these purchases will result in the construction of new housing developments, and even more difficult to predict the extent to which it will positively impact the current recession,” Judge Fink said.

Expecting a busy 2011 tax calendar, Judge Fink developed a proposal that recommends a modification in the training required of commissioners. The proposal, which has been adopted by the Arizona Supreme Court, will enable additional commissioners to hear small-claims tax cases should the need arise. An additional strategy has been implemented which involves returning some small-claims tax cases to Pima, Pinal, Mohave and Yavapai County.

To further assist the Tax Court, the chief justice of the Arizona Supreme Court has granted temporary relief from the requirements of Rule 24, Arizona Tax Rules of Procedure. This rule mandates the resolution of small-claims tax cases within six months from filing of the complaint.

In his 2011 proposal, Judge Fink also recommends implementing an e-file process as soon as possible in Tax Court; retaining the services of retired judges to hear small-claims tax cases; using additional commissioners from other court divisions to hear small-claims cases and implementing new procedures and resources to accommodate large crowds at the Tax Court filing counter prior to and on the last filing day, Dec. 15.

Last, the Tax Court has revised and updated self-service forms as well as the Tax Court web page. These materials may be found at: www.supriorcourt.maricopa.gov/SuperiorCourt/Self-Service/Forms/PropertyTaxCases/tax_txsc1.asp

“I feel these updates were necessary to ensure that litigants have access to all necessary information related to Tax Court,” Judge Fink said.

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SESSION I
FRIDAY, JANUARY 7
Where There Isn’t a Will, There’s a Way
A quiet revolution is happening in estate planning. Non-probate substitutes are occupying the field, so that probate often is not necessary, and even wills are not necessary. In this seminar, you will examine the competing philosophies of probate vs. non-probate transfers, explore the various alternatives to wills, and discuss the importance of coordinating probate and non-probate “governing instruments” for your clients.

PRESENTER: Mark Montz, Attorney at Law

SESSION II
FRIDAY, JANUARY 14
Basic Estate Planning
The presentation will include an overview of estate-planning vehicles, discussion of applicable Arizona law, discussion of information needed from client and client interaction, community property, insurance and tax considerations. A form engagement letter, client questionnaire, trust funding letter, and durable power of attorney will be included.

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

SESSION III
FRIDAY, JANUARY 21
Basic Conservatorship/Guardianship for Adults
This program will cover guardianship and conservatorship of adults from intake through the first year. A great primer for beginners or refresher for updates. An update on current topics in this area.

PRESENTERS: Brian Theot, Theot, Davis, Theot & PC, serves as court-appointed attorney and guardian ad litem for the Volunteer Lawyers Program. The presentation will also cover common mistakes.

PRESENTER: Jackie M. Betzke, Attorney at Law

SESSION IV
FRIDAY, JANUARY 28
Intro to Probate
In this program you’ll learn about which assets will pass via probate proceedings, via non-probate or via informal probate, what happens to creditors, the cost of the estate plan, and dealing with disputes among beneficiaries. This program will also review common mistakes.

PRESENTER: Jodie M. Betzke, Attorney at Law

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SESSION I
FRIDAY, FEBRUARY 4
Commercial Purchase Contract and Option Contract Disputes

PRESENTERS: Kevin Parker, Snell & Wilmer
Andrew Stone, Snell & Wilmer

This will be a “basic fundamentals” seminar addressing buyer-seller disputes in the commercial context. Topics will include enforceability of purchase contracts and option contracts, defenses to enforceability, remedies, counterclaims, appraisal issues, broker issues, financing contingencies, plus more.

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

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

This will be a “basic fundamentals” seminar addressing bankruptcy issues in the real estate dispute context. Topics will include bankruptcy impacts on real estate secured loans, leases, permitted uses of property, and more.

SESSION III
FRIDAY, FEBRUARY 18
Title and Escrow Disputes

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

This will be a “basic fundamentals” seminar addressing title and escrow disputes. Topics will include title issues, retracing, lien priority, and other issues.

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

PRESENTERS: Danielle Vida, Snell & Wilmer
Robert Henry, Snell & Wilmer

This will be a “basic fundamentals” seminar addressing issues that commonly arise out of commercial landlord-tenant disputes and relationships. The primary topic will be foreclosure issues impacting the landlord, tenant, and lender.

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PHONE: Call (602) 257-4200.
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  - Steven & Wilmer
  - Kyle S. Hirsch—2 cases
  - Bryan Cave
  - Ashley Mercomes
  - Sole Practitioner
  - Jane A. Proctor
  - Fennemore Craig
  - Adrienne Way
  - Wilhoit—2 cases
  - Ballard Spahr

- **HOME OWNERSHIP ISSUES**
  - Shane Capps
  - Snell & Wilmer
  - Brynn Hallman
  - Snell & Wilmer
  - Ernest F.
  - Medzelowski—2 cases
  - Sole Practitioner
  - Randall S. Papetti
  - Sole Practitioner

- **TAX ISSUE**
  - Jason M. Ray
  - Davis Miles

- **TENANTS’ RIGHTS**
  - Harry N. Stone—2 cases
  - Stone Law Firm
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- **OTHER ISSUE**
  - Krystal Aspey
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Thank you for making a difference!
Commemorating AZ’s Constitutional Convention

By Laura Swendsen

An Arduous but Worthwhile Process

It’s been many years in the making: the centennial anniversary of Arizona’s Constitutional Convention. On Thursday, Dec. 2, members of the public, retired judges, law professors and others gathered at Steele Park Memorial Hall in Phoenix to remember and honor that stepping stone in the state’s history.

Former U.S. Supreme Court Justice Sandra Day O’Connor, retired Maricopa County Superior Court Judge Penny Willich, retired Arizona Supreme Court Chief Justice Ruth McGregor and others shared stories of Arizona’s laborious efforts to become its own state and form its own constitution.

Retired judge and Phoenix School of Law Prof. Willich provided background on Arizona’s formation as a state from the 1848 Treaty of Guadalupe Hidalgo to the formation of Arizona as its own territory in 1862 and finally to its statehood on February 12, 1912.

On June 20, 1910, the process for creating the constitutional convention began with President William Howard Taft’s signing of the Enabling Act, which allowed for the choosing of 52 delegates to form the convention.

However, a little more than a year later, on Aug. 22, 2011, President Taft vetoed Arizona’s constitution citing one issue: the inclusion of a provision allowing for voters to recall judges.

In his veto letter, Taft called the provision “pernicious in its effect” and “destructive of independence in the judiciary.”

Disappointed but not deterred from its goal of becoming a state, the convention went back to the drawing board, eliminated the provision from the constitution, and sent it back to the president’s office.

Finally, on February 12, 1912, the convention received what many had long been laboring for: statehood.

O’Connor on the Constitution

O’Connor recalled her own encounters with Arizona’s constitution, first as an attorney in the state then as judge in both the trial and appellate courts.

“The Arizona Constitution is something I have the privilege to look at from time to time when I served on the trial court and later the Court of Appeals and the state got rather a hard-fought privilege.”

“Another is the inclusion of women’s right to vote in its constitution when I practiced law here and when I served on the trial court and later the court of appeals. And the state got rather a rocky start, you know,” O’Connor said.

That rocky start included, among many obstacles, women’s suffrage.

Alongside the delegates struggling to get the constitution ratified were many women fighting for the right to vote.

Unlike the state of Wyoming, which had included women’s right to vote in its constitution, O’Connor said the framers of Arizona’s constitution did not allow for that.

“In fact, as with Arizona’s lengthy and difficult process of attaining statehood, it would be another 10 years from the formation of the constitution before women would be granted that long-coveted and hard-fought victory.”

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On Saturday, Jan. 22 and Sunday, Jan. 23, Arizona State University will host 24 of the nation’s finest undergraduate mock trial programs in the Aiken Schenk Sun Devil Mock Trial Tournament. ASU is currently looking for members of the bar to serve as judges for the competition.

Continental breakfasts and catered lunches will be provided.

For more information, please visit http://sundevilmocktrial.com/#/judge-sign-up/4536593187. To confirm your participation, please send an email to sundevilmocktrial@gmail.com stating which round(s) you are interested in judging.
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A New Year’s Wish List

continued from page 3

retention decisions based on the actual scores achieved by the judges, rather than having to rely on the recommendations of the Commission On Judicial Performance Review, which has only rarely recommended that a judge not be retained.

The U.S District Courthouse

Finally, I must admit that the sight of the Sandra Day O’Connor U.S. District Courthouse is still startling. I know this structure was designed by a world-famous architect and costs hundreds of millions of dollars, but it reminds me of an athletic field house.

Rather than waste all of that empty space in its huge atrium, perhaps the Phoenix Coyotes could be coaxed back from their location in Glendale or dissuaded from their contemplated move to Chicago and occupy the courthouse as a hockey arena. The presently unused space in the courthouse building would be more than sufficient for both a hockey rink and seating for 15,000 people.

From the proceeds of sale or from the rental income, perhaps the General Services Administration could build a new U.S. District Courthouse – hopefully, this time, with inoffensive white stucco walls and a mission tile roof.

Happy New Year everyone.

Jack Levine is a sole practitioner and practices in the areas of family law, personal injury law, employment law and criminal law. He is a past chairman of the State’s Trial Practice Section and a past President of the Arizona Trial Lawyers Association. In addition, he has served as Chair of the Committee On Lawyer Discipline for the State’s Sole Practitioners’ Section and as a member of the Maricopa County Judicial Evaluation Poll Committee, after the adoption of Merit Selection in 1974.

MCBA Honors Retired Judges

continued from page 1

careful not to refer to him as being retired. “I say retiring because we immediately called him back,” Berch quipped.

She went on to say that not long after his start as a judge at the superior court, he became “one of those core reliable judges that everyone counts on to handle big cases.” Ryan, who became a member of the MCBA when he first started practicing in Phoenix, thanked his colleagues, and contact information to Robert Otnow at rotnow@clientfundings.com or call 888-594-1190.

He also talked about his longtime involvement with the MCBA, which included serving on the Association’s board of directors, the Public Lawyers Section board of directors and more recently, on the bar’s Diversity Committee.

Former Chief Justice McGregor presents retired Presiding Judge Mundell her award.

MCBA President Jennifer Green speaks before a crowd of about 100 people at the inaugural membership luncheon.

Michael Young

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MID-SIZED CENTRAL PHOENIX law firm seeks attorney with a minimum of 5 years experience in real estate and commercial transactions. Excellent academic credentials required. Competitive salary and benefits. Send resume to: C. Kevin Dykstra, DONNETT, FARBBOURN, FRIEDMAN & BALINT, P.C. E-MAIL: kdylkstra@fbbf.com, FAX: 602-798-5806.

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The Jury Will Decide

COURTWATCH, continued from page 2

limitations. Those issues are for the jury, he concluded, noting that the supreme court had held that “determinations of the time when discovery occurs and a cause of action accrues are usually and necessarily questions of fact for the jury.” He also pointed to a long list of cases in which juries, not judges, determined whether a mailed document was actually delivered to its destination.

Although the issue is for the jury, Winthrop concluded that “in this circumstance, a jury determination on this factual issue should occur expeditiously.” This could be done by applying Arizona Rule of Civil Procedure 42(b), which allows bifurcation of trials. “[T]he issue,” Winthrop wrote, “can [ ] be promptly and efficiently resolved by a jury.”

“Where,” he continued, “a material issue of fact has been timely raised (i.e., proof of mailing→rebuttable presumption→denial of receipt by governmental entity – material fact dispute), the court can immediately set a date for what likely would be no more than a one- or two-day jury trial on this limited issue.”

Joining Winthrop in remanding for a jury hearing were Judges Patricia K. Norris and Patrick Irvine.

Editor’s note: Daniel P. Schacht, an assistant Arizona attorney general, represented the State of Arizona in Lee v. State...

657-acre Center of Controversy

A parcel of land in Pinal County was the focal point of a controversy over an Indian tribe’s claims of ownership and right to regulate lands that were part of its historical territory. The courts rejected the tribe’s efforts to both assert aboriginal title to the parcel and to avoid implied easements over its territory for access to the parcel. Lynn v. Gila River Indian Community, No. 08-15770 (9th Cir. Nov. 24, 2010).

The parcel, known as “Section 16,” comprises approximately 657 acres. It is now completely surrounded by a portion of the Gila River Indian Community. The community’s historical homeland was south-central Arizona. In 1853, the USA acquired Section 16 and the surrounding lands from Mexico as part of the Gadsden Purchase.

In 1854, Congress adopted legislation requiring a survey of the purchased lands and providing that two sections in each township should be reserved for the benefit of schools. Section 16 was such a section. In 1877, it was conveyed to the newly created Territory of Arizona.

In 1859, Congress created a reservation for the community. Its original boundaries did not encompass Section 16, but the reservation was enlarged by a series of executive orders. An 1883 order added to the reservation the land north of Section 16. A 1913 order added the land to the west, south, and east, making the parcel an island completely within reservation boundaries.

Two roads provide access to Section 16. Smith-Enke Road, an east-west road running between Sacaton and Maricopa, lies along Section 16’s southern edge. Murphy Road runs north and south along the section’s eastern edge.

Section 16 was held by the State of Arizona held until 1929 and then sold to a private individual. It changed hands several times over the ensuing decades. In 2001, the Schugh family bought it and operated a dairy on it. They later filed bankruptcy, and listed Section 16 as the bankruptcy estate’s largest asset. The community laid claim to Section 16, asserting that it held aboriginal title and that the estate’s trustee, as a nonmember of the community, had no right to cross reservation lands to access the parcel.

The district court rejected the community’s claim to aboriginal title. It also held that the trustee had implied easements to use Smith-Enke Road and Murphy Road to access Section 16. The community appealed to the Ninth Circuit.

The court of appeals agreed with the district court that there were implied easements of access to Section 16. “In granting lands to a state for the purpose of funding schools,” Judge J. Clifford Wallace wrote for the court, “the federal government must have intended some right of access to the land or the purpose of the lands granted would fail.”

Wallace rejected the community’s argument that federal procedures for obtaining rights of way over Indian lands preempted claims of common-law rights of way. He pointed out that these procedures were not created until after 1877, when the land was conveyed to Arizona. He concluded that Congress did not intend procedures for obtaining new rights to preempt already acquired rights.

The community countered that the court was required to construe the laws literally in favor of the Indian tribes. Wallace was not persuaded. “The community’s argument,” he wrote, “ignores the fact that in 1877, when the federal government granted Section 16 to Arizona, the lands surrounding Section 16 were not Indian lands.”

“Thus,” he continued, “when the federal government granted Section 16 to Arizona in 1877, an implied easement accompanying the grant would not have interfered with Indian land at all. Section 16 was not surrounded by Indian lands until 1913...”

The community also argued that the district court had erred in holding that any aboriginal title it had in Section 16 had lapsed with the federal government’s 1877 conveyance to Arizona. But Wallace agreed with the district court, which reasoned that because the parcel was intended for the support of schools, “Congress would not intend the land, to be used as a revenue generator, to be burdened with a superior right of use and occupancy such as aboriginal title.”

Joining Wallace in affirming the judgment were Chief Judge Alex Kozinski and Judge Richard R. Clifton.
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The Maricopa County Justice Museum & Learning Center educates children and adults about bedrock principles in the American justice system. The Museum will restore the historic Old Courthouse’s sixth floor and preserve Arizona’s past in an interactive and vibrant way. The Justice Museum will offer visitors an opportunity to learn about Arizona’s significant contributions to the justice system (e.g., Miranda rights) through interactive displays and knowledgeable tour guides. The Maricopa County Justice Museum & Learning Center will be one more attraction that will help revitalize downtown Phoenix.

SATURDAY • MARCH 5, 2011

6:30 p.m. Cocktails & Silent Auction • 7:30 p.m. Dinner • Black Tie Optional

ARIZONA BILTMORE
2400 Missouri, Phoenix, Arizona 85016

COST
$125 per seat  •  $1,250 per table

EARLY BIRD SPECIAL
If you purchase a table of 10 (regularly $1,250) by January 31, 2011, you pay only $1,125. That’s a savings of $125!