MCBA Membership Luncheon

**2nd Quarter Membership Lunch**

**Wednesday April 26**
11:30 a.m. to 1:30 p.m.
Phoenix Country Club
Guest Speaker
Sheriff Paul Penzone
$25/person
Early Bird pricing by 4/21/17
$35/person
After 4/21/17

Register at maricopabar.org/event/q2lunch

**CourtWatch**
Daniel P. Schaack

Now that you’ve got your judgment, what are you going to do with it?

To a certain segment of our readership, that headline might sound oddly like a reference to the song “Now That We Found Love” by Heavy D & the Boyz, which is played over the ending credits of the romantic comedy “Hitch.” They’re right. But today it’s the theme song for Labertew v. Langemeier, No. 14-15879 (9th Cir., Jan. 20, 2017). It sings about the tribulations of taking a *Damasco* judgment obtained in an Arizona state court and trying to enforce it in an Arizona federal court.

Marcus Labertew and John McDermott filed suit in the Arizona Superior Court against Fred Auzenne and Loral Langemeier, alleging that the defendants had defrauded and defamed them in a business context. They settled with Langemeier by entering into a *Damasco* agreement. A *Damasco* agreement is used when a liability insurer refuses to defend its policyholder against a tort claim. The insured and the policyholder allows judgment to be entered against the insurer, based on the theory that the insurers owed Langemeier the $1.5 million that Langemeier owed to them under the stipulated judgment.

The insurers removed the garnishment proceedings to the federal court and then filed an answer asserting that they owed Langemeier nothing. When the plaintiffs did not object to that answer within the 10 days mandated by Arizona garnishment law, the district court discharged the insurers from the garnishment. The plaintiffs appealed.

Judge Andrew J. Kleinfeld wrote the Ninth Circuit’s opinion, which provides a sort of primer on federal-court execution of a state-court judgment. The first question was whether a state-court garnishment proceeding can even be removed to federal court.

“Garnishment of wages or money in a bank account is ordinarily a collection device completed within the same proceeding as the case against the judgment debtor, not a separate action,” Kleinfeld wrote. That fact, coupled with the limitation in the federal removal statute, 28 U.S.C. § 1441(a), that allows removal only of a “civil action,” raised the question of removability.

But it turned out to be the least complex issue in the case. The Ninth Circuit had already answered the question, holding in a 1966 opinion that garnishment proceedings are removable. Kleinfeld noted that Arizona law generally treats garnishment as separate from the underlying proceedings, which he found logical. “Langemeier, the defendant in the Arizona action, has no interest in the dispute, being protected by a covenant not to execute,” he wrote. “The insurers’ duties, which will control the garnishment, were not relevant to and did not arise in the Arizona tort case,” he added.

The judge then turned to the dispositive issue: Whether the plaintiffs’ failure to object to the insurers’ answer allowed the district court to discharge the insurers. Citing A.R.S. § 12-1580(A), he noted that when a garnishee answers the writ of garnishment by contending “that it does not owe the money claimed against the judgment debtor, … then the judgment creditor has ten days to object to the answer.” The statute requires the court to discharge the garnishee if the judgment creditor does not timely file an objection.

In arguing that the federal court had to apply the Arizona statute, the insurers pointed to Federal Rule of Civil Procedure 69, which provides that the procedure for executing on a money judgment in federal court “must accord with the procedure of the state where the court is located.” Kleinfeld acknowledged that Rule 69 appeared to support the insurers: “Much of the argument addresses, in effect, whether Rule 69 means...”

See Now that you’ve got page 14
In the last year, the MCBA has been exploring new ways in which we can embody our motto, “Where the Legal Community Connects.” In addition to the transition to our new management team and the updating of the strategic plan, the MCBA has also sought to ensure that the association is positioned to comment — and, in some instances, to take a position on — issues that impact the legal community and the public at large. One of the strengths of the MCBA is that as a voluntary organization, a large number of members join specifically for the purpose of taking an active role in the legal community. Our members are very involved in programming and initiatives that advance the practice of law, and advance the legal community’s relationship with the public.

We recognize the hard work our members have put into building the MCBA into the largest voluntary bar association in Arizona and, in return, the MCBA seeks to be a voice that can channel and amplify the concerns of our membership. In the last year, we formed an ad hoc legislative and current issues committee to agilely respond to trends that impact the legal community and the public. Two items have consistently been raised by our membership in the last several months: 1) Proposals to modify the structure of the State Bar of Arizona and 2) the State Bar’s Public Service Center.

We recognized quickly that these topics are controversial — one need only look at last year’s legislative session to see the variety of opinions concerning the State Bar’s structure. Arguments were made on both ends of the spectrum. The State Bar advocated for a continued “unified bar” while also proposing ways to address the concerns driving the call for de-unification that could be achieved without a significant restructuring. Others called for the state supreme court to take over lawyer regulation, and still others called for a model in which members paid for the disciplinary/regulatory components with members opting in or out of paying for other services. While the State Bar remained unified after the last legislative session, a large number of members joined in building the MCBA into a model best served its members and the public.

At the beginning of this legislative session, two new bills were introduced to again examine the structure of the State Bar. While we received regular inquiries about possible changes to the State Bar’s structure, the MCBA remained neutral. This year, with the installation of a new board, new executive director and other infrastructure advancements, members expressed concern with the issue of possible restructuring of the State Bar again being brought to the state legislature — the MCBA’s leadership is again evaluating whether to take a position, and what position to take, to advocate on behalf of our members.

In addition, during the second half of last year, the State Bar announced its intent to create a Public Service Center. As the program concept has evolved, the MCBA leadership has grown cautious over the potential impact the proposed Public Service Center may have on our members and our organization. Certain members of the executive committee and board, as well as the executive director, raised some of those topics at the State Bar’s December Board of Governors’ meeting. The job posting for the Public Service Center manager position on the State Bar’s website states, “[t]he PSC is designed to help connect people with legal needs to Arizona attorneys willing to help. While its initial focus will be on helping those who feel they can’t afford legal services, the PSC will ultimately help the full spectrum of legal consumers.” MCBA members have expressed concerns, including but not limited to, whether funding the Public Service Center “help[s] the full spectrum of legal consumers” and whether the State Bar has conflicts by simultaneously being a part of the lawyer referral program.

Another result of the survey was a strongly worded response that, simply by issuing a survey on a controversial topic, the MCBA was taking a negative position about the Public Service Center and the State Bar. However, from the tone of this article and the results of the survey, we hope the MCBA’s goal in issuing the survey — fostering discussion or important issues that affect all of our membership — has been met. Given that we have received a variety of responses, from supportive to neutral to downright accusatory, I think it is fair to say the discussion is alive and well. We encourage our members to learn more about the issues covered in the survey. For those who have an opinion, we encourage you to contact the MCBA, the State Bar and your legislators. For those who are undecided or unsure, we encourage you to read more about the current events affecting the profession.
Finding something to write about each month for this column is somewhat difficult for me, as I do not practice in an area that is familiar to most people (I am a school law attorney) and I do not want to bore readers with my love of all things school law-related. But, this month, as I was contemplating topics to write about, I started thinking, “Why did I join the MCBA?” and perhaps that was something I could share that would inspire others to join as well.

My initial “why” for joining the MCBA was for networking purposes. Since my area of practice does not bring me into contact with other lawyers on a regular basis (except for the few school law attorneys out there), at the beginning of my practice I felt somewhat isolated from the larger legal field. My practice takes me into the schools on a daily basis for IEP meetings or governing board meetings, but not into the courtroom or other “typical” places you would encounter lawyers. By joining the MCBA and becoming active in the Young Lawyers Division (YLD), I have been able to interact with attorneys, judges and other legal professionals whom I otherwise would not have met or worked with.

However, “why” I continue to remain highly involved with the MCBA is much more than just networking. Through my involvement in the YLD, I have participated in amazing fundraising events such as Race Judicata and Barristers’ Ball, as well as partnered with other MCBA divisions to participate in community service events such as packing food boxes at St. Mary’s Food Bank. Along with the CLE and membership events that the MCBA provides, there are always opportunities to expand your knowledge and enhance your practice. Through my experiences with the MCBA over the past three-and-a-half years, I have cemented relationships, both personally and professionally, as well as gained critical leadership skills that have contributed to my growth as a lawyer and an individual.

For all the new lawyers out there, or younger lawyers seeking to find your place in the legal community, I encourage you to come and check out the opportunities that the YLD offers and find your “why.” For example, as the community service arm of the MCBA, the YLD is always looking for new and interesting ways to connect with the public. I am excited to announce that beginning this month the YLD will begin hosting regular legal clinics/informational sessions for members of the public. The goal of these legal clinics is to reach members of the community who are unable to access services through one of the other community resources such as Community Legal Services, Volunteer Lawyers Program or the Lawyer Referral Services through the MCBA. These clinics will initially be held bimonthly, but hopefully grow into a monthly event.

The first clinic is scheduled for Monday, March 20 at the MCBA office beginning at 5:30 p.m. and will address the area of family law. If you are interested in supporting the YLD at this clinic, either as an attorney, paralegal or an observer, please contact me at krd@udallshumway.com for more information. ■

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**YOUNG LAWYERS DIVISION CALENDAR**

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**March 20**
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**April 5**
YLD Board Meeting

**April 26**
MCBA Quarterly Membership Luncheon

**May 3**
YLD Board Meeting

Check our Facebook page for news and division events at www.facebook.com/YLDMcba.
A few weeks ago, an attorney approached me regarding some questions that arose during a committee meeting. The question, basically, was, “Is a legal secretary the same as a legal assistant?” This question reminded me of a comment a former co-worker made almost 10 years ago. In her opinion, a legal assistant performed pre-litigation work and the paralegal performed litigation work. I was reading an article online by an attorney which began, “Legal secretaries, also called administrative assistants, legal assistants …”

What is the definition of a legal assistant? According to the American Bar Association (ABA), a legal assistant is a paralegal. At the August 1997 ABA Annual Meeting, the ABA’s policy making body, the House of Delegates, adopted the current definition of “legal assistant/paralegal,” as recommended by the Standing Committee on Legal Assistants. The current definition reads as follows:

A legal assistant or paralegal is a person, qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible.

The ABA definition is very similar to the definition set forth in Rule 31.2.C, Ariz. R. Sup. Ct. The rule states, in part: “[l]egal assistant/paralegal” means a person qualified by education and training who performs substantive legal work requiring a sufficient knowledge of and expertise in legal concepts and procedures …”

According to the National Federation of Paralegal Associations (NFPA), substantive legal work is the recognition, evaluation, organization, analysis, and communication of relevant facts and legal concepts. The main difference between a paralegal and a legal secretary is the substantive legal work performed by the paralegal. Under the supervision of an active member of the State Bar of Arizona, a legal assistant/paralegal performs substantive legal work that would otherwise be done by attorney. There are specific duties that must be performed by an attorney such as conducting a deposition. The paralegal may assist in scheduling and preparing for the deposition. They may also attend and prepare a summary. For detailed information about the tasks a paralegal may perform, please see the ABA Model Guidelines for the Utilization of Paralegal Services, which is available on the ABA website at www.americanbar.org.

Another main requirement for paralegals is education. In 1967 the ABA endorsed the use of paralegals and, in 1968, the first committee on paralegals was formed. The approval of paralegal programs began in 1975. It is important to note that there are many paralegal programs that are not ABA approved. In addition, there has been a move toward obtaining a higher form of education, such as certification specializing in specific areas and obtaining a four-year degree, and even a master’s degree.

According to the National Federation of Paralegal Associations (NFPA), substantive legal work is the recognition, evaluation, organization, analysis, and communication of relevant facts and legal concepts. Paralegals, as a rule, are not regulated; however, if they hold a certification from a paralegal association such as National Association of Legal Assistants (NALA), NFPA or NALS, they are subject to the code of ethics of the association. In addition, as the paralegal works under the supervision of an attorney, the attorney is held responsible and

See What is the difference page 7
**Different ways to limit defined terms**

**LEGAL WRITING**

Tamara Herrera

My drafting class recently had a lively debate about how to limit defined terms. Should a legal writer say “including but not limited to,” or is the one-word “including” sufficient to capture the meaning? The technical answer to this question is easy: “Including” does not indicate an exhaustive list, so the “but not limited to” language is superfluous. But the practical answer differs.

In practice, legal drafters worry about readers (and courts) interpreting the term “including” to mean a restrictive list. Thus, many drafters automatically use all five words (including but not limited to) to combat this worry. As Ken Adams explains, though, this worry has deeper roots. Specifically, legal drafters do not always use the phrase “including but not limited to” correctly, and courts have interpreted the phrase to be restrictive based on the context surrounding the phrase.

His advice to drafters is to use any version of “including” carefully by making sure the word being defined is as specific as possible.

Another concern is clarity. In a long, complex document, “including but not limited to” can get clumsy and affect the readability of the definition. Bryan Garner suggests a simple way to avoid this needless repetition: Define the word “including” to mean “including but not limited to” at the beginning of the definitions section. Ken Adams calls this definition an “internal rule of interpretation.” Although this internal rule can help with clarity, it may not help if the legal draftsman uses “including” in a confusing way.

Finally, a quick Google search shows that there are numerous ways to punctuate the phrase:

- including but not limited to
- including, but not limited to
- including — but not limited to
- including last but not limited to

Adams and Garner use the first example. But I bet we could have a lively debate about whether the commas and dashes make por-

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**Fairy tales and public records**

**CLERK’S CORNER**

Michael K. Jeanes
Clerk of the Superior Court

Access to records calls to mind the tale of “Goldilocks and the Three Bears.” Too much access to court records and anyone anywhere in the world can get full social security numbers, juror names and victims’ addresses. Too little access and citizens lose the ability to monitor their government, and work slows down for everyone who has to travel to a building to look at documents. The right fit is something in between that provides easy access to public records — without putting people at physical harm or at risk for identity theft and other cyber-crimes. By its nature as a record keeper, the clerk’s office is always in the middle of this ongoing conversation.

It helps to consider what is already in the court’s public records. Most legally trained staff and practitioners know that sealed and confidential records are the exception and not the rule in superior court. However, many self-represented litigants are shocked and dismayed to learn that the details of their divorce, probate or juvenile delinquency can be a clerk or visit away from spreading publically. Even seasoned lawyers have been disappointed and angered when their hard work to protect sensitive information is undone by a less-careful or rogue oppo-

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**FAMILY LAW SPEED NETWORKING WITH THE JUDGES**

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New session, new bills — and how they may impact lawyers

By Rhonda Barnes

The 2017 Arizona legislative session is well under way, having kicked off on the second Monday in January as required by the Arizona Constitution. This year in the state house of representatives, we saw a large freshman class with 23 brand new members (out of a total of 60) and one representative returning to the house from the senate. That large freshman class may be one of the reasons there was a surprisingly low number of bills introduced this year.

The Arizona House of Representatives has a rule that prohibits members from introducing more than seven bills after the fourth day of session. That leads to a mad rush to get bills introduced before the deadline so the members can use their final seven line so the members can use their final seven days to address issues that come up later in the session. This year, following the seven-bill limit rule was put into place. By way of comparison, in the 2016 legislative session, at that same deadline, a total of 504 bills were introduced.

The state house also opened with a flurry of rules changes that were designed to improve the efficiency of house business. One change requires notorious strike-everything amendments, which completely delete the underlying bill and replace it with all new language, to be germane to the original bill. This is an exciting change for legislative watchers because the previous practice had been to introduce so-called vehicle bills that did not make any real substantive change to the law because the sponsor intended to strike the language and replace it with something entirely different. This led to the introduction of dozens of bills that were never intended to move through the process as written, but rather would be stricken with language that was not introduced by the seven-bill limit. Strike-everything amendments were often controversial subjects, and the public only received 48-hours notice for their content because the amendment’s title appeared on agendas only two days before the committee was scheduled to meet. Now, under the new house rule, the public can be confident that any strike-everything amendment that is offered to a house bill will not expand the purpose of the underlying bill. As a consequence of that rule change, we have seen fewer strike-everything amendments at this point in the session.

While all of the legislation that is being considered in the legislature this year may be of interest to some lawyers, many bills may be of special interest to litigators and transactional attorneys. As in the previous few sessions, the 2017 session has included a handful of bills that are aimed at reforming the Arizona State Bar. As of the writing of this article, those bills are making their way through committees, heading to a vote of the full house. HB2295 and HB2300 both seek to place control over the regulatory function of lawyers within the authority of the state supreme court. Last year, the legislature failed to pass two similar bills, along with a resolution to the supreme court asking it to impose additional restrictions on the state bar related to transparency for the use of member dues and the bar’s advocacy activities. With a petition pending before the supreme court on this same topic, this is an issue that will not go away until the concerned parties find a resolution either in the legislature or with the courts.

One of the best aspects of working at the Arizona Legislature is learning about a wide variety of topics. The legislature has its hands in literally everything that is regulated by the state. From animal cruelty to forestry thinning to zoning regulation, legislation is introduced to deal with everything. One topic that you might not think would make its way to the forefront of state legislative business is the federal judiciary — but it has been a hot topic for a couple of sessions. This year, House Concurrent Memorial 2001 asks Congress to split up the Ninth Circuit in hopes of dispersing its workload, which can result in long wait times for cases to be heard and decided. The memorial is not binding but expresses the will of a majority of the legislators to divide the circuit into two, each with fewer states than the current Ninth Circuit.

There are several bills working their way through the process that are designed to implement the recommendations of the state supreme court’s Task Force on Fair Justice for All, which seeks to revise the way fines, penalties and fees are assessed on Arizona’s criminal defendants as well as to improve the pretrial release process. The bills include SB1158, which gives more discretion to judges to ease financial penalties on defendants; SB1160, which authorizes a person’s driver’s license rather than suspension to allow that person to continue to go to work and take care of family obligations; SB1163, which modifies the bond hearing process to allow more flexibility for judges to address community safety; and SB1157, which expands the authority of limited jurisdiction courts in competency hearings.

These four bills may fundamentally change our justice system and will undoubtedly impact practitioners as well as their clients.

I have heard it described that being an attorney at the legislature affords a great seat for an interesting show. That’s certainly true this session, as both the controversial and mundane bills work their way through the process. And since nothing is truly dead until the session adjourns sine die, stay tuned for more twists and turns until the finale — and then we can assess how the new legislation impacts the practice of law in our state.

Rhonda Barnes is general counsel and deputy chief of staff for the House Democratic Caucus in the Arizona Legislature. She was previously a litigator at Perkins Coie for several years and received her law degree from the Sandra Day O’Connor College of Law at Arizona State University.

WRITE A REVIEW

Write a CLE review and get the CLE on the house (up to 1.5 hours max)! Contact Marcy Morales at mmorales@maricopabar.org for more information.
AAABA hosts scholarship banquet

The Arizona Asian American Bar Association (AAABA) hosts its Twenty-First Annual Scholarship Award and Installation Banquet on Thursday, April 20, 2017 at Great Wall Cuisine in Phoenix. The featured guest speaker will be Karen Korematsu, founder and executive director of the Fred T. Korematsu Institute.

In 1942, at the age of 23, Fred T. Korematsu refused to go to the government’s incarceration camps for Japanese Americans and was arrested and convicted of defying the government’s order. Korematsu appealed his case all the way to the U.S. Supreme Court. In Korematsu v. United States, the Supreme Court ruled against him, arguing that the incarceration was justified due to military necessity. In 1983, new evidence was discovered of key documents that government intelligence agencies had hidden from the Supreme Court in 1944. The documents consistently showed that Japanese Americans had committed no acts of treason to justify mass incarceration. With this new evidence, a pro-bono legal team that included the Asian Law Caucus re-opened Korematsu’s 40-year-old case on the basis of government misconduct. On Nov. 10, 1983, Korematsu’s conviction was overturned in a federal court in San Francisco. It was a pivotal moment in civil rights history.

AAABA is a professional organization formed in 1993 by the late Judge Thomas Tang of the United States Court of Appeals for the Ninth Circuit. Tang was the first Chinese-American federal judge in the United States. AAABA’s purpose is to provide a vehicle and forum for a unified expression of opinions and positions regarding current social, political, economic, legal and other issues of concern to Asian Americans, and to promote the professional growth of Asian American lawyers.

The annual banquet is AAABA’s only major fundraising event each year and is used to fund the Thomas Tang Memorial Law Scholarship awarded to law students in Arizona, as well as to support other community outreach programs sponsored by AAABA. If you know a law student enrolled in Arizona, encourage them to visit AAABA’s website to download the scholarship application and apply. The application deadline is Friday, March 3. Information about AAABA, how to attend its upcoming banquet and information on the Thomas Tang scholarship can be found at www.azasianbar.org.
Why did you decide to join the MCBA?
I joined the MCBA because the events are fun and you meet great people in your profession! I have been a member off and on since 1996. And as a past president of the Arizona Black Bar Association, I served on the board of the MCBA as well.

What do you like most about being in the legal field?
I like the work. I think my enthusiasm spilled over to my daughter, who surprised me when she decided to go to Stanford Law School. She is a lawyer now and works for an international law firm. Specifically, when I practiced law, no day was ever the same. That is still true. I have met the most interesting people over the years. I believe being a lawyer and a judge affords me the opportunity to make a difference in my community. It is extremely rewarding to know that I have helped others to learn from past mistakes and, in some cases, I have seen individuals make significant life changes as a result. While some days are difficult because of the types of cases I have seen throughout my career, I am sure that this is indeed the profession and work that was meant for me. While some days are difficult because of the types of cases I have seen throughout my career, I am sure that this is indeed the profession and work that was meant for me.

If you weren’t a judge what would you be?
An international chef. I love to cook. Preparing inviting meals and learning about food from around the world can be very exciting. Traveling to different parts of the world to prepare and share a meal in different and diverse cultures would be remarkable. Meeting people who love to eat good food while having fun is always wonderful. Preparing a meal for others makes a really special memory.

What are your hobbies or interests?
I belong to a book club and I have always enjoyed reading. And cooking, of course! And travel.

What’s the craziest job you’ve had?
Working as a dishwasher for Steak ‘n Shake! The hot steam from the dishwasher when opened would hit me directly in the face — that cleared up my acne. I would also slide all over the place because of the extreme moisture on the floor. Very steamy business.

If you were a character in a movie or TV show, which character would you be?
My middle name is Monyette. I was named after a woman who was a character in a French novel. I once tried to locate that book to learn about that character, without success. Maybe I would like to be that Monyette. Who knows.

MEMBER SPOTLIGHT
JUDGE MONYETTE NYQUIST
Criminal Law
MCBA MEMBER SINCE 2017
I was a bailiff for the Honorable Judge Barbara R. Mundell after graduating from ASU law school in 1996. My first job as a lawyer was as a deputy public defender for the Maricopa County Public Defender’s Office. From there I went to work for the city of Phoenix as an assistant prosecutor. When I left the city of Phoenix, I worked in private practice as a criminal defense attorney for several boutique law firms prior to being appointed to the bench in 2010.

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The firm has changed its name from Berk & Moskowitz, P.C. in light of the departure of Frank W. Moskowitz to become a Maricopa County Superior Court Judge.
Responding to a subpoena for client information

By Russell Yurk

Too often, lawyers receive subpoenas for information contained in the client file or information learned in the course of representing a client. Although not all information in a client file is privileged, it is almost always confidential. Consequently, it is subject to the requirements (and protections) of ER 1.6. Remember, lawyers must preserve the confidence of all information learned in the course of representation regardless of whether it qualifies as a privileged communication.

ER 1.6 reflects a “well-recognized principle that preserving confidentiality is one of the lawyer’s most important obligations to his or her client.” Land v. Myers ex rel. City of Marana, 230 Ariz. 445, 452, 286 P.3d 789, 796 (App. 2012); see also Land v. Myers on other grounds, 232 Ariz. 309, 305 P.3d 374 (2013). ER 1.6 precludes lawyers from revealing “information relating to the representation of the client unless the client gives informed consent, the disclosure is implicitly authorized in order to carry out the representation or the disclosure is permitted or required by paragraphs (b), (c) or (d), or ER 3.3(a)(3).” ER 1.6(a). Typically, absent client consent, none of the ER 1.6 exceptions apply to a subpoena served on the lawyer.

Subpoenas on lawyers typically seek “information relating to the representation of the client.” Unlike the attorney-client privilege, ER 1.6 protects “all information relating to the representation, whatever its source.” ER 1.6 cmt. 3; see also Ethics Op. 00-11. ER 1.6’s broad scope encompasses everything that the lawyer learns or communicates during the representation. The duty to not disclose such information exists even after the information becomes publically known or has been disclosed to others. See Ethics Op. 00-11.

ER 1.6 helps to preserve the lawyer-client relationship. Unless an exception applies, lawyers should not discuss their clients’ cases with others. Discussing such information outside of the lawyer’s role as the client’s representative would erode the client’s trust in his or her lawyer and jeopardize the open and honest communication necessary in the relationship. ER 1.6 identifies those circumstances where lawyers are permitted to disclose otherwise protected information.

The first two ER 1.6(a) exceptions are clearly inapplicable to subpoenas if the client has not given informed consent for disclosure. Nor is responding to a subpoena usually “impliedly authorized in order to carry out the representation.” Responding to a subpoena typically does not further the client’s interests.

Nor do the exceptions found in ER 1.6(c) or ER 1.6(d) or ER 3.3(a)(3) typically apply. Subpoenas are not final court orders, so ER 1.6(d)(3) does not require disclosure without more. And subpoenas to lawyers typically are not requesting information to prevent the client from committing a future crime or fraud or from misrepresenting a material fact to the court. Potential relevance to another matter or claim does not satisfy any of ER 1.6’s exceptions.

Recognizing these restrictions on lawyers, the State Bar Ethics Committee concluded that lawyers are “ethically required” to invoke ER 1.6 (and, where appropriate, the attorney-client privilege and work product doctrine) as grounds for refusing to provide confidential and/or privileged information in response to a subpoena. Ethics Op. 00-11. If the court overrules an ER 1.6 privilege objection and orders the lawyer to produce the requested information, “the lawyer must consult with the client about the possibility of appeal.” ER 1.6 cmt. 15. If review of the order is not sought, then the lawyer may comply with the court’s order. So ER 1.6(d)(3); ER 1.6 cmt. 15.

Russell Yurk is a partner with Jennings, Hang & Cunningham, L.L.P., in Phoenix. He serves as the Immediate Past Chair of DRI’s Lawyers’ Professionalism and Ethics Committee and served 12 years on the State Bar of Arizona’s Committee on the Rules of Professional Conduct. He currently is a member of the Arizona Supreme Court Judicial Ethics Advisory Committee. If you have a question about ethics or lawyer liability that you would like addressed in future columns, please email rry@jhcc.-law.com.

Barrett Marson is a public relations consultant who works in the political, legislative and legal fields. He also hosts a podcast at www.coppertalkaz.com that focuses on politics.

The views and opinions expressed by the author in this column are his own and do not necessarily reflect the views and positions of the MCBA.
Commissioner retirement

On Jan. 27, 2017, Commissioner Charlie Donofrio retired from the bench. He began with the court on March 5, 2007, after a long and distinguished career at the Maricopa County Attorney’s Office. Since then, he has spent his entire 10 years on the bench in the criminal department.

“I would like to take this opportunity to thank Charlie for his years of service to the bench and wish him well in retirement,” Presiding Judge Janet Barton said. To fill the vacancy created by Donofrio’s retirement, Barton appointed attorney Marvin Davis. Since 2000, Davis has been operating his own firm. He also worked for three years at the Maricopa County Public Defender’s Office. Davis received his J.D. from the Arizona State University College of Law in 2004.

Investiture ceremony

Commissioner Marvin Davis

Maricopa County Bar Association President-Elect Hon. Geoffrey Fish presents Judge Erin Otis with her ceremonial gavel during her investiture ceremony.

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$75/$90 (use promo code fam0303)

[...]

If audio media is available, registrations may be converted to a self-study package for an additional $15 charge.

If you registered and paid, but could not attend, you may request that materials be sent to you, free of charge, mail, fax at (602) 257-4200, or email mmorales@maricopabar.org at least two business days prior to the program.

The State Bar of Arizona does not approve or accredit CLE activities for the Mandatory Continuing Legal Education requirements. The activities offered by the MCBA may qualify for the indicated number of hours toward your annual CLE requirement for the State Bar of Arizona, including the indicated hours of professional responsibility (ethics), if applicable.

MARCH 3  11:30 A.M. TO 1 P.M. (Lunch included)
The Aftermath of Campbell, Columbo and Casey Kasem: Updates to the Arizona Guardianship Statutes
SPONSORED BY: Family Law Section
1.5 CLE credit hours available, of which .5 is ethics

Presenters will tell the story of the Camp-bell, Columbo and Kasem families and how that led to a movement changing guardianship legislation across the country to include access to someone who is incapacitated and notice of their hospitalization or death. Many states have passed legislation and Arizona is one of them. The changes to the Arizona Guardianship statutes will be explained and the practical modifications practitioners will need to make in their pleadings, office protocols and advice to clients will be outlined. This is just the beginning of an ongoing national discussion and conversation you will be having with your clients so they can make decisions.

PRESENTERS: Hon. Jay Polk, Maricopa County Superior Court; Jennifer L. Kupiszewski, Kile & Kupiszewski Law Firm

MARCH 9  7:30 A.M. TO 9 A.M. (Breakfast included)
Update on Changes to Mental Health Powers of Attorney Statutes & Whether the Changes Have Helped
SPONSORED BY: Estate Planning Probate & Trust Section
1.5 CLE credit hours available

Overview and discussion of recent changes to the Arizona statutes governing Mental Health Powers of Attorney and how these changes may or may not have helped the public.


MARCH 10  11:30 A.M. TO 1 P.M. (Lunch included)
The Current Status of Third Party Rights in Arizona Family Law
SPONSORED BY: Family Law Section
1.5 CLE credit hours available

The CLE will provide practitioners with the latest information on the rapidly evolving topic of Third Party Rights. Attendees will be provided with practice tips and information to assist in avoiding the potential pitfalls of litigating Third Party Rights action. The presentation will also provide current information regarding the recent case law on the topic as well as review of the relevant statutes.

PRESENTERS: Hon. Suzanne E. Cohen, Maricopa County Superior Court; Keith A. Berk-shire, Berkshire Law Office, PLLC

Cost: (Early Bird Pricing/Regular Rate):
- MCBA members: $85/$100
- MCBA Family Law Section members: $75/$90 (use promo code fam0309)
- MCBA Paralegal & Public Lawyer Division members: $60/$75
- Non-members: $120/$135
- MCBA student members: $15/$30
- Bring your paralegal/legal assistant: $30/$45

Early bird pricing ends March 2

MARCH 17  11:30 A.M. TO 1 P.M. (Lunch included)
Tax Implications of Child Support
SPONSORED BY: Family Law Section
1.5 CLE credit hours available

Please join Melvin Sternberg for a seminar discussing tax considerations in family law cases. Every family law practitioner should attend this seminar. More specifically, Mr. Sternberg will discuss dependent child deductions and tax credits.

PRESENTER: Melvin Sternberg

Cost: (Early Bird Pricing/Regular Rate):
- MCBA members: $85/$100
- MCBA Family Law Section members: $75/$90 (use promo code fam0317)
- MCBA Paralegal & Public Lawyer Division members: $60/$75
- Non-members: $120/$135
- MCBA student members: $15/$30
- Bring your paralegal/legal assistant: $30/$45

Early bird pricing ends March 10

MARCH 24  11:30 A.M. TO 1 P.M. (Lunch included)
Orders of Protection Update
1 CLE credit hour available
Chief Presiding Judge Don Taylor and criminal defense attorney Flynn Carey will review the revised court rules governing orders of protection, case law interpreting the rules, and will discuss the different procedures at the city, justice and superior courts throughout Maricopa County. The presentations will also focus on the recent Brady developments.

PRESENTERS:
- Hon. John T. Linn, Presiding Judge Maricopa County Superior Court; Brian Mahmassy, Esq., P.C., P.C.
- Hon. Robert L. Vanderlip, Presiding Judge Superior Court of Pima County; Nathan W. McCloskey, Attorney at Law

Cost: MCBA members: $85/$100
- MCBA Family Law Section members: $75/$90 (use promo code fam0320)
- MCBA Paralegal & Public Lawyer Division members: $60/$75
- Non-members: $120/$135
- MCBA student members: $15/$30
- Bring your paralegal/legal assistant: $30/$45

Early bird pricing ends March 20

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BARRISTERS AND BASEBALL
Sports Law for the General Practitioner and Specialist
THURSDAY, MARCH 16, 2017
10 A.M. TO 1 P.M.
2.5 CLE credit hours available
THE PEORIA SPORTS COMPLEX
COLONNADE ROOM
16101 N. 83d Avenue, Peoria, AZ 85382
Admission is free but space is limited to 20 registrants!
Registration includes CLE, refreshments, lunch, parking and admission to the spring league game, Padres v. Royals.

PRESENTERS:
- Professor Gabe Feldman, Tulane University Law School
- Dr. Catherine Jiang, Attorney
- Debbie Weecks, Attorney/Judge Pro Tem
- Brian Edward Smith, Attorney
-orable George T. Anagnost, Presiding Judge Peoria Municipal Court
(including a case law update on how orders of protection impact firearm possession), the intersection of family law cases and orders of protection, as well as post-hearing fee applica-
tions.

Presenters: Hon. B. Don Taylor III, City of Phoenix Municipal Court; Flynn P. Carey, Mitchell Stein Carey, PC.
Cost: (Early Bird Pricing/Regular Rate):
- MCBA members: $65/$80
- MCBA Paralegal & Public Lawyer Division members: $45/$60
- Non-members: $90/$105
- MCBA student members: $15/$30
- Bring your paralegal/legal assistant: $30/$45

Early bird pricing ends March 22

APRIL 7 • NOON TO 1 P.M. (Lunch included)
Registration begins 11:30 a.m.

Effects of Merger vs. Non-Merger of Marital Settlement Agreements
Sponsored by: Family Law Division 1 CLE credit hour available

Once having successfully negotiated a marital settlement agreement between divorcing parties, an attorney is often confronted with the question of whether or not to merge the agreement into the decree of dissolution of marriage. This seminar will explore the option of merger vs. non-merger, the language necessary to provide for either option, the resulting effects on enforcement and modification, and the jurisdictional issues presented in either scenario.

Presenter: Stanley David Murray, Murray Law Offices, PC.
Cost: (Early Bird Pricing/Regular Rate):
- MCBA members: $65/$80
- MCBA Paralegal Law Section members: $60/$75
- Non-members: $90/$105
- MCBA student members: $15/$30

Early bird pricing ends March 31

APRIL 7 • NOON TO 1 P.M. (Lunch included)
Recent Developments in 9th Circuit Bankruptcy Law
Sponsored by: Bankruptcy Law Section 1 CLE credit hour available

Need an update on what happened in the world of bankruptcy in 2016? A panel consisting of the Honorable Eddward P. Ballinger, Jr., experienced consumer and bankruptcy attorneys, and an Arizona State University professor of law will analyze, discuss and field questions regarding significant developments in 9th Circuit bankruptcy law over the last year.

Presenters: Honorable Eddward P. Ballinger, Jr., United States Bankruptcy Court; Anthony Calli, Stinson Leonard Street, LLP; Heather Macre, Aiken Scherber Hawkins & Riccidi, PC; Laura Napoli Coorades, professor of law at Arizona State University; Tyler Grims, SchianWalker, PLC.
Location: United States Bankruptcy Court 230 N. 1st Ave., Ste. 101, Phoenix, AZ 85003
Cost: (Early Bird Pricing/Regular Rate):
- MCBA members: $65/$80
- MCBA Bankruptcy Law Section members: $55/$70
- Non-members: $90/$105
- MCBA student members: $15/$30
- Bring your paralegal/legal assistant: $30/$45

Early bird pricing ends March 31

March Calendar
All events at MCBA office, unless otherwise specified.

1 Young Lawyer Division Board Meeting
Noon-1 PM

2 Construction Law Section Meeting
Noon-1 PM

3 Estate Planning Section Board Meeting
7:30-8:30 AM

4 CLE: The Aftermath of Campbell, Columbus and Casey Kasem: Updates to the Arizona Guardianship Statutes
11:30-AM-1 PM

4 Barristers’ Ball
6-11 PM

5 Litigation Section Board Meeting
Noon-1 PM

8 Bankruptcy Section Board Meeting
7:30-8:30 AM

9 Environmental Section Board Meeting
Noon-1 PM

CLE: Update on Changes to Mental Health Powers of Attorney Statutes & Whether the Changes Have Helped
7:30-9 AM

10 CLE: The Current Status of Third Party Rights in Arizona Family Law
11:30-AM-1 PM

13 Paralegal Division Board Meeting
3:30-6:30 PM

14 Personal Injury Law Section Board Meeting
Noon-1 PM

15 Volunteer Lawyers Project Board Meeting
Noon-1 PM

16 Corporate Counsel Division Meeting
Noon-1 PM

16 CLE-Baristers and Baseball Sports Law for the General Practitioner and Specialist
10 AM-1 PM

16 Peoria Sports Complex Employment Law Section Meeting
Noon-1 PM

16 Board of Directors Meeting
4:30-5:30 PM

16 Barristers’ Ball
6-11 PM

16 JW Marriott Phoenix Desert Ridge Resort & Spa

20 Young Lawyers Division Family Law Legal Clinic
5:30-7:30 PM

21 Family Law Section Board Meeting
Noon-1 PM

22 Maricopa County Bar Foundation Board Meeting
7:30-8:30 AM

23 Diversity and Inclusion Board Meeting
Noon-1 PM

24 CLE: Stock Options - Asset or Income …

24 And How Much is Community?
11:30 AM-1 PM

24 Paralegal Career Day
7:15 AM-12:30 PM

25 Public Lawyers Division Meeting
noon-1 PM

28 Real Estate Section Board Meeting
Noon-1 PM

29 CLE: Orders of Protection Update
Noon-1 PM

30 Managing Partners’ Breakfast
8-10 AM

31 flap Volunteer Appreciation Lunch
11 AM-1 PM

Please watch your MCBA E-News for updated information about meetings and events.
VLP ATTORNEY OF THE MONTH

VLP honoree helps families move forward from bankruptcy

By Peggi Cornelius, VLP Programs Coordinator

Bankrupt: A word no one wants associated with him or her. Bankruptcy: A legal term that can literally mean the opportunity to begin anew. As an attorney whose expertise encompasses consumer bankruptcy and family law, Robert Teague understands both the reticence his clients may feel in deciding to seek bankruptcy and the restoration of hope it may bring to their lives. For the outstanding pro bono representation he has provided to clients referred to him by the Volunteer Lawyers Program, Teague has been honored as VLP’s “Attorney of the Month.”

Even though becoming a lawyer was a goal Teague had in mind in his early teens, it was a career that would be preceded by another professional pursuit. After graduating from high school in Thatcher, Arizona, he attended the University of Arizona. After completing his B.A. in political science with a minor in Russian, Teague, his wife and 2-year-old daughter moved to the island of Yap, in the Federated States of Micronesia. There, he taught English, world history and geography to high school students. Teague recalls his teaching experience as a meaningful learning experience, too. “We lived in humble circumstances, having to boil water or electricity for periods of time, lived in humble circumstances, having to boil water or electricity for periods of time, living in humble circumstances,” he says. “They had been struggling financially for years, due to poor health and/or debilitating accidents. They’d lost jobs, which led to the inability to make payments on their family cars. Of course, the cars were repossessed. And, as it is in the case, just as they began to regain employment and recover a bit financially, their modest wages were being garnished.”

Teague says he feels good when he’s able to help people who cannot afford representation. He says his reward is seeing the immediate relief that comes with a family’s hope that there is a way forward. Teague doesn’t discuss his pro bono work with others, but when asked how he might encourage a colleague who expressed uncertainty about participating in VLP, he replies, “Just do it! You won’t have any regrets.”

BANKRUPTCY
Mark Atchley
Atchley Law Firm
Robert Teague - 3 cases
Teague Law Firm
CONSUMER
Brian J. Foster
Snell & Wilmer
Megan Tracy
Snell & Wilmer
COURT ADVISORS FOR CHILDREN IN FAMILY COURT
Florence M. Bruegger
Law Office of Florence M. Bruegger
Tabitha Cabrera
Anderson and Cabrera Law Group
Stacy D. Click
ASU Law Group
Annette M. Cox
Law Office of Annette M. Cox
Joshua De La Ossa - 3 cases
De La Ossa & Ramos
Elizabeth Feldman
Butt Feldman and Grier
Jennifer G. Gadaw
Fromm Smith & Gadaw
Nicole Maroulakos Goodwin
Greenberg Traurig
Felicia Schumacher - 3 cases
Davis Faas Blase
Jennifer W. Shick
Shick Law Offices
Heather L. Stewart
The Law Office of Heather L. Stewart
Scott H. Zwillinger
Goldman & Zwillinger
FAMILY LAW
Fayynn S. Baum
Glickstein Law
Sharon L. Ottenberg
Law Office of S. Alan Cook
GUARDIANSHIP OF INCAPACITATED ADULTS
Kelly Kral - 2 cases
Dyer Brigham & Ferris
KELLY KRAL
Afina Law Group

**PRO BONO SPOTLIGHT ON CURRENT NEED**
Experienced probate attorneys are needed to provide brief legal advice to unrepresented litigants at the Probate Lawyers Assistance Project (PLAP).

Now that you’ve got CourtWatch, continued from page 1
what it says.” No complicated issue here: “It does,” Kleinfeld wrote.

But things were not as simple as they might have seemed. Kleinfeld went on to ask: “When Federal Rule of Civil Procedure 69 says ‘a money judgment,’ does it refer to the judgment of any court? Any federal district court? Any state court? Or only the particular district court in which execution is sought?” It turned out that “[t]he last is correct.” “Ordinarily,” he wrote, “a court enforces its own judgments.”

For one court to enforce another court’s judgment, it must be domesticated by any of the available means, such as registration, filing an authenticated copy or copying the separate action on the judgment debt. But the plaintiffs had done none of those things. “The only judgment in this case is the one by the Superior Court of the State of Arizona in favor of the Labertews and McDermotts for $1.5 million,” Kleinfeld noted. “There has never been a federal judgment in the District of Arizona to that effect, nor is there any judgment anywhere in this case against Langemer’s liability insurers.”

Ironically, the plaintiffs’ failure to procure a federal judgment against the insurers won them their appeal. “The necessary predicate for application of Federal Rule 69,” which mandates application of the forum state’s judgment-execution laws, “is a judgment in the federal district court in which execution is sought,” Kleinfeld wrote. “Not only is there no federal judgment in this case upon which to execute,” he added, “but there is also no state judgment against the insurance companies that could be registered and enforced in federal court.” Consequently, the failure to answer the insurers’ objection did not operate through Rule 69 to discharge the insurers under Arizona procedural law.

The rule that actually applied here, according to Kleinfeld, was Rule 81(e), which directs the federal court to apply the federal rules to a civil action after its removal from state court. Under that rule, the Arizona statute on which the district court had relied was inapplicable. Now, so that the plaintiffs had their judgment, what should they do with it? Kleinfeld noted that the federal rules give the district court discretion to allow repleading upon a case’s removal from state court, and he hinted strongly that the district court should do just that: “It may choose to do so, because this case now is in substance a claim by the insurers’ assignee against the liability insurers for breaching their obligations under their insurance policies. The claims in the state court pleadings are no longer at issue. Nor is Langemer an interested party, having stipulated to a judgment and secured a covenant that no execution would be taken against her.”

Joining Kleinfeld in vacating the judgment discharging the insurers were Judges Sandra S. Ikuta and Paul J. Watford.
PROMOTIONS

Rider Levert Bucknall would like to announce the promotion of Casey Martin to associate. As a part of the advisory team, Martin reviews in-house contracts and schedules and provides services to owners, attorneys, contractors, subcontractors and design professionals.

With over 15 years’ experience in the construction industry as a project manager and superintendent, Martin specializes in project and administration management and provides expert-opinion reports on construction-dispute issues, including delay claims, construction defects/forensic investigations and claims for additional compensation. His expertise includes a variety of public and private projects within the healthcare, education, hospitality, commercial and residential sectors, with both general contractor and specialty trade subcontractor firms.

ANNOUNCEMENTS

Arizona Summit School of Law (Summit) has appointed The Honorable Penny Willrich as interim dean. Dean Willrich is a charter member of the Summit faculty, served as a Maricopa County Superior Judge and previously served as Summit’s dean of academic affairs.

Willrich succeeds Shirley Mays, who has been dean since 2010. Willrich’s top priority as interim dean is to ensure that Summit provides an exceptional legal education for its students. The school equips students with the legal knowledge and skills they need for future success. Summit must continue training the next generation of leaders so that its students are equipped to reach their full potential.

“I want Summit to be the go to law school for non-traditional law students and to continue our efforts in helping underserved students earn a law degree,” Willrich says. “I look forward to working with the dedicated faculty and staff of Summit and leading Summit to its next level of greatness.”

Willrich assumed the interim deanship on Jan. 1, 2017.

NEW HIRES

Guist Rosenfeld, PLC, is pleased to announce that Carrie O’Brien has joined the firm as an associate in the firm’s Education Law Practice Group. Prior to joining the firm, O’Brien was the chief privacy officer and director of legal services for the Arizona Department of Education from 2012 to 2016. She was an assistant attorney general at the Arizona Office of the Attorney General for six years, where she represented the Arizona Department of Education.

While at the Arizona Department of Education, O’Brien oversaw the handling of confidential student and teacher data and developed data protection agreements with partner agencies. She is a frequent speaker on topics related to data privacy and public records in schools.

O’Brien represents schools, school districts and other educational organizations in all types of legal matters, including data privacy and school finance issues. She also assists education clients with their business needs, compliance reviews, intergovernmental agreements, lease-purchase agreements, public records requests, open meeting law compliance, special education litigation and civil rights matters.

O’Brien earned a B.A. from the University of Notre Dame and an M.P.A. from the University of Arizona. She earned her J.D. from Arizona State University.

David Garner, a former partner from the firm Lewis Tosh, has joined Osborn Maledon, PA, where his practice will focus on education law.

Garner represents both private and public educational institutions at all levels in an outside general counsel role, where his legal training is supplemented by his background and perspective as a former high school English and English as a Second Language (ESL) teacher. He also has broad experience in business litigation, where he has represented commercial entities in a wide range of complex business disputes.

Following law school, Garner clerked for the Arizona Court of Appeals. He is actively involved in various legal associations, including the National and Arizona Council of School Attorneys; the American Bar Association, where he serves as subcommittee chair on emerging issues for the Class Action & Derivative Suits Committee; the State Bar of Arizona, where he serves on the executive council of the Religious Liberty Law Section; and the J. Reuben Clark Law Society, where he serves as chair of the Litigation Section. Garner is also involved in numerous Arizona community organizations, including the YMCA, the Boy Scouts of America and the Arizona School Boards Association.

Garner earned his B.A. and law degrees from Brigham Young University.

HONORS & AWARDS

Struck, Wienneke & Love is pleased to announce that Kathleen L. Wieneke, a founding partner of the firm, has been selected as a fellow of the International Academy of Trial Lawyers (IATL).

The IATL is a group of elite trial lawyers representing plaintiffs and defense counsel in civil litigation, as well as prosecutors and criminal defense attorneys. The academy’s purposes are to promote the rule of law, promote reforms in the law, facilitate administration of justice and elevate the standards of integrity, honor and courtesy in the legal profession at home and internationally. Fellowship is by invitation only.

Wieneke was selected after a comprehensive vetting and screening process by colleagues and judges. She joins a truly select group of trial lawyers who will be inducted into IATL’s summer 2017 class. Wienieke brings over 30 years of litigation experience to the IATL. Her achievements include twice obtaining one of the top 10 civil defense verdicts in the state of Arizona in the last five years. She successfully defended a client before the U.S. Supreme Court, which was recognized by Arizona Attorney Magazine as one of the top 50 significant Arizona cases in the last 100 years.

Wienieke received her B.A. from Arizona State University in 1983 and her J.D. from the University of Arizona in 1996.

Ogletree, Deakins, Nash, Smoak & Stewart (Ogletree Deakins), PC, is pleased to announce that Joe Clees has been elected to the firm’s board of directors.

Clees joined Ogletree Deakins in 2005 as the founding and managing shareholder of the firm’s Phoenix office. He represents employers in Arizona and across the United States in employment litigation and labor relations matters. Clees also has a strong advantage and counsel practice covering an array of state, federal and tribal compliance laws.

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, specs (unless they are of national interest), 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 printed at no cost, must be submitted in writing and are subject to editing. At times the space is available. News releases regarding lawyers who are not MCBA members in good standing will not be printed.

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