8 inductees selected into the MCBA Hall of Fame

Congratulations to the eight exemplary attorneys and judges who have been inducted into the Maricopa County Bar Hall of Fame.

For the modern era, the honorees are Hon. Susan Bolton, Antonio Bustamante, Hon. Noel Fidel, Hon. James Moeller, Patricia Lee Refo, and Gerald Smith.

For the pioneer era, we honor Hon. DeForest Porter and Hon. Howard Speakman.

The Hall of Fame was created in 2008 by the MCBA to recognize the outstanding lawyers and judges who are, or were, true giants of the profession, primarily in Maricopa County.

Inductees were selected based on criteria which includes: practiced for at least 10 years; played prominent and important roles that have had an impact on the history and development of our local bar and the legal profession; made significant or unique contributions to the law or the administration of justice; and/or demonstrated significant leadership, advocacy and accomplishments in service to the community or the profession.

The inductees will be honored on Oct. 26 at the MCBA’s Annual Meeting/Hall of Fame Luncheon at the Hyatt Regency Phoenix. Registration for this event is available at www.maricopabar.org.

Members of the 2017 Hall of Fame Selection Committee are Charles (Chas) Wirken, Kyle Hirsch, Norma Izzo, Don Bivens, Hon. Michael Hawkins, Jessica Sanchez, Nicole Ong, Mark Harrison and Stan Watts.
Your opinion matters

To say that it has been an interesting and tumultuous year in politics, government, and the law would be making a significant understatement. Within the last year, issues that have never been part of the nation’s cultural zeitgeist have taken center stage, and it is hard to go online or turn on the news without seeing discussions regarding many controversial topics, such as the limits of Presidential power, election espionage, social activism, the pardon power, immigration issues, etc. There are discussions being had throughout the country about race, beliefs, and culture which demonstrate we are a nation of laws and progress, and other discussions and arguments which show that we have a long way to go and may not have taken to heart all of the lessons learned from past mistakes.

Unsurprisingly, not only do people not agree on these issues, but there is not even agreement on the framework that we as a city, state, or nation should be using to think about these issues. It is hard to say exactly whether the vigorous debate on these topics is signs that the process of challenge and debate inherent in our system is working, or if it is not.

To those of us who are officers of the Court and members of the Bar, we have taken an oath to protect the rule of law. This is because we believe that the “rule of law” is something that transcends each of us, and any one leader. Instead, we pledge an oath to an idea that through the application of the law, we can create a society that is safe for people, ideas, and personal liberties. When the process works, and our rights are protected, that is when we see progress and the very best of our society.

How we get there is another matter. What is not in debate is the passion and the thoughtfulness that members of the MCBA have shown for these issues. As the President of the MCBA, I receive a number of emails and calls from people who have positions different than mine, even if I don’t agree.

As an MCBA Board, we have had to face some of these issues head-on, as various groups have asked us to take positions on matters, and have asked us to publicize events. Based on the interest of our members in having the MCBA take positions and publicize events that have a political or legal focus, I wanted to let our membership know more about the MCBA’s philosophy on those issues.

First, the MCBA believes that debate is important. This month, the MCBA has published articles debating both sides of the pardon issue. We opted to provide both positions so that our membership may consider the views of two prominent, well-informed attorneys, who have focused their comments on the legal underpinnings of the pardon power— an aspect of the debate that often got lost in the news cycle. We have previously hosted forums on legalizing marijuana, SB 1070, and other immigration topics, and on issues of marriage equality. While the MCBA board members may have a variety of positions on these topics, we are unified in the belief that the process only works when people are talking about the hard issues.

Second, the MCBA is not averse to taking positions on controversial or topics that are at the forefront of our political consciousness. For example, the MCBA strongly opposed a professional services tax that would have placed a cost of “professional” services including legal services, accounting services, and others. To enhance the MCBA’s ability to fairly and consistently decide on whether to take positions on important current events, the MCBA authored a policy to help us in our decision making. If there are topics of social and legal importance that are important to our membership, the MCBA wants to stand with our members, and we encourage you to continue to make those issues known to the MCBA.

Third, the MCBA wants to publicize legal events that are being held on controversial topics. As I mention often in my articles, I believe our association’s highest calling is to be a place where the “legal community connects.” We do this by putting members and the public on notice of events of legal interest in the community. Going forward, we recognize we can do better on this front. Specifically, we are working to put together an area of our website in which events, including those which may be politically controversial, are noted. How our membership chooses to participate in those events may vary. However, we feel it is important for our membership to be put on notice that those events are taking place. While MCBA may not, due to philosophical, political, and legal differences within our membership, always take a position on those events, we want our membership to know when events that support and those that oppose their views are being held.

I recognize that many of our members did not primarily join the MCBA for a political or ideological reason. Rest assured, the MCBA is not looking to move from being a provider of legal information and opportunities to a lobbying entity. However, law is a thread that weaves through our daily lives, and figures prominently into governance and politics. It would be irresponsible of the MCBA not to recognize that lawyers, by the very nature of our role in shaping the law, will interact frequently with political issues and current events. Many of our members have inquired about how and when the MCBA decides to take positions on topics of importance, prompting the following article.

As the largest voluntary group of lawyers in the state, we want to be a place in which the legal community can have the discussion and the debates that are fundamental to the rule of law. We hope this glimpse into how the MCBA views its role in relation to current events is helpful when considering whether you’d like to have the MCBA publicize your event or take a position on an issue that is important to you.
Calling all Young Lawyers!

By Nicole True

The Maricopa County Bar Association's Young Lawyers Division (YLD) will have at least two openings on its Executive Board to fill in the upcoming November 2017 election. If you are a lawyer who is under 36 years of age or within your first 5 years of practice, and are not yet familiar with the YLD, the following Q & A will help you to decide whether the YLD Executive Board might be right for you.

What is the YLD?
The YLD consists of all MCBA members who are age 36 years or younger or who have been licensed to practice law for five years or less. The mission of the YLD is to involve young and new lawyers in serving the community and enriching the profession while focusing on the specific needs of young and new lawyers. Specifically, the YLD has the following purposes:

1. To encourage, promote, and stimulate the profession while focusing on the specific needs of young and new lawyers.
2. To promote interest in the legal profession and the general public.
3. To make reports and recommendations to the Board of Directors of the MCBA on matters of importance to new lawyers, the legal profession, and the general public.
4. To encourage, promote, and provide:
   A. Activities that will be of assistance to new lawyers in the practice of law, as well the improvement of the overall quality of their lives.
   B. Activities through which lawyers may provide assistance to the general public, thereby enhancing the general welfare of the community.
   C. Opportunities for participation in activities directed at improving the administration of justice and the legal profession.
   D. Opportunities for involvement and participation in bar activities by minorities, women, law students, and persons not historically represented in the activities of the MCBA.
   E. Opportunities for interaction and cooperation between new lawyers and the general bar membership, the judiciary, minorities, women, law students, persons not historically represented in the legal profession, community and business leaders, and the general public.

Those ideas sound important, but what does the YLD actually do?
The YLD plans three MCBA events every year with the assistance of the MCBA:
1) The Barristers’ Ball; 2) Race Judicata; and
3) The Necessities Drive. The YLD also conducts mock interviews at ASU and Summit Law Schools and holds legal clinics. Additionally, the YLD participates in community volunteer events, often in conjunction with the Paralegal Division. Past volunteer events have been held at the St. Mary’s Food Bank and at Arizona Helping Hands.

Now that I understand what the YLD is and does, tell me more about the YLD Executive Board.
The YLD Executive Board is composed of seventeen people, including twelve directors (four officers: President, President-Elect, Secretary, and Treasurer), the Immediate Past President and two liaisons from ASU and Summit law schools.

So, if I were elected to the YLD Executive Board, what kinds of things would I be doing?
As a director of the YLD Executive Board, you would meet with the other Board members eleven times per year at Board meetings (there is no meeting in July), which are currently held over the noon hour on the first Wednesday of each month. As a director of the YLD Executive Board, you would also serve as a member or chair of one or more committees. The YLD will have four committees in 2018: Race Judicata, Barristers’ Ball, Legal Clinics and Mock Interview.

The YLD also has representatives on the MCBA Membership Committee, the VLP Advisory Committee, the Maricopa Lawyer Editorial Board and the Maricopa County Bar Foundation.

Why would I be interested in becoming a YLD Executive Board director?
Although being a director of the YLD Executive Board may not ultimately make you rich and famous, as a director on the YLD Executive Board you will have the opportunity to:
   • Network with your peers and with more experienced lawyers and judges working in the Maricopa County legal community.
   • Develop your professional and leadership skills.
   • Write articles for the Maricopa Lawyer.
   • Give back to the community (e.g., by participating in legal clinics, collecting necessities for domestic violence shelters, and attending community volunteer events).

That sounds great! How do I become a director of the YLD Executive Board?
To become a member of the YLD Executive Board of Directors, you must be eligible, you must apply, and you must be elected. To be eligible for election to the YLD Executive Board of Directors, you must be eligible for membership in the YLD for the entire term of the YLD Executive Board position. Directors elected to the YLD Executive Board serve for a term of two years, so for the upcoming election applicants must be eligible to be a YLD member through December 31, 2019.

You can apply for one of the open board positions by submitting a copy of your resume along with a short statement of interest to yldmcba@gmail.com by October 29, 2017. Your statement of interest should address why you are interested in being a director on the YLD Executive Board.

Voting for this election begins on November 1st and ends on November 15th. YLD Executive Board members are elected by a plurality vote of the YLD members via electronic ballot.

What happens if I apply and am not elected?
Hang in there and get involved! For example, you do not have to be on the YLD Executive Board to attend the monthly meetings or to be a member of one of the YLD’s committees or to volunteer at a YLD event. If you are interested in helping to plan Barristers’ Ball or if you want to help organize a legal clinic, you can do that without ever being elected. Additionally, seats sometimes open up on the YLD Executive Board during the year. Those seats are filled by a vote of the current YLD Executive Board and those elected to those seats serve out the remainder of the vacating board member’s term.

What if I am a law student and am not yet eligible to join the YLD?
The YLD Executive Board has two ex officio non-voting positions that are filled by law students from Arizona State University and Summit Law School. The ex officio law student member reports to the YLD Executive Board at each monthly meeting regarding issues affecting law students in Maricopa County. If you are interested in becoming an ex officio law student member of the YLD Executive Board, send an email to yldmcba@gmail.com with a copy of your resume and a short statement of interest.

We look forward to your applications and future involvement with the YLD!

Note: This month’s article was written by the YLD President-Elect, Nicole True. Thanks to Nicole for facilitating the YLD elections!

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The following candidates have been deemed elected, and will begin their two-year terms in 2018: Gail Barsky, Kim Davis, Michael Kielisky, Stan Silas, and Hon. Lisa VandenBerg. Barsky, Kielisky, and Silas were re-elected to the At-Large Director positions they currently hold (terms expire 2017). Kim Davis, current YLD President, and Lisa VandenBerg, former Judicial Liaison to the Probate section and a Maricopa County Commissioner assigned to the Durango Juvenile bench, will assume the positions vacated by Lynne Adams and Tyler Carroll.

Tyler Carrell, a current At-Large member of the Board, whose term would have expired in 2017, was elected by the Board of Directors to serve on the Executive Committee as Secretary, beginning in 2018. His main role shall be to record the minutes of the meetings of the Board of Directors and the Executive Committee.

Gail Barsky

Gail is a graduate of Temple University, with an L.L.M. in Trial Advocacy, and a twenty-five year member of the legal profession. She began her legal career in the Federal Government in Philadelphia, and later assumed the Managing Trial Attorney position for Nationwide Insurance Company for 14 years. In Arizona, her legal career began with Ryley, Carlock, & Applewhite, then Restnick & Louis doing insurance defense and construction defect litigation. Currently she is at Suzuki Law Offices where she specializes in personal injury and criminal defense. Community involvement and volunteerism has been a way of life for Gail since early on, including serving in leadership positions. Since 2013, she has served on the Board of Directors for Scottsdale Bar Association and The Phoenix Philanthropists since 2012, and as Chair of The Pauite Neighborhood Center. She volunteers regularly for Free Arts of Arizona, Community Senior Centers, US VETS, and Andre House. Gail strives to represent the interests of my fellow Maricopans by bringing their viewpoint to the MCBA Board of Directors, of which she is a returning member.

Michael Kielisky

Michael Kielisky is a partner at Udall Shumway PLC, in Mesa. He is admitted in Arizona and California, and to Arizona’s U.S. District Court. Mr. Kielisky’s practice areas include criminal defense and traffic ticket defense. He has served on the MCBA Board since 2012, as President of the East Valley Bar Association from 2011-13 and again from 2015 on, and on the Community Legal Services Board since 2016. His committee memberships include the State Bar’s Technology Committee from 2012-15, and the MCBA’s Lawyer Referral Service Committee since 2012. Mr. Kielisky was appointed as a Maricopa County Justice of the Peace pro tempore in 2014, and as a Maricopa County Superior Court Judge pro tempore in 2017. Mr. Kielisky has presented CLEs before numerous groups and is a State Bar of Arizona Certified CLE Presenter. Mr. Kielisky is a founding board member of ‘Generations After, Descendants of Holocaust Survivors in Greater Phoenix’. Also active in politics, Mr. Kielisky was the Libertarian candidate for Maricopa County Attorney in 2008, 2010, and 2012, receiving nearly 28% of the votes in 2012. Professionally and in volunteer activities, Michael Kielisky has consistently advocated and worked to advance individual rights, personal autonomy and responsibility, and justice.

Hon. Lisa A. VandenBerg

Hon. Lisa A. VandenBerg is a current member of the MCBA Bench/Bar Committee and recently served as the Judicial Liaison to the Probate section. She has presented and/or moderated numerous MCBA CLE events for both lawyers and paralegals and looks forward to continuing her service to the bar as a Board of Directors member. Lisa has dedicated her legal career to serving Maricopa County. For the past twelve years she has served as a Commissioner on the Maricopa County Superior Court Bench. She is currently assigned to the Durango Juvenile bench. Previous assignments include Probate/ Mental Health, Criminal, Lower Court Appeals and assisting Family Court and Civil departments. Through the Court, VandenBerg has provided training and brown bag sessions designed to assist and / or enhance lawyers work with the Bench.

She is especially proud of the work she has done to encourage Phoenix Union High School students to consider the practice of law by providing courtroom tours and talks, classroom instruction, mock trial coaching and student mentoring.

Prior to coming to the bench, VandenBerg served as a Deputy County Attorney for Maricopa County in criminal prosecution and as Utility Staff Counsel for the Arizona Corporation Commission.

Tyler Carrell

Tyler Carrell is a current member of the MCBA Board of Directors and a real estate and banking attorney at Gallagher & Kennedy, PA. Previously, Tyler served as President of the MCBA Young Lawyers Division (YLD), and at the 2017 Barristers’ Ball, received the inaugural Steven A. Hirsh Outstanding Young Lawyer Award. In 2015, he became the first attorney in Arizona history to serve as President for both the State Bar of Arizona and MCBA YLD concurrently. Tyler is passionate about serving the legal community, and was recently elected to the State Bar of Arizona Board of Governors. In his time in MCBA leadership, Tyler has helped coordinate the Barristers’ Ball, Race Judicata, mock interviews at the Arizona law schools, and Law Day events. His focus for 2018 will include increasing MCBA membership, cultivating corporate partnerships, and expanding valuable programming to assist lawyers with the changing legal market.

Kim Davis

Kim is currently an associate at Udall Shumway PLC in Mesa, Arizona, as part of the firm’s education law section representing and advising charter schools and school districts throughout the state. Kim has been a member of the MCBA since she was in law school, and has served in a leadership capacity of the MCBA’s Young Lawyers Division (YLD) since 2014. Currently, Kim is the President of the YLD and is a member of the MCBA Board of Directors. Kim is very active in community organizations and is a member of the Board of Directors for The Centers for Habilitation in Tempe.

“Since 2014, when I first joined the Young Lawyers Division Board of Directors, I have been committed to the MCBA and the success of the Association and its various sections and divisions. As a member of the Board of Directors for 2017, I have strived to ensure that the best interest of the MCBA and its members are always at the core of my decisions. As a leader in the Association, I have learned the value the MCBA provides to all its members and the community through the various offerings such as CLEs, networking events, etc. I hope to continue to play an integral part in furthering the MCBA’s mission and values for years to come.”

Stanley Silas

Stanley Silas, senior/lead attorney at Community Legal Services (CLS), moved to Arizona in 2001. He began his legal services career at CLS’ central Phoenix office and later moved to its office in Mesa, serving East Valley residents.

Silas specializes in housing law, often training new attorneys focusing on tenants’ rights. As a legal-services attorney, his legal advocacy is committed to eliminating poverty-based inequities faced by economically challenged Arizonans. Over the past few years, Silas has earned a well-deserved reputation as a training presenter with expertise in federal and state fair-housing laws and the housing-related problems of tenants who are designated as Seriously Mentally Ill (SMI). His presentations included the first-ever training for Mercy Maricopa Integrated Care case managers and supportive-housing staff on prevention techniques to reduce evictions of SMI tenants.
2017 MCBA/MCBF Paralegal Scholarship Recipients

Submitted by Kristi McLaughlin
The Sloma Law Group
Paralegal Division Scholarship Committee Chair

The 2017 MCBA Paralegal Scholarship of $1,000 was presented to Acacia Sullivan-Brown by Kristi McLaughlin at the MCBA Paralegal Conference on September 8, 2017 at the Desert Willow Conference Center. The 2017 MCBF Paralegal Scholarship of $1,000 was presented to Enrique Mendez by Kathy Bunch.

Sullivan-Brown is a paralegal student at Phoenix College. After a seven-year gap, Sullivan-Brown decided to go back to school to pursue a career as a paralegal. She was working two part-time jobs while attending school and discovered she was expecting a son. She had to sit out a semester but registered the following semester and she was eager and even more determined to finish the program. She hopes to graduate as previously scheduled and find a position as a paralegal.

Mendez is a paralegal student at Phoenix College and he is a single parent to four children. He has served our country over the last 20 years as an active-duty service member with the US Army and Arizona Army National Guard. His target to graduate in the Paralegal Studies program is Fall 2018. After graduation, he plans to pursue employment with a family or criminal law firm.

Nilda Jimenez (Paralegal Division President), Kristi McLaughlin (Scholarship Chair), Enrique Mendez, Acacia Sullivan-Brown, Kathy Bunch (MCBF)
This is why we don’t wear purple

CLERK’S CORNER
Michael K. Jeanes
Clerk of the Superior Court

Maricopa County has the power to reach more than 13,000 people who use its email system—including employees and others. In the past, the county has used the email system to encourage wearing purple on a designated day in October for domestic violence awareness. The court has also suggested similar emails to recognize heart disease prevention, charitable campaigns, and other worthy causes.

In response to the county’s email, Clerk’s office employees were told they could not participate in the wear purple day. Imagine their confusion. Some were shocked, some angry, others forwarded the email to other departments in disbelief. Soon the office’s senior managers were getting calls of outrage and disappointment—surely this was a misunderstanding. Only it wasn’t a misunderstanding. This was a thoughtful and calculated decision that would be made again and again.

We can all agree that life would be better if heart disease were prevented. And we can all agree that people should not resort to domestic violence. Or can we agree on that? Heart disease and domestic violence have very different relationships to individuals and their interactions with the court system. Judicial branch employees have to publicly respond to societal issues differently from nearly everyone else. To be clear, domestic violence and its victims have a substantial role in courts and there are statewide committees, services, and workgroups making valuable, tireless efforts to make sure those issues are considered at all levels of courts, law enforcement, housing, and beyond. This article is about appearances specific to individuals whose daily work supports the superior court.

Judicial branch employees have sincere, strongly held beliefs in many things. One thing that leads people to this field of work in particular is their strong belief in justice. Sometimes a judicial employee personally disagrees with an outcome but has a professional obligation to appear unphased and to diligently perform their duties—whatever they may be. The judicial branch stresses the importance of both being fair and neutral and having the appearance of being fair and neutral to anyone who may be watching.

For example, courtroom clerks get familiar with attorneys who regularly appear in their courtrooms. Clerks make an effort to be friendly but are mindful of appearing too friendly. While a clerk’s work and professionalism are not influenced by familiarity (the judicial code of employee conduct specifically prohibits this) they know it could appear unfair to others if they are outgoing with one attorney in the courtroom and completely ignore another. Outside observers wouldn’t know that the clerk knows one attorney well and does not know the other at all, so we all fall back on the appearance of our actions and what they look like to others. It can be difficult for outsiders to know or learn the facts about everything. As a result, court employees are mindful of what the public attributes to appearances.

Bringing this back to wearing purple, the reasoning for the office’s policy should start taking shape. Parties who come to court should expect that the Clerk’s employees will be fair and neutral, not taking sides or prejudging arguments or the merits of cases. Statistically speaking, some of our customers will be in our buildings and courtrooms on domestic violence issues on a wear purple day. It should not appear that Clerk’s office employees are for or against anyone. The message to parties, witnesses, and all onlookers is that, regardless of strongly held personal beliefs, Clerk’s office staff can be patient and empathetic as well as counted on to both be—and demonstrate the appearance of being—professional, fair, and respectful to all.

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SUPPORT LOCAL DOMESTIC VIOLENCE SHELTERS WITH YLD NECESSITIES DRIVE

The YLD is sponsoring a Necessities Drive to collect toiletries and other items for local domestic violence shelters.

Examples of necessities include the following items:
- shampoo and conditioner
- brush and comb sets
- toothbrushes/toothpaste
- body lotion
- deodorant
- diapers (assorted sizes)
- sanitary pads and tampons
- gift cards to Target, Walmart, or similar stores

All items should be unused.

Please collect and deliver these items to the MCBA office by Wednesday, October 25, 2017.

Contact yldmacha@gmail.com for more details.

Beware of “Between”

LEGAL WRITING
Tamara Herrera

I have written before about how the word “and” can be ambiguous and thus confusing to a legal reader. But that word is not the only common word that can be confusing. Beware of “between!”

Recently I have noticed the word “between” used ambiguously in several documents. The preposition “between” is defined as the range or interval separating two things. If the parameters of that range are not clear, “between” can cause a legal reader a lot of confusion.

First, watch for the ambiguous use of “between” to indicate range of time. Consider the phrase “between 1999 and 2000.” No year exists between 1999 and 2000, so “between” is not the correct way to represent what the writer intends to say. If the writer’s intent is to show a range of time that includes both 1999 and 2000, I suggest using one of the following more precise constructions:

From 1999 through 2000.
In both 1999 and 2000.

In addition, “between” can be ambiguous if the reader is not clear whether the end points are included in the range. Consider the phrase “between 2013 and 2017.” This phrase means that the reader should be looking at the years 2014, 2015, and 2016. But what if the writer intended to include 2013 and 2017 in the range? To be precise, I suggest that the writer use one of the following constructions:

From the start of 2013 through the end of 2017.
From January 2013 through August 2017.

Second, watch for the ambiguous use of “between” with geographical terms. Consider the phrase “between Phoenix and Tucson.” Does the writer mean every stop on I-10 that separates the two cities? Or are both cities included in the range? I read this sentence recently, and it does not use “between” correctly:

Over five million people call the desert home between Phoenix and Tucson. Five million people do not live on the stretch of I-10 separating Phoenix and Tucson. To be more precise, the writer should replace “between” with more appropriate prepositions or more precise explanation.

Over five million people live in Phoenix and Tucson and call the desert home.

Between you and me, I know this advice sounds like splitting hairs. But I have been that confused reader recently, so I wanted to share my cautionary tale.
The Sheriff’s Pardon and the Rule of Law

Dear Sir or Madam:

Sheriff Joe was popular because he was doing what many citizens wanted him to do. The public saw an unprecedented wave of illegal immigration, and was frustrated with their government’s ineffective response. The sheriff was someone who was actually trying to do something to stem the tide. The public did not have the time or the inclination to seek legal opinions on the appropriateness of what the sheriff was doing. To a lay person, it was obvious that something needed to be done, and Sheriff Joe was doing it. The public may not have agreed with the court’s orders; certainly, President Trump did not. While the president has access to as much legal advice as he cares to credit, he may share the disillusionment of many citizens actually to credit it.

Whether the sheriff was doing what the people wanted, is a different question from whether what the sheriff was doing was legal. It is not a question of whether it should have been legal. Many people in Maricopa County, and the President of the United States, thought it should have been legal. The president apparently thought that the federal court’s conviction of the sheriff for criminal contempt was wrong. It is; however, a question of whether the federal court’s decision was right. It is a question of whether the rule of law will be respected. When a court makes a decision, whether it is right or wrong, we obey it. Our observance of the rule of law is far more important than whether a particular court decision is correct. The rule of law is fundamental to our form of government.

The important question then is not whether Sheriff Joe’s conduct was legal, nor whether the court correctly decided it was illegal, and not whether the president should have pardoned the sheriff. Rather, it is whether the president’s pardon of the sheriff was legal. If it was legal, it is part and parcel of the rule of law. It may have been unwise, it may have even disrespected the rule of law, but if it was legal, it did not violate the rule of law. The president may have thought that the court’s decision was wrong, and we may think the pardon was wrong, but both the decision and the pardon participate in the rule of law.

The answer to the important question of whether the pardon was legal is that it was not. It was illegal because it violated the separation of powers. The very nature of a pardon is that the executive branch of government interferes with a result produced by the judicial branch. The judiciary may convict someone of a criminal offense, yet the executive branch can override the result with impunity, nullifying the work of a co-equal branch of government. But what if the executive nullifies the ability of the judiciary to enforce its orders? In the case of a criminal pardon, the victim of the crime will not see justice done. In the case of a criminal contempt pardon, the court is itself the victim. If the court cannot enforce its orders, the court’s effectiveness as a co-equal branch of government is nullified. We could say that the sheriff’s pardon is an isolated instance, and should not interfere with the enforcement of the orders of the court in any other matter. Yet the pardon may encourage others to commit civil rights violations. The pardon is an indication, among others, of the president’s attitude toward the judiciary. It seems entirely plausible that the president might issue pardons of criminal contempt in other civil rights cases.

In that event, the power of the judiciary to enforce those laws could become severely restricted. That is such a systemic interference with the judiciary that the court should hold that the sheriff’s pardon is void as constituting a violation of separation of powers, and the court should proceed to sentencing.

John C. Lincoln
The Maricopa County Bar Association is pleased to be a partnering organization of NAWL’s Thirteenth General Counsel Institute on Thursday and Friday, November 9-10 at the InterContinental Barclay Hotel in New York City. We have arranged a special 10% discount for our members. To register, please go to http://www.nawl.org/gci13 and use the code GCI13M-CBA to get the discount.

Successful people are open to new challenges. In order to be poised to say yes to new opportunities, we must be confident in our abilities, trust that our prior work has prepared us for the next step, and be willing to take on the accompanying risk of a new challenge. Whether you already have mastered your current challenges or want to position yourself to push for more, the National Association of Women Lawyers’ Thirteenth General Counsel Institute offers you the tools you need to take advantage of the power of preparation and to have the courage to say yes.

At GCI 13, you will be asked to challenge yourself and consider what you need to do to feel prepared, powerful, and courageous. Through inspiring stories, substantive legal workshops, and GCI’s unique open exchange of ideas, GCI 13 will help you gain leadership skills, business acumen, and the power to say yes.

WHO SHOULD ATTEND?
Senior corporate counsel of public, private, large and small companies, non-profits, government, and educational institutions. Registration is limited to in-house counsel and select law firm sponsor representatives. Scholarships are available for in-house attorneys who wish to attend, but may not be able to do so due to cost considerations.

For additional information about NAWL and GCI13, visit www.nawl.org.
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Uninformed Consent: The Validity of Advance Conflicts Waivers

In almost every state (including Arizona), a lawyer’s undivided duty of loyalty means that individual lawyers and their firms cannot oppose any current client on any legal matter, even if the matters are entirely factually and legally unrelated. An advance conflict waiver preserves the law firm’s right to represent current or future clients in matters adverse to the interests of a prospective client. By signing an engagement letter containing such a provision, the client waives its right to object to such conflicts of interest. Under ER 1.7(b), an attorney may not represent a client against another client in the same matter. But short of representing on both sides of the “v,” all other conflicts are usually waivable so long as it is not prohibited by law, the attorney can competently represent each party affected, and each party gives informed consent in writing.

Advance conflicts waivers protect lawyers from conflicts that arise when accepting new clients. They are especially beneficial for industry-based practices and global mega firms who depend on the waivers to protect against the numerous conflicts that may arise when acquiring new clients. In the case of niche practices, potential clients are more likely to be competitors of current clients, thus precluding the firm from representing other businesses engaged in the same industry—the exact clients these firms target and serve. The waiver also helps protect against conflicts that arise, but of which the firm is unaware. On the other hand, some view advance conflict waivers as being akin to a prenuptial agreement that gives one of the spouses the option to date other people should the opportunity arise. Legal sure, but not a great message to send at the beginning of the relationship.

The ABA’s Model Rules and comments provide their typical level of certainty in their guidance—advance conflict waivers are enforceable. Unless they are not. The client must give informed consent for an advance waiver to be valid, which can be tricky since it is difficult to know what conflicts will arise in the future. How can a client be “informed” enough to give consent when they have no idea of the facts and circumstances giving rise to a conflict that has yet to arise? See Sheppard, Mullin, Richter & Hampton, LLP v. J.M. Manufacturing Co., Inc., 244 Cal.App.4th 590 (2016) (petition for review pending) for a recent example of the kinds of trouble that can arise from uninformed consent to a future conflict. Comment 21 to Arizona’s ER 1.7 provides some considerations that help whether a client had the requisite understanding to provide informed consent:

(1) The nature and specificity of the information the attorney provided the client. The more details the lawyer is able to provide regarding the potential conflicts and adverse consequences, the more likely the client is to understand the material risks involved. An open ended waiver is unlikely to be upheld.

(2) How related the future conflict is to the client’s current matter. An advance waiver is less likely to be upheld when the materialized conflict is a matter substantially related to the client’s matter. The waiver assists lawyers who may represent a conflicting client in the future, in an unrelated matter, where the conflict will not affect the future or previous representation—it cannot lessen the lawyer’s duties to the current client.

(3) The client’s sophistication/experience with the legal services involved. ER 1.7 does not define the term “sophistication,” but a client who is familiar with the particular type of conflict that is the subject of the risk is more likely to understand the risk of the waiver. Moreover, the case law distinguishes between business and legal sophistication. Companies that routinely hire a number of law firms around the country are viewed a “sophisticated” within the meaning of the rule. Sophisticated business people who do not routinely deal with law firms may not qualify as sophisticated for purposes of an advance conflict waiver.

(4) Whether the client is represented by independent counsel. A client who is represented by independent counsel (including in-house counsel) is more likely to have understood the waiver’s effect. If the waiving client does not have in-house counsel, the firm seeking the waiver should at least recommend that the client have independent counsel review it.

Joseph Brophy is a partner with Jennings Haug Cunningham in Phoenix. His practice focuses on professional responsibility, lawyer discipline and complex civil litigation. He can be reached at JAB@JHC.law.

Q&A

LAWYER LIABILITY AND ETHICS

Potential clients can be yours with the MCBA Lawyer Referral Service. The LRS receives more than 10,000 calls per year from people seeking more than adequate legal assistance as well as attorneys referring clients outside their practice area.

AMONG THE AREAS NEEDING COVERAGE ARE:
administrative law
SSI-SSD/Medicare law
workers’ compensation
immigration

Spanish-speaking and West Valley attorneys are especially needed.

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Past Presidents Breakfast

On Thursday, August 31, Past Presidents of the MCBA gathered for breakfast and discussion of topics including member benefits, outreach, and policies related to the MCBA taking positions on controversial issues in the legal world. The MCBA values the continued support and guidance that our Past Presidents provide. Held twice yearly, our fall event was generously hosted by Osborn Maledon at their office.

A Small Donation Makes a Big Difference

Arbitration Fee Donations Help
Partnering with the Maricopa County Superior Court, the Maricopa County Bar Foundation (MCBF) is once again encouraging attorneys assigned to arbitration to donate the $75 fee to the Foundation’s fundraising efforts.

It’s Easy to Contribute

The court has made it easy to contribute with a convenient “pro bono” check-off box located at the bottom of the Invoice in Support of Request for Warrant, a form provided in your arbitration packet. For more information, go to maricopabar.org and click on “About Us” on the top menu bar then “Maricopa County Bar Foundation.”

THANK YOU FOR MAKING A DIFFERENCE!
INSIDE THE COURTS

State Adult Probation Services Director Earns National Leadership Award

Arizona Adult Probation Services Director Kathy Waters recently received the prestigious George Keiser Award for Exceptional Leadership from the National Association of Probation Executives (NAPE). Ms. Waters has more than 33 years of criminal justice experience. In 2001, she became Division Director of Adult Probation Services for the Arizona Supreme Court and Administrative Office of the Courts. Ms. Waters is a leader and mentor for probation executives across the nation through peer collaborations, speaking engagements, and training programs.

Specific achievements that helped Ms. Waters earn this award include:
- Developed Arizona Code of Judicial Administration code sections implementing evidence-based practices for the supervision of adult offenders;
- Successfully implemented evidence-based practices for adult offenders in all 15 counties;
- Acquired and managed the technical assistance of the Laura and John Arnold Foundation PSA (Pretrial Assessment) for five pilot sites in the state, which eventually led to the statewide technical assistance for the remaining counties;
- Developed and in the process of implementing evidence-based pretrial statewide;
- Chaired an officer safety committee, which led to the development and adoption of the statewide Officer Safety Program for adult and juvenile probation officers.

■ Successfully rolled out the Adult Probation Enterprise Tracking System (APETS) to all of Arizona’s 15 counties. The award is named for the former director of the Iowa Department of Corrections who later served as Chief of the Prisons and Community Corrections Divisions at the National Institute of Corrections in Washington, DC.

In a letter to Ms. Waters acknowledging this achievement, Mr. Keiser wrote: “I know you don’t want to hear just how significant your contributions have been over the years, or about the number of lives you have touched. But you have come a long way from that Oklahoma County where I first met you. While concepts like EBP (evidence-based practice) can be designed and promoted by organizations like NIC (National Institute of Corrections), it requires practitioners like yourself to implement and refine their application if they are to become industry standard.”

Ms. Waters served as an instructor in Criminal Justice at Northeastern State University from 1983 until 1988. Currently, she serves as a consultant to the National Institute of Corrections and an auditor with the American Correctional Association. She is a past president of the American Probation and Parole Association (APPA). In 2009, Ms. Waters was the recipient of the APPA Walter Dunbar Award for service and contributions to the organization and field. She has been an active member of the American Correctional Association since 1988. She is a charter member of the Association of Women Executives in Corrections, a Past President and currently serves as the Chair of the National Voice Committee for AWEC. In 2015, she received the Supreme Court’s Strategic Agenda Award for her efforts in implementing evidence-based pretrial services in Arizona. A year later, the Arizona Supreme Court recognized her professional contributions with the 2016 Administration of Justice Award.

Bench Bar recap

On Friday, September 15, 2017, MCBA held its 6th Annual Bench Bar Conference at the Phoenix Country Club. A group of 110 lawyers and judicial officers came together to learn from one another and discuss issues relevant to litigators. The program began with a luncheon where Maricopa County Superior Court Presiding Judge Barton gave an update on the court and took questions from the audience. Dr. Rachel Colangelo came from New York to join other local panelists to talk about jury selection challenges. Justice Bolick and Justice Brinetel garnered many laughs during the ethics segment which culminated with table discussions about social media’s impact on trials. The five Superior Court Division Presiding Judges led practice-area specific breakout sessions to discuss recent rule changes and other topics of importance. The conference ended with a networking cocktail hour overlooking the beautiful golf greens. Save the date for next year’s conference: September 14, 2018.

October Calendar

All events at MCBA office, unless otherwise specified.

2 Litigation Section Board Meeting
12pm
Maricopa Lawyer Editorial Board Meeting
5:15pm
4 Young Lawyer Division Board Meeting
12pm
5 Construction Law Section Board Meeting
12pm
6 Estate Planning Section Board Meeting
7:30am
Understanding Safe Harbor and the Alphabet Soup of Family Court Resources (CLE)
8:00am - 10:30am
Public Lawyer Division Criminal Law Luncheon Forum
12pm
10 Personal Injury Law Section Board Meeting
8:30am
2017 Paralegal Division Board Meeting
5:30pm
11 2017 Bankruptcy Law Section Board Meeting
7:30am
Environmental Section Board Meeting
12pm
16 Public Lawyer Division Civil Law Luncheon Forum
12pm
17 Family Law Section Board Meeting
12pm
18 Ted Talks
5:30pm
19 Employment Law Section Board Meeting
12pm
2017 MCBA Board of Directors Meeting
4:30pm
20 Criminal Law Section Board Meeting
12pm
21 Race Judicata
Kiwanis Park, Tempe
6:30am - 12:00pm
24 Real Estate Section Board Meeting
12pm
25 Maricopa County Bar Foundation Board Meeting
7:30am
26 2017 Annual Meeting and Awards Luncheon
Hyatt Regency
11:30am - 1:30pm
27 Arizona Automobile Insurance Law: Understanding Uninsured and Underinsured Motorist Coverages (CLE)
7:30am
30 2017 Maricopa Lawyer Editorial Board Meeting
5:15pm
31 Public Lawyers Division Board Meeting
12pm

Please watch your MCBA E-News for updated information about meetings and events.
The State Bar of Arizona does not approve or accredit CLE activities for the Mandatory Continuing Legal Education requirement. 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.

### THREE WAYS TO REGISTER

**ONLINE**
Register online at: www.maricopabar.org. Click on “CLE/Events” at the top menu and then “Calendar.”

**DOWNLOAD PRINTED FORM**
Follow directions for online registration. Then, from the program’s online registration page, download a print registration form to mail or fax.

**PHONE**
Call (602) 257-4200, or email mmorales@maricopabar.org at least two business days prior to the program.

### PROGRAM LOCATION
Unless otherwise specified, all programs are held at the Maricopa County Bar Association office at 303 E. Palm Lane, Phoenix 85004.

### ATTENDANCE POLICIES

- **ADVANCE REGISTRATION**: Full payment must be received in advance of the program before you are considered registered.
- **LATE REGISTRATION**: Early Bird registration ends five days prior to the program date. Late registration is an additional $15. For example, registrations for a Sept. 17 program must be paid by Sept. 12 in order to receive early bird pricing.
- **WALK-INS**: You may register at the door if space is available; the $15 fee will apply. If you do not register at least five business days in advance of an indicated program, MCBA cannot guarantee space or availability of materials.
- **CANCELLATIONS/REFUNDS**: Refunds, less a $25 fee, will be issued only if the MCBA receives your cancellation, in writing by mail, fax at (602) 257-4200, or email mmorales@maricopabar.org at least two business days prior to the program.
- **NO SHOWS**: If you registered and paid, but could not attend, you may request that materials be sent to you, free of charge (allow 3-4 weeks). If audio media is available, registrations may be converted to a self-study package for an additional $15 charge.

### OCTOBER 6 • 8 - 10:30 AM (Breakfast included)
Understanding Safe Harbor and the Alphabet Soup of Family Court Resources
2.5 CLE: Credit Available
**SPONSORED BY**: Family Law Section

- Have you ever had a therapist refuse to provide services because they were afraid to “get involved” in Family Court? How do you balance the interests of parents’ rights due process against a child’s right to have his own safe harbor therapist? Are you lost in the sea of FCA (Family Court Acronyms)? Have you wondered the difference between CFE and FA, BIA and CAA or are you confused if a PC means a Parent Conference or Parenting Coordinator?

- Understanding Safe Harbor counseling and the alphabet soup of family court resources—can make or break a case.

- **PRESENTERS**: Diana Vigil, P.P.C., R.P.T., Child Therapy AZ, David Weinstock, J.D., Ph.D., Forensic Counseling & Evaluations, Gregg R. Woodnick, Esq., Woodnick Law PLLC

- **COST**: (Early Bird Pricing/Regular Rate): Early Bird ends October 4, 2017
  - MCBA Members: $90/$105
  - MCBA Law Section members: $65/$80
  - Paralegal & Public Lawyers Division members: $65/$80
  - Non-Members: $125/$140
  - MCBA Student members: $15/$15
  - MCBA Sustaining members: Free

- Please email: CLE@maricopabar.org to register your paralegal for $30 (early bird rate) or $45 (regular rate).

### OCTOBER 27 • 7:30 - 9 AM (Breakfast included)
Arizona Automobile Insurance Law: Understanding Uninsured and Underinsured Motorist Coverages
1.5 CLE: Credit Available
**SPONSORED BY**: Personal Injury Law Section

- Andrew DeFusco has been presenting this CLE seminar over the past fifteen years for attorneys and lay persons alike. This presentation will help you better understand both Uninsured Motorist Coverage (“UM”) and Underinsured Motorist Coverage (“UIM”), the public policy rationale underlying each coverage, as well as the practical application of these important automobile insurance coverages in various hypothetical (and not-so-hypothetical) collision scenarios.

- Whether your practice focuses on personal injury law, or you simply wish to learn more about UM and UIM coverages, you will walk away with a greater understanding and appreciation of these valuable insurance coverages.

- **PRESENTER**: Andrew J DeFusco, Esq., DeFusco Law, P.L.C.

- **COST**: (Early Bird Pricing/Regular Rate): Early Bird ends October 24, 2017
  - MCBA Members: $90/$105
  - MCBA Personal Injury Law Section Members: $65/$80
  - MCBA Sustaining members: Free

- Please email: CLE@maricopabar.org to register your paralegal for $30 (early bird rate) or $45 (regular rate).

### OCTOBER 16 • 12 - 1 PM
**LUNCHTIME FORUM**
PUBLIC LAWYER DIVISION “Transition to Private Practice”

- **LUNCHTIME FORUM**
  - Whether you are considering this now, or want to keep it in mind for the future, this panel discussion will be a great resource for you.
  - FREE for MCBA Members of the Public Lawyer Division! Only $15 for all others.

- **SPEAKERS**
  - JOEY HAMBY, Law Offices of David Michael Cantor
  - THOMAS M. CONNELLY, Law Offices of Thomas Connelly
  - KRIS CALIFANO, Law Offices of Kristopher Califano, PLLC

- **SPEAKERS**
  - BARBARA PASHKOWSKI AND CARRIE O’BRIEN, Gust Rosenfeld
  - KEVIN MCCOY, Networking/Client Development
  - JODY POWERS, Networking/Client Development

### CRIMINAL LAW
**OCTOBER 6 • 12 - 1 PM**
Lunch included
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- **SPEAKERS**
  - JOEY HAMBY, Law Offices of David Michael Cantor
  - THOMAS M. CONNELLY, Law Offices of Thomas Connelly
  - KRIS CALIFANO, Law Offices of Kristopher Califano, PLLC

### CIVIL LAW
**OCTOBER 16 • 12 - 1 PM**
Lunch included
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- **SPEAKERS**
  - BARBARA PASHKOWSKI AND CARRIE O’BRIEN, Gust Rosenfeld
  - KEVIN MCCOY, Networking/Client Development
  - JODY POWERS, Networking/Client Development

### NEW CLE SELF STUDY WEBSITE

Most CLEs are available for simultaneous webcast through West LegalEd or later viewing through the MCBA CLE Self-Study Page. (www.maricopabar.org)

- NEW CLE SELF STUDY WEBSITE

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2017 Annual Meeting & Awards Luncheon

OCTOBER 26 HYATT REGENCY PHOENIX

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Antonio Bustamante
Honorable Noel Fidel
Hon. DeForest Porter

PIONEER ERA:
Honorable James Moeller
Patricia Lee Refo
Gerald Smith
Hon. Howard Speakman

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CONGRATULATORY PROGRAM NOTICES ARE AVAILABLE:
Full Page $250 (8.5 X 5.5 Vertical) Half Page $150 (4.25 X 5.5) Text Only $100 (Max. 25 Words)
To reserve space for your congratulatory program notice, please contact Lori Katzaroff, MCBA Development Director: lkatzaroff@maricopabar.org

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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.
For Love of Justice

In Maricopa, Mohave, LaPaz, Yavapai and Yuma counties, those who need but cannot afford legal advice or representation in civil law matters may seek help at Community Legal Services (CLS). They are people whose annual income is at or below 125% of the federal poverty level. Their requests for assistance usually involve everyday concerns most people experience at some time in their lives. Perhaps what brings them to a law office relates to their rights and responsibilities as employees, consumers, tenants, or homeowners. Maybe the situation affects their health, or the well-being of an incapacitated loved one. They may be grandparents raising grandchildren in lieu of a parent, or parents facing the dissolution of their marriage and difficult decisions that impact their children. Whatever brings them to Community Legal Services, the assistance they seek will be provided through the efforts of staff attorneys or private attorneys who engage in pro bono work through the Volunteer Lawyers Program (VLP) co-sponsored by CLS and the Maricopa County Bar Association.

On October 19, 2017, Community Legal Services will celebrate 65 years as a non-profit law firm by hosting a fund raising event at the Sandra Day O’Connor Federal Courthouse. You and your guests are invited to attend and to support the important work of making access to justice a reality for Arizonans of limited means. Some of your colleagues will be honored for their outstanding pro bono work during 2017.

Please join CLS in recognizing and congratulating the recipients of the VLP

2017 “For Love of Justice” Pro Bono Awards

Case and Operations Support Awards:
CPA of the Year .............................................................................................................................................Tom Rex
Law Student of the Year .................................................................................................................................Ankita Gupta
Lifesaver of the Year ........................................................................................................................................Mariel Burks
Private Investigator of the Year ..........................................................................................................................James Murphy, President
Tax Preparer of the Year ..................................................................................................................................Don Jensen

Clinic Services Awards:
Children’s Law Center Clinic Award .....................................................................................................................Melissa Ho
Federal Court Clinic Attorney of the Year - Mesa ............................................................................................Carrie Ravatta
Federal Court Clinic Attorney of the Year - Mohave County ...........................................................................Charlotte Wells
Federal Court Clinic Attorney of the Year - Phoenix .........................................................................................Susan McGinnis
Joseph Mahowald F.L.A.P. Attorney of the Year .............................................................................................Chris Lazenby
P.L.A.P. Attorney of the Year .............................................................................................................................Thomas Hickey
Tenant’s Rights Attorney of the Year ..................................................................................................................Shawn Stone

Attorney of the Month Awards - Maricopa County:
Barbara Berman, James Cork, Nathan Finch, Richard Goldsmith, John Gordon, Thomas Hickey, Kyle Hirsh, Judith O’Neill, Jeremy Poryes, Mathew Stotzen, Janet Story, Robert Teague

Attorney of the Year Awards - Maricopa, Mohave, Yavapai, Yuma Counties:
Court Advisor of the Year, Children’s Law Center - Maricopa ........................................................................Stay Cich
Attorney of the Year, Children’s Law Center - Maricopa .................................................................................Bruce Squire
Attorney of the Year, Tenant’s Rights - Maricopa .............................................................................................Peggy LeMoine
Attorney of the Year - Mohave ..........................................................................................................................Kenneth Moyer
Attorneys of the Year - Yavapai ..........................................................................................................................Joseph Waeche
Attorneys of the Year - Yuma .............................................................................................................................Richard Edgar
Attorney of the Year - Yuma .............................................................................................................................Jeanne Vatterott-Gale

Access to Justice Achievement Awards:
Hon. Robert W. Pickrell Community Support Award..........................................................................................Hon. Robert W. Pickrell, posthumously
Hon. Frank X. Gordon Jr. Award ......................................................................................................................Federal Court Self-Service Clinic - Phoenix
MCBA PARALEGAL DIVISION’S CONFERENCE

“Every Possibility Begins with the Courage to Imagine…”

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Scot Claus, Esq.
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