MCBF presents check to AZ DAV

The Maricopa County Bar Foundation presented the Arizona Disabled American Veterans (AZ DAV) with a check at their April meeting. As you may recall, the AZ DAV won the Charity Partner Raffle at the 2017 Barristers’ Ball. They will partner with the MCBF throughout the rest of the year and will also be the major charitable beneficiary of the 2018 Barristers’ Ball.

CourtWatch

Daniel P. Schaack

Court of appeals signals proper interpretation of supreme court opinion on bailable offenses

Lawyers have a love–hate relationship with the Bluebook. Well, mostly they hate it. Proper legal citation helps in getting one’s argument across to the court, but it surely doesn’t affect the merits. Right? Well … consider the Arizona Court of Appeals’ opinion in State v. Win (Henderson), No. 1 CA-SA 17-0072 (Ariz. App. Apr. 25, 2017).

A provision of the Arizona Constitution — Article 2, § 22 — precludes a defendant charged with a capital offense from being released on bail “when the proof is evident or the presumption great.” In 2002, the voters enacted Prop 103 to add to the list of non-bailable offenses sexual assault, sexual conduct with a minor under 15 years of age and molestation of a child under 15. The legislature enacted statutes implementing Prop 103.

In 2017, the Arizona Supreme Court struck down Prop 103, in part, in a case known as “Miller II,” Simpson v. Miller, 241 Ariz. 341 (2017), holding that it violates due process. The court ruled that denying bail to a suspect charged with sexual conduct with a minor under the age of 15 requires the state to additionally prove that he is a danger to somebody, even if there is evident proof or a great presumption that he committed the crime.

The court held that “the state may deny bail categorically for crimes that inherently demonstrate future dangerousness, when the proof is evident or presumption great that the defendant committed the crime.” But to be consistent with due process, the state may not “deny bail categorically for those accused of crimes that do not inherently predict future dangerousness.”

The court held that sexual conduct with a minor “is not in itself a proxy for dangerousness.” Under A.R.S. § 13-1406 (defining sexual assault as ‘intentionally or knowingly engaging in sexual intercourse or oral sexual contact ... without consent of such person’).”

In response to Miller II, the Maricopa County Superior Court issued a protocol for setting dangerousness hearings for bail requests. In the superior court’s view, Miller II “held unconstitutional the portion of A.R.S. 13-3961(A) that allowed a defendant charged with Sexual Assault, Sexual Conduct with a Minor under 15, or Molestation of a Child under 15 to be held without bond if the Court has only made a ‘proof evident and presumption great’ finding.”

Marlin Bryan Henderson and Guy James Goodman were charged with sexual assault under A.R.S. § 13-1406. At their bail hearings, the judge found the proof evident and the presumption great that they had committed the crime. But he also concluded that the defendant’s danger to anyone. Cf. A.R.S. § 13-1406 (defining sexual assault as ‘intentionally or knowingly engaging in sexual intercourse or oral sexual contact ... without consent of such person’).”

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The bystander effect

When learning how to administer CPR, you are taught first to point to a specific person and designate that person with the responsibility of calling 911. This is because people will often observe the situation yet choose not to become involved. This is also known as the "bystander effect." Essentially, the more people there are standing around an emergency situation, the less likely any of those bystanders will intervene or seek help for a person in need.

This year, I have tried to reflect honestly and frankly on the toll that lawyering takes on the professional. I have written about why we chose the career we have, how non-lawyers perceive us and how we perceive ourselves. In this article, I want to continue that dialogue by talking about our lack of perception for the needs of others. Too often, we are the bystanders watching another attorney struggle, and we stand by, thinking someone else in that attorney's life, perhaps closer to him or her, is paying attention. Our ethical rules talk about the need to report or seek help for an attorney who may be compromised or incapacitated due to a personal issue. However, those rules are silent about what we do when an attorney is performing fine, but falling apart internally.

The song "In the Air Tonight" by Phil Collins is often mistakenly believed to be about Collins seeing someone drowning, but being too far away to help that person. Apparently, Collins saw another person who was close enough to help, but who did nothing. All of that's an urban legend: The song is actually about Collins' divorce, but the urban legend interpretation is far more applicable here. At times, we are the person standing in the singer's position: Too far away to do anything to help the person who is personally or professionally drowning, hoping that the person closer to that person will intervene. Other times, we are the person who is close enough but, for a variety of reasons, choose to not intervene and hope no one is further away, watching us do nothing. And, let's face it, it's easier and easier. It doesn't require us to get wet and dive into the cold water to help the person. It doesn't get us tangled up into whatever is causing the person to drown. And the farther we get from the riverbank, the easier it is to do nothing. That's one explanation for why we don't intervene.

I'm cynical at times, but I'm not cynical enough to believe that we don't get involved solely because we don't like entanglements. The job description for attorneys includes getting involved in our clients' problems and trying to fix them. So assuming we have the skill and ability to get involved, why don't we automatically call 911 without being asked first? Why don't we jump into the river and save the drowning man? One explanation is that we're busy and we've got our own personal pressures that dictate how much of ourselves we can give to others in need.

In the 1970s, John Darley and Daniel Batson conducted the well-known Good Samaritan study. It is a fascinating study that examined whether thinking about the religious parable of the Good Samaritan would make a test subject more likely to stop and help someone in need. Some test subjects, who were men in seminary, were told that they were going to give a talk on the Good Samaritan, a parable in which the titular character sets aside his cultural-religious bias against a traveler who has been robbed on the highway, and offers aid. Another set of subjects was told they were to prepare a lecture on another topic unrelated to the Good Samaritan. Darley and Batson also manipulated the amount of time the subject had to get from the testing room to the lecture they were to give. Some were given plenty of time, some were rushed and some were told they were already late for the lecture. On the way to the presentation, the researchers placed an actor, who pretended to be in distress, sitting on the ground in a doorway, coughing. The result was that those who were rushed were much less likely to help, or even inquire of, the distressed person. That is, the most important indicator of whether the subject helped was how pressed they were for time. Rushing can cancel out our instinct or motivation to help another person, but pressures more generally also impact our motivations and help. Whether we are facing the pressures of managing our practices, the pressures from deadlines or pressures from our personal lives, these pressures can prevent us from recognizing that there are others who may be struggling — or at least give us a justification to ignore those people when they are struggling.

I reflect on the above examples frequently and often consider whether there is something else I could have done to help a colleague. I admit, unfortunately, that I reflect on those examples most often when I am reading the discipline section of the State Bar magazine about an attorney who has been suspended due to an addiction or mental health issue, or when I receive news that a colleague or acquaintance has passed away or left the practice due to something that could have been prevented had someone intervened.

If you stop and think for a moment, I believe you can identify someone who could benefit from your call, your email asking them to coffee, your kind word, a simple check in. That's an important first step in letting someone know they have someone out there that is thinking about them and available as support. What they do with your attempt to reach out is often up to them, but don't make the mistake of believing that someone else is making that call or sending that email or text.

I'm not saying that it's your job to save everyone. No one can reasonably expect that of you, even if you wanted to try. It's not your job to replace the place of a professional counselor — but you may be the person who breaks from the crowd, who stops being a bystander. If there is a colleague who you can help breathe a little easier by letting them know you are out there thinking of them, I hope you will consider telling that person.
The Young Lawyers Division (YLD) is commonly referred to as the community service arm of the MCBA. With that, I have made it a priority of my presidency to get the YLD board and members more engaged in volunteer projects throughout the community as a whole and not just the legal community. The YLD board has partnered with other legal professionals, such as paralegals, to volunteer at St. Mary’s Food Bank for packing emergency food boxes for families. This November, the YLD will be organizing a team for the Light the Night event to support the Leukemia and Lymphoma Society.

Community service teaches people of all ages and backgrounds to be compassionate and understanding of the differences (and sometimes the challenges) throughout the community. To release your inner volunteer you do not have to find a specific community service event; just find a way to advocate for causes that you are personally passionate about. For example, in addition to my work for the YLD, I sit on the board of directors for The Centers for Habilitation (TCH). TCH provides services that support, care for and empower adults who have developmental and physical disabilities. In addition to providing day programs and group homes around the East Valley, TCH also offers them employment opportunities that they otherwise would likely not have. TCH also runs the not-for-profit social enterprise, ASDD Document Destruction center, through which TCH sells shredded paper to recycling companies and helps the adults with disabilities working at ASDD earn a paycheck. If you want to learn more about TCH, visit their website at tch-az.com.

It’s likely safe to assume that most of you reading this article have been encouraged by someone in your life to volunteer or participate in a community service project. In fact, many of you do just that through your participation in the divisions, sections and committees at the MCBA. However, for those of you that are still on the fence about whether volunteering is worth your time (it’s difficult to think you are out there, but I digest), consider the following top five reasons why you should volunteer in a community service event:

#5 – Improve your health. It is a well-known fact that you can reduce your own stress levels by focusing on others. Helping others can interrupt our tenses and allow us to gain perspective on our lives and challenges. Volunteering your time can also serve as a change in your regular patterns or activities that may have you in a rut.

#4 – Meet new people. You can never have too many friends, right? Well, OK, maybe you can, but you should never stop meeting new people and learning from others. Volunteering brings together people from all different walks of life. If you attended the TED Talk in April at the MCBA, you know that relationships are the key to good health and living longer (no really, there is a study).

#3 – Expand your learning. “What is a college? An institute of learning. What is a business? An institute of learning. Life itself, is an institute of learning.” – Thomas Edison. We should all be curious and never stop learning — from books and from others — to enrich our own lives. Volunteering can help each of us reveal hidden talents, inform us about community resources that we didn’t know existed, and provide us with more tools to help those around us, both personally and professionally.

#2 – Be an example. When we volunteer and participate in community service events, we are investing in our communities and showing the younger generation why it is important to give to those less fortunate or to support a cause that is close to our hearts. Find events where you can involve your children as volunteers, or support causes like Girls on the Run or Big Brothers and Big Sisters, where children are seeking someone to look up to.

#1 – Make a difference! “In a gentle way, you can shake the world.” — Mahatma Gandhi. We have all heard some version of the old adage that one person can make a difference, but together we can move the earth! By coming together for a common cause and giving back we are making a positive difference and touching the life of one child, one family or an entire community.

Personally, volunteerism and community service events have provided me with irreplaceable memories and great friendships throughout my life. Looking back, I have always chosen careers that help others be the best they can be (yes, even as a lawyer). Perhaps it was the example of my single mother who, despite working full time and going to school at night, always found time for community service. Or perhaps it is just part of my essential being. In any case, I have always gravitated toward volunteering and giving back to the community in one way or another.

So, I invite each of you to come join me and my fellow YLD’ers in giving back to our community. If you would like to get involved, please email me at yldmcba@gmail.com.
A 'refresher' on the attorney discipline process

In 2011, the Arizona Supreme Court overhauled lawyer discipline. The entire system and process was changed. In my column for this month, I’m going to talk about the changes that were made to the rules and offer a "refresher" to those who (thankfully) have not been involved in the process and how it works.

The process

The first step in the process is intake, which is called the Attorney/Consumer Assistance Program (A/CAP). Pursuant to Rule 55, Ariz. R. Sup. Ct., when a person, organization or the court contacts the State Bar of Arizona (SBA) with an allegation of misconduct, also known as the “charge,” it is assigned to A/CAP bar counsel to determine if the charge can be resolved with a minor investigation, phone call or should be dismissed. Should A/CAP counsel determine that they are not able to resolve the issue or that the issue requires further investigation, it is referred to a screening investigation by bar counsel. There are instances where the charge is so significant, such as a felony charge against a lawyer, that it is immediately referred to bar counsel.

Once the charge is referred to a screening investigation, bar counsel will further investigate the charge and contact the lawyer, now the respondent, and request a formal written response to the charge (now the bar charge). The screening investigation may consist of depositions, interviews, physical examination, review of documents such as client files, court filings, listening to court recordings, issuance of subpoenas duces tecum and any other discovery method available under the rules (Rule 58, Ariz. R. Sup. Ct.). Failure by the respondent to respond or participate in the investigation is a violation of Rule 54(e), Ariz. R. Sup. Ct., and may lead to additional disciplinary action. The respondent is given the opportunity to provide all necessary information regarding the bar charge. The respondent’s response is forwarded to the person who submitted the bar charge, who is now referred to as the complainant. The complainant has the opportunity to respond to the respondent’s response.

Once bar counsel has sufficient information for a recommendation on how the bar charge should be resolved, bar counsel will prepare a report of investigation which is also sent to the respondent. The recommendation may consist of a dismissal with comment, admonition or probable cause order. The report of investigation is sent to the Attorney Discipline Probable Cause Committee (ADPCC) for presentation and review. The respondent has an opportunity to respond to the report by writing a letter to ADPCC. The proceedings before ADPCC are closed to the public and consist of a panel. Pursuant to Rule 50, Ariz. R. Sup. Ct., the panel consists of nine members who consist of six active members of the SBA and three public non-lawyer members. The rules provide that the public members have the same rights and duties as the six lawyer members. ADPCC will review the facts presented by each bar counsel and determine if they will follow the bar counsel’s recommendation, increase or decrease the sanction, issue probable cause orders or dismiss the charge. Should ADPCC issue a probable cause order, it provides bar counsel with the authorization to file formal charges against the respondent in the form of a complaint.

Upon the issuance of a probable cause order, bar counsel will prepare and file a complaint before the Presiding Disciplinary Judge (PDJ). The PDJ must schedule and hold a hearing on the matter within 150 days from the filing of the complaint. The respondent has 20 days to respond to the complaint in the form of an answer.

As mentioned above, the initial process is intake and it is designed with two goals in mind: 1) to resolve the majority of the bar charges at the earliest stage and 2) to quickly move serious charges to investigation. The SBA increased the number of A/CAP counsel from two to five and formalized the procedure for handling new bar charges. Prior to the rule changes, A/CAP counsel would quickly review the bar charge to make sure it is an issue that the SBA has jurisdiction over, and then the case would be referred to investigation. A/CAP now has the ability to resolve many minor bar charges with a phone call, which allows them to refer the more serious bar charges to investigation.

Another change in the process was the establishment of ADPCC. The prior system required bar counsel to make recommendations to the Attorney Discipline Probable Cause Panelist, which consisted of one attorney. The new committee provides the opportunity for a non-lawyer to be part of the process.

In addition, the rule changes also established the Office of the Presiding Disciplinary Judge (PDJ) and a hearing panel. The hearing panel consists of the PDJ, an attorney and a non-lawyer. The panel hears the case and submits a decision and order within 30 days of the hearing. After the appeal time has lapsed, the hearing panel's decision and order is final. The hearing panel allows for a more uniform process and, with the public member, the opportunity for the public to participate. In a brief discussion with Amy Rehm, deputy chief bar counsel at the SBA, who relayed that having a designated judge who is familiar with the process allows for more consistent and predictable rulings. Prior to the rule changes the hearing officer could be any active member of the SBA, and many times he/she did not have any experience regarding disciplinary matters. The recommendations from the hearing officer would not be consistent with other similar bar charges. Thus, the hearing panel and judge provide consistency.

On May 6, Paralegal Division members and their friends and family volunteered at the Special Olympics Summer Games in Glendale. I would like to extend a personal thank you to everyone who joined us and made it a successful volunteering event! Please join us on June 5 and 7 for “Navigating the Web of the Family Law Case Without Being Caught by the Spider.” This is a two-part CLE for three credit hours. The presenters, Tara Hughes and Kerrie S. Trindle, have many years of experience preparing family law cases for trial and post-decree issues. Division meetings are held the second Monday of each month, unless the Monday is a holiday, then it will be held on Tuesday. All members are invited to attend the meeting. Our next meeting is June 12 at 5:30 p.m. at the MCBA office. I look forward to seeing you there!
Special Olympics of Arizona

MCBA Paralegal Division members and their families volunteered at the Special Olympics Summer Games held on May 6 at Raymond S. Kellis High School in Glendale.
The next time you break bread, leave with a sharp saw

Last month, members of the office’s administrative staff held a potluck. Typical of Phoenix, a “spring” potluck happens on a day when temperatures flirt with triple digits, meaning everything happens indoors. Typical of a government agency, we kept things in-house by transforming our training room into a picnic atmosphere by rearranging tables and trading the hot sun for the soft glow of fluorescent tube lights. While eating homemade food is always welcome, the bigger goal was togetherness.

Without being able to identify an authoritative source, it seems “breaking bread” with those around you is as old a human tradition as any. And breaking bread itself can be a challenge when a room full of people includes vegans, paleo, carb avoiders, gluten-free individuals, and others along the endless spectrum of dietary needs and experimentation. Actual breaking of bread quickly becomes a metaphor for sharing ideas and experiences.

Office get-togethers often start with work small talk because work is the team’s common thread. Food and shared space make it easier to transition to actually knowing your co-workers. When clerk staff starts talking about family vacations, whose kids are graduating this year and the best escapes from the summer heat, the fast-paced, work-based mind gives way to a more laid-back, natural and receptive mind. In the clerk’s office, these get-togethers lead to new partnerships, friendships and ideas — and can reinvigorate personal and work projects.

Sparks fly when, during a thousand different conversations, seemingly wild ideas make their way into office practices. While it’s unlikely anyone would willingly bring up the clerk’s strategic plan during a social get-together, someone’s experience at a national park or a movie theater might start to turn the unconscious wheels of how the clerk’s office can incorporate new features into office practices. Things like how people reserve camping spaces in advance or how they buy tickets online can find their way into the clerk’s goals of taking payments online and scheduling appointments for passport applications. Although the clerk has mandates and guidelines, there is a lot of space for creativity and innovation between the markers.

Government and the judicial branch can be seen as slow to change and downright opaque to new ideas. But motivated people tend to ignore stereotypes and others’ perceptions. It’s important to pull people out of their daily grind and give them space to focus on who they are, who they work with and the world beyond putting out fires all the time. It’s in that space where people appreciate those around them and the bigger picture of individual contributions that keep this public service machine burning clean and efficient.

Stephen Covey’s seventh habit for being highly effective is sharpening the saw. Without trying to cover each habit here, the clerk’s office strives to think strategically, work toward goals, know who we are and who we work with, and to really understand why we do what we do. The seventh habit is about continuous improvement, which requires maximizing our personal and professional interactions. What better reason to sharpen your saw than to cut into some treats from time to time with your team? ■

Beware the capital letters

Has anyone noticed the proliferation of capitalized terms lately? A reader recently sent me a note saying he was frustrated by the capital letters “sprinkled throughout documents like rainbow candies on a sugar cookie.”

I feel the same pain. Here is a sentence I recently encountered: “Either the State or Federal Government should address the Constitutional issue.” To me, this sentence read like a contemporary book title or a fancy new name for a rock band. Most legal writing style experts and guides advise against this type of random capitalization. First, too many capital letters impede readability. Second, too many capital letters means the reader cannot tell what, if any word, should be highlighted or is a proper noun. My advice is to embrace a light hand when choosing which words to capitalize. Following are some helpful guidelines.

**State:** Capitalize this word if (1) the citation rules require it, such as when the state is a party to the litigation; (2) if the word is part of a formal title (State of Arizona); (3) if the word is used as a shorthand reference to the formal title. Do not capitalize the word if using it as a common noun.

Each state should adopt the new rules.

**Federal:** Only capitalize this word if it part of a title (Federal Rules of Evidence). Otherwise, this word should be lowercase.

**Constitution/Constitutional:** Capitalize “Constitution” if part of a formal title or as a shorthand reference to the formal title (Arizona Constitution). Do not capitalize this word if used as a common noun.

*He does not have the constitution to finish the project.*

Do not capitalize the adjective “constitutional” because its corresponding noun is not exclusively a proper noun, per Bryan Garner and other legal writing experts.

There is no constitutional basis for the argument. These same guidelines apply to other official-sounding nouns and adjectives: capital, congress, congressional, legislature and legislative. ■

**On Law Day, May 1,** a free CLE panel discussion about the 14th Amendment was held at the Beus Center for Law and Society at ASU’s Sandra Day O’Connor College of Law. Thank you to the MCBA Law Day committee and panel of guests for a successful event.
The benefits of using a virtual paralegal

By Brenda Studebaker

In today’s economy, more and more corporations and law firms are now realizing the benefits of using virtual services. Everything from bookkeeping to transcriptionists to medical coding — and, yes, even paralegals can work virtually. Attorneys and law firms are taking full advantage of this upward trend by hiring virtual paralegals, which can help them limit overhead costs, maintain more profits and even help their clients stay within their budgets.

What is a virtual paralegal and how does it work?

A professional virtual paralegal maintains an office with everything he/she needs to perform the duties of an employee paralegal. Most often when hiring a virtual paralegal, you will find they work very similarly to that of a paralegal who works remotely. One big difference is the virtual paralegal will incur the cost of maintaining a complete office — from having a law library based on their areas of expertise to having access to references such as LexisNexis or Westlaw for cite checking and researching.

When the right person is hired, a professional virtual paralegal is no different from having a paralegal down the hall. They can answer phones and emails promptly and be able to attend in-person meetings, depositions, trials, travel and everything in between.

Benefits of using a virtual paralegal

There are many benefits for using a virtual paralegal versus your firm hiring an additional paralegal. Most often, the solo practitioner and/or law firm may not be in a position or have the need to hire a full-time or part-time paralegal. When hiring a virtual paralegal, the attorney/law firm will benefit in several ways. Here are just a few things the attorney/law firm will eliminate:

- overhead cost
- costs for training new employees
- health insurance, retirement, unemployment taxes, social security, CLE, overtime, vacation, personal time, etc.
- office space, equipment, law books, research account, etc.

When to consider hiring a virtual paralegal

Most often, when the attorney and/or law firm decides there is the need for extra paralegal help, hiring a virtual paralegal can be the best decision made. Whether the need ranges from a one-time project/assignment or something ongoing, their employee paralegal will be out of the office for a length of time, their employee paralegal needs an extra hand due to the current caseload or because it is not in the budget to hire an employee.

Brenda Studebaker has been a senior litigation paralegal for over 20 years. She can be reached at brenda@studebakerparalegalservices.com or studebakerparalegalservices.com.
As managing partner at your firm, why do you encourage associates to get involved with the MCBA?
I encourage associates to get involved with the MCBA so they can take advantage of the great CLE, develop professional relationships early in their careers, give back to the community in meaningful and well-organized ways, and take advantage of networking opportunities.

What do you like most about being in the legal field?
I enjoy helping people through a process that many find overwhelming and difficult. I also like when I can bring creativity and imagination to solving problems.

If you weren’t an attorney what would you be?
The answer would change depending on what point in my life I answered the question. If asked to consider what I would have been earlier in life, I would have loved to be the executive editor of a fashion magazine. If you asked me what I might do at this point in my life if I no longer practiced law, I would like to write a book.

What is the craziest job you’ve had?
I have not had a lot of jobs, but the craziest would have to be the summer I worked at Adventureland Amusement Park in Addison, Ill., when I was 16. I worked in the games, which I really disliked.

If you were a character in a movie or TV show, which character would you be?
As a movie fanatic, I have a hard time providing a singular example. I might be Miranda Priestly in “The Devil Wears Prada,” for the hairstyle, wardrobe and ability to sit in the front row at New York and Paris fashion weeks. Alternatively, I would probably be Esther Hoffman Howard (if it meant I could sing like Barbra Streisand) in “A Star is Born.” Or, who wouldn’t want to fly to a Technicolor world, melt a wicked witch and sing “Somewhere Over the Rainbow” as Dorothy did in “The Wizard of Oz”?

HELEN R. DAVIS
Area of Practice Family Law
MCBA MEMBER SINCE 1997

What are your hobbies or interests?
I love movies and review movies on Facebook. Not surprisingly, given my last answer, I also love to write and maintain a blog about my experience with breast cancer (immunetobreastcancer.blogspot.com). I also enjoy travel, entertaining and fashion.

MCBA MEMBER SINCE 1997

KUDOS TO THE 2017 100% CLUB MEMBERS!
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Maricopa Lawyer
ARCHIVAL PROJECT
Calling all loyal readers and history buffs!
The Maricopa Lawyer is trying to assemble a complete archive of all MCBA monthly newsletters published since 1956 (or earlier if they exist) and all editions of the Maricopa Lawyer published since October 1982.
If you have historic copies of either and are willing to share your collection with us, contact Stan Watts at watts@dwlaw.net or 602-279-7488. Thank you!
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.
SPOTLIGHT ON

Marson MEDIA)

Not to sound cliché, but your voice does matter — and count

The legislative session is over and much of the hundreds of bills passed during the nearly four months lawmakers met under the copper dome become law in the summer.

And while it’s said that the people of Arizona are never safe while the legislature is meeting, the interim time between sessions provides a good opportunity for lawmakers and activists to conjure fresh ideas.

It may be June, but it’s never too early to start coming up with new concepts for the next legislative session.

And as lawyers, there are few groups more qualified to assist or more impacted by the outcomes of the legislature’s work.

Every one of you is represented by three people at the legislature — two representatives and one senator. You have a powerful voice and can hold the attention of at least three of the 90 legislative members.

Legislators of all political stripes know that constituent services are one of the most important aspects of serving in office. Personal correspondence, by phone or email, with a legislator makes a significant impact. Mass emails that contain cut-and-paste statements get little attention from a lawmaker that is inundated with communications from a wide variety of sources.

Legislators face voters every two years. They are almost always in campaign mode. The men and women who serve us are always looking for ways to meet constituents in casual circumstances. They want to brag about themselves and their accomplishments. They know that personal contact will make a person more likely to vote for them come the August and November elections.

Meetings or other personal contact with a legislator makes a real impact. Getting to know your hometown legislators takes little time but pays dividends in the future. Lobbyists paid to push an issue get their due at the capitol, but constituents who share their thoughts and insights on legislation get particular attention.

Take the time between legislative sessions to get to know your lawmakers. Set a meeting with them and make it at a casual place like a coffee shop. Do some homework and learn who they are prior to a meeting. Show them you are a concerned and educated constituent. Lawyers are one of the few groups who understand the law. Use that knowledge to help steer legislation in the future.

Absence may allow the heart to grow fonder, but don’t let legislators forget you are there. Now is the time to prepare for the new laws you want to see written and approved next year. Go to azleg.gov to find your legislator and make your voice heard.

Barrett Marson

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Q&A

A healthy reminder about joint representations

By Russell Yurk

I’ve periodically referenced the concept of joint representations, but it’s been awhile since I devoted a column to the topic.

In my experience, joint representations are one of the most often mishandled representations for an ethically competent lawyer.

So, what is a joint representation? Quite simply, a joint representation exists when one lawyer (or law firm) represents two or more clients in the same matter. Examples are abundant: Employer and employee; co-owners; business partners; husband and wife; co-insured individuals. Recognizing that you are facing a joint representation is the first step to handling it properly. If you are representing a husband and wife (even if only for community property purposes), you have a joint representation. If you are representing a lawyer and his or her law firm, you have a joint representation. If you are representing a county agency and a government employee, you have a joint representation.

There are obvious advantages to a joint representation (primarily lower costs and a unified front), but too few lawyers and clients pay enough heed to the disadvantages and risks. Joint representations raise several unique issues. Here are just a few examples.

There is no duty of confidentiality between the clients because lawyers also owe a duty of communication to both clients. See ER 1.7 cmts. 29-30. Alexander v. Superior Court, 141 Ariz. 157, 685 P.2d 1309, 1314-15 (1984). Second, any of the jointly represented clients generally can waive confidentiality or the attorney-client privilege as to all parties. Id. Third, should a conflict arise during the case, or if one of the jointly represented clients withdraws their consent, ethical rules might prohibit the lawyer from continuing to represent any of the other jointly represented clients, which may increase costs and delay. See ER 1.7 cmt. 28.

Because of these issues, all joint representations are considered conflicts of interest, but most are waivable. Lawyers will need to determine if a joint representation conflict is waivable on a case-by-case basis. See ER 1.7(b).

If the joint representation is waivable under ER 1.7(b), then the lawyer must secure informed consent from each jointly represented client, confirmed in writing.

Informed consent requires the lawyer to communicate “adequate information and explanation about the material risks and reasonably available alternatives to the proposed course of conduct.” ER 1.0(e). In other words, each of the clients must fully understand the risks of a joint representation before giving informed consent, confirmed in writing. ER 1.7(b); ER 1.0 cmts. 6-7. Ethics Op. 07-04 contains an excellent discussion of the issues that should be discussed with clients before consenting to a joint representation.

Finally, remember that conflicts can arise during the course of a representation that were not present at the beginning. One common example is a substantive difference in testimony. Two clients may testify very differently regarding corporate policy or key events in the litigation. If the testimony or prior statements of one client can be used to impeach the other, a new conflict of interest has arisen that might prevent continued representation of both clients.

Differences in settlement positions can also lead to conflicts of interest. Aggregate settlements of claims against jointly represented clients require each client’s written informed consent to the settlement. ER 1.8(c). The same risk might arise if the jointly represented clients have different positions on settlement negotiations.

In the end, lawyers need to recognize when they are undertaking a joint representation, make the appropriate disclosures and secure informed consent from each client. Even then, lawyers must remain vigilant of potential conflicts that might arise during the representation and remain mindful that any jointly represented client can withdraw their consent at any time. If considered and handled properly, joint representations can be beneficial to the clients. But if not properly recognized or handled appropriately, they can be detrimental to all.

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 and is an adjunct professor of law at the Sandra Day O’Connor College of Law.

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INSIDE THE COURTS

CANVAS: The Power of Art

Probationers don’t always see coming to court as a positive experience. But since Commissioner Wendy Morton started the CANVAS (Creating Art, Nurturing, Vision, Achieving Success) in January, participants in the CANVAS program may look forward to their next court date.

Through CANVAS, Morton found a way to connect with probationers through art. “In mental health court, I wanted to engage people on a different level. Court should be more than telling people what they did wrong,” she says.

For Morton, who has been passionate about art and writing since she was a kid, inspiration came from a memorable court appearance. She recalls a hearing where a young man in mental health court, who was using drugs, would skip his court appearances to hang out at a city park.

“When the young man finally appeared in court, I asked him what he did in the park,” Morton says. “He told me that he was writing a book. So I asked him to write me a chapter for every court appearance. From that moment, he would come to court rather than go to the park.”

As a result of this case, Morton realized that art might be used for healing and as a motivating tool to get probationers back on track and attend court.

To encourage interested probationers to enroll in the program, Morton sought out community partners to help probationers find ways to be creative in the community. Participants don’t need formal training or skill level to be in the program; they must simply enjoy creating art.

From painting to jewelry making, the community partners offer a variety of opportunities for the participants. The list of partners includes: Friends of the Court, Art Awakenings, Phoenix Office of Veterans Affairs, Hope Lives, REN, RI International, Fairs, Hope Lives, REN, RI International, Awakenings, Phoenix Office of Veterans Affairs, Hope Lives, REN, RI International, AZ Art Alliance, AZ Artist Guild and Sonoran Arts League. The program is grant funded and at no cost to the court.

CANSAS, which is used in mental health and veterans court, is expected to expand to all specialty courts. According to Morton, the goal is to someday offer a set schedule of art classes, establish a directory of community partners and create a travelling art exhibit or gallery in court buildings for participants to display their artwork.

Currently, there are 13 probationers participating in the program. Upon their acceptance, they receive a sketchpad and a CANVAS T-shirt.

“CANSAS is whatever the participant makes of it,” Morton says. “We are here to be a cheerleader for participants, whether they decide to enroll in art therapy classes or draw in their sketchpad. The intent is to create a positive environment where participants have an opportunity to succeed.”

Judicial staff Catherine Soileau (left) and Marie Riggatti proudly display a banner with the CANVAS logo. The logo was designed by Commissioner Wendy Morton.

Q&A with Karen Arra

After 28 years with the Superior Court of Maricopa County, Media Relations Director Karen Arra retires on June 2. Here, she talks about her long-standing career working in government communications.

Q: Your first day on the job. Do you remember what it was like and how you felt?
A: The Public Information Officer (PIO) office was located in the basement of the East Court Building. It was a huge open space that staff called the “Bat Cave.” The PIO office shared the space with jury office staff and one of the secretaries that handled the budget. It was very loud and the basement smelled moldy and damp. It was not a great first impression.

Q: Can you describe a particularly memorable case or story that you worked on?
A: State v. Jodi Arias. This case started out like any other murder case but then gained momentum about a month before trial. We had no idea we would be flooded with requests from local, national and international media all wanting seats in the courtroom and constant case updates, plus live gavel-to-gavel TV coverage. The case seemed to explode overnight and so did the public’s interest in the case. I don’t really know how we were able to handle all the requests, issues in the courtroom, and other job duties and responsibilities.

Q: What is something that you wish other people knew about life as a PIO/Media Relations Director for the superior court?
A: It is a very stressful job and everything you say and do is a reflection on the court. You are constantly quoted as the court spokesperson so you have to be accurate and able to explain court procedures and legal issues.

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Applications being accepted for a vacancy on Division One of the AZ Court of Appeals

Applications are being accepted for a vacancy on Division One of the Arizona Court of Appeals, created by the retirement of Judge Donn Kessler. The Commission on Appellate Court Appointments will review applications, interview selected applicants, and recommend at least three nominees for the vacancy to Gov. Doug Ducey.

The judicial application has been revised and includes all new instructions and questions. The new application can be downloaded at accounts.gov/iae. Applications may also be obtained from the Administrative Office of the Courts, Human Resources Department, 1501 W. Washington, Suite 221, Phoenix, AZ, 85007, by 5 p.m. on June 30, 2017.

The commission, at its discretion, use the applications filed for this vacancy to nominate candidates for any additional vacancies known to the commission before the screening meeting for this vacancy is held. All meetings of the Commission on Appellate Court Appointments are open to the public.

Division One of the Court of Appeals hears cases arising in Apache, Coconino, La Paz, Maricopa, Mohave, Navajo, Yavapai and Yuma counties.

The new judge will be paid $152,250 annually.

Q: Is there someone who has inspired, motivated or mentored your career?
A: So many people have inspired and mentored me throughout the years. I have learned something from every judicial officer I have worked with. They all have taken time to explain complex legal issues and helped me whenever I needed advice or direction. Court staff and judicial staff also have taught me many things and helped make my job so much easier by providing me with information and answering my questions.

Q: What are you going to miss the most and the least about your job?
A: I will miss working with all of the wonderful judicial branch employees who have made my job so much easier. Some of the trials in our court concern matters that are horrific or tragic. Hearing these stories can take an emotional toll on a person. I will not miss this part of the job. Working with the media can also be very stressful because of the constant demands and deadlines. However, I am very proud of the relationships I have developed with local and national media throughout the years. I have made some great friends and worked with some of the top talent in the profession.

Q: Do you have any words of advice for someone who wants to get into your line of work?
A: There are very few positions like mine. Not all court systems have public information officers or community outreach staff. It is a great opportunity for someone who enjoys drama, law and public records requests!

Q: What’s next for you? What is your retirement plan?
A: Other than travel plans, I hope to have no plans! I need time to decompress.
JUNE 1 • 11:30 A.M. TO 1 P.M.  
(Lunch included)

Representing Families Who Are, Were or Want to Be a Placement for a Child in DCS Custody

Sponsored by: Family Law Section

1.5 CLE: credit hours available, of which 1.0 is ethics.

Presenters will explain the legal options for kinship, relatives and foster parents to be involved in a dependency matter filed by the Department of Child Safety.

- DCS legal requirements for visitation and placement with relatives and kinship.
- Filing a Notice of Right to Participate for Family — including sample pleadings.
- Tips for placements on working with DCS, including serving as the safety monitor.
- Review of case law on intervention as a party in a DCS matter.
- Practical considerations for placements to keep them out of trouble.

Presenters: Jennifer Kupiszewski, Kile & Kupiszewski, PLLC; Lynda Vescio, Vescio Law Firm, PC.

Cost: (Early Bird Pricing/Regular Rate):
- MCBA members: $90/$105
- MCBA Family Law Section members: $80/$95
- MCBA Paralegal & Public Lawyer Division members: $75/$80
- Non-members: $125/$140
- MCBA student members: $15/$15
- Bring your paralegal/legal assistant: $30/$45

Early bird pricing ends May 29

JUNE 6 • NOON TO 1:30 P.M.  
(Lunch included)

How to Navigate MVD and the Administrative Hearing Process

1.5 CLE: credit hours available

Learn from a former AJ and the former chief presiding AJ about how to successfully navigate the bureaucracy of MVD and get tips to help you get a successful outcome for your client at the Executive Hearing Office. If you represent clients with driver's license issues, tax assessments, AZDOR or DUBs, you won’t want to miss this rare opportunity to learn from those who know firsthand how complicated the MVD can be!

Presenters: Allison Schneck, Former Chief Administrative Law Judge, MCBA Executive Director; Mark White, Former Leader Administrative Law Judge, Attorney, Alcock & Associates

Cost: (Early Bird Pricing/Regular Rate):
- MCBA members: $90/$105
- MCBA Paralegal & Public Lawyer Division members: $85/$95
- Non-members: $125/$140
- MCBA student members: $15/$15
- Bring your paralegal/legal assistant: $30/$45

Early bird pricing ends June 2

JUNE 8 • 3 TO 5 P.M.  
Networking 5 to 6 p.m. (appetizers and drinks available)

Trial Skills CLE Series and Networking Event: Direct and Cross Examinations; Opening and Closing Statements

Sponsored by: Litigation Section

2 CLE: credit hours available, of which 1 is ethics.

This seminar is designed to benefit litigators of all experience levels and backgrounds, including plaintiff and defense civil litigators, prosecutors, criminal defense attorneys, young lawyers, and senior lawyers looking for fresh or diverse perspectives on direct and cross examinations and delivering opening and closing statements. This two-hour CLE may particularly benefit new attorneys without courtroom experience and law students.

Attendees will have the opportunity to hear perspectives and practice pointers from litigators with substantial trial experience—specifically, regarding effective examination techniques, opening statements, and closing arguments. Attendees will learn the “golden rules” of trial practice and cautionary tales from real-world experience. The panel’s discussion will include an audience participation segment in which CLE attendees can try their hands at direct and cross examinations and openings/closings from the fact pattern and receive constructive criticism and unique-to-attendee tips from the panel.

Presenters: Geoff Balon, Maricopa County Attorney’s Office; Adam D. Martinez, Rose Law Group, PC; Joseph A. Schenk, Aiken Schenk Hawkins & Ricardi, PC; J. Tyrrell “Ty” Taber, Aiken Schenk Hawkins & Ricardi, PC.

Cost: (Early Bird Pricing/Regular Rate):
- MCBA members: $100/$115
- MCBA Litigation Section members: $90/$105
- MCBA Paralegal & Public Lawyer Division members: $70/$85
- Non-members: $150/$165
- MCBA student members: $15/$15
- Bring your paralegal/legal assistant: $30/$45

Early bird pricing ends June 2

JUNE 14 • NOON TO 1:30 P.M.  
(Lunch included)

Seven Things Every Lawyer Needs to Know About HOAs

1.5 CLE: credit hours available

Why do we need them? Why do we hate them? Dealing with HOA can be difficult and complex. Attendee will learn about the most commonly misunderstood, misinterpreted, and overlooked laws, obligations and rights regarding HOAs.

Presenters: Josh Bolen, Carpenter Hazelwood Delgado & Bolen, PLC

Cost: (Early Bird Pricing/Regular Rate):
- MCBA members: $90/$105
- MCBA Paralegal & Public Lawyer Division members: $65/$80
- Non-members: $125/$140
- MCBA student members: $15/$15
- Bring your paralegal/legal assistant: $30/$45

Early bird pricing ends June 2

JUNE 16 • NOON TO 1:30 P.M.  
(Lunch included)

Clients Behaving Badly! React Ethically!

1.5 CLE: ethics credit hours available

What do you do when your client is acting out? Let’s talk about how you handle it if your client isn’t following your instructions; threatens you with a bar complaint; reinvents history that you’ve already put in a pleading; doesn’t pay you or gives you a hot check; is engaging in conduct that results in the cops calling you for information; threatens to harm themselves or someone else; or complains about you on social media. If you’re in litigation, what if the court doesn’t let you withdraw?

Presenters: Patricia A. Sallen; Nancy A. Greenlee

Cost: (Early Bird Pricing/Regular Rate):
- MCBA members: $90/$105
- MCBA Paralegal & Public Lawyer Division members: $65/$80
- Non-members: $125/$140
- MCBA student members: $15/$15
- Bring your paralegal/legal assistant: $30/$45

Early bird pricing ends June 9

JUNE 21 • 9 A.M. TO NOON  
(Breakfast included)

A Balanced Discussion of Real Estate Litigation from the Perspectives of Owners, Lenders and Title Insurance Professionals

Sponsored by: Real Estate Law Section

3 CLE: credit hours available

This program will include a balanced discussion of some of the more common claims among such general topics as:塬owner/property owner vs. tenant disputes; lender/owner disputes; lender/contractor disputes; and lender/property owner disputes. The perspectives brought to the table come from the human beings involved in each topic and the perspective they bring to the table.

Presenters: Paul Adamson, Attorney at Law; Nancy Lee; James A. Paim; Tracy S. Pulaski; Cynthia A. Salazar

Cost: (Early Bird Pricing/Regular Rate):
- MCBA members: $90/$105
- MCBA Paralegal & Public Lawyer Division members: $65/$80
- Non-members: $125/$140
- MCBA student members: $15/$15
- Bring your paralegal/legal assistant: $30/$45

Early bird pricing ends June 9
and defenses raised in real estate litigation and potential ways to resolve them. The issues addressed will include recent developments related to boundary disputes, lien priority disputes, equitable subrogation, junior lienholder rights, foreclosure issues, unique issues related to leases and Tribal land, and how title insurance companies analyze and process title claims. The program will conclude with a roundtable question-and-answer session so that the audience may get a global response to their questions from the presenters.

PRESENTERS: Kevin Nelson, Tiffany & Bosco, PA; Ari Ramras, Ramras Legal, PLC; John Lotardo, aka the TITLEMAN™, First American Title Insurance Company

**COST:**
- Early Bird Pricing/Regular Rate:
  - MCBA members: $135/$150
  - MCBA Real Estate Law Section members: $120/$130
  - MCBA Paralegal & Public Lawyer Division members: $90/$105
  - Non-members: $205/$230
  - MCBA student members: $15/$15
  - Bring your paralegal/legal assistant: $30/$45

Early bird pricing ends June 14

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**JUNE 2017 Calendar**
All events at MCBA office, unless otherwise specified.

1. CLE: Representing families Who Are, Were or Want to be a Placement for a Child in DCS Custody 11:30 AM-1 PM
2. Construction Law Section Board Meeting Noon-1 PM
3. Estate Planning Section Board Meeting 7:30-8:30 AM
4. Litigation Section Board Meeting Noon-1 PM
5. MCBA: Navigating the Web of the Family Law Case without Being Caught by the Spider 5:30-7 PM
6. CLE: How to Navigate MVD and the Administrative Hearing Process Noon-1:30 PM
7. Young Lawyers Division Board Meeting Noon-1 PM
8. CLE: Ethics in Digital Evidence Collection: How to Get it and Have it Admissible Noon-1:30 PM
9. Membership Committee Meeting 12:15-1:15 PM
10. Paralegal Division Board Meeting 5:30-6:30 PM
11. Personal Injury Law Section Board Meeting Noon-1 PM
12. Solo/Small Firm Division Board Meeting Noon-1 PM
13. Bankruptcy Section Board Meeting 7:30-9 PM
14. Environmental Section Board Meeting Noon-1 PM
15. CLE: Seven Things Every Lawyer Needs to Know About HOAs Noon-1:30 PM
16. Employment Law Section Board Meeting Noon-1 PM
17. Criminal Law Section Board Meeting Noon-1 PM
18. CLE: Clients Behaving Badly! React Ethically! Noon-1:30 PM
19. Family Law Section Board Meeting Noon-1 PM
20. CLE: A Balanced Discussion of Real Estate Litigation From the Perspectives of Owners, Lenders and Title Insurance Professionals 9 AM-Noon Voluntary Lawyers Program Board Meeting Noon-1 PM
21. Corporate Counsel Division Board Meeting Noon-1 PM
22. MCBA: Mediation for Beginners Noon-1:30 PM
23. CLE: Ethics and Mindfulness for the Probate Practitioner 4:30-5:30 PM
24. Maricopa Lawyer Editorial Board Meeting 5:15-6:15 PM
25. Real Estate Section Board Meeting Noon-1 PM
26. CLE: Ethic Issues in Construction Law Noon-1 PM
27. Ted Talks 5:30-7:30 PM
28. Maricopa County Bar Foundation Board Meeting 7:30-8:30 AM
29. Managing Partner Breakfast and CLE 8-9:30 AM Phoenix Country Club

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**TUESDAY JUNE 27, 2017 5:30-7:30 PM at the MCBA office**
TOPICS: 
"How to Speak Up for Yourself "
"How to Judge a Strength, Not a Weakness"
"Who's My Client? Who's Paying My Bills?
"What's the Scope of the Representation?"
"What’s the Priority?" "When do I raise the attorney-client privilege?"
"How can I better understand the emotions and stress of my client?"
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When she retired from the Maricopa County Attorney’s Office last fall, attorney Judith C.R. O’Neill had been an active member of the Volunteer Lawyers Program (VLP) for two decades. She had already been the recipient of pro bono awards, including the distinction of being recognized by the Arizona Foundation for Legal Services and Education in 2007 as among the Top 50 pro bono attorneys in the state. Not resting on her laurels, once retired, O’Neill wanted to volunteer more, and more often. For her continuing exemplary commitment, VLP is currently honoring her as “Attorney of the Month.”

Reflecting on how she came to be an attorney, O’Neill says with a smile, “Both my parents were teachers, but when I graduated from Indiana University-Bloomington with an undergraduate degree in history, I felt teaching wasn’t in my future. Brief employment as a claims adjuster didn’t inspire me to pursue a career in the insurance industry. Further education appealed to me, but I had an aversion to the idea of writing a master’s thesis. Instead, I applied to law school. Ironically, had I known any lawyer, they would have told me writing and practicing law are inseparable.”

There are two prominent memories O’Neill carries from her years in law school. She remembers there was a growing acceptance of women into law schools — her class at American University in Washington, D.C., was comprised of about 10 percent of women. Although the “War on Poverty” had been declared by President Johnson years before, she also recalls there were only a few legal clinics where law students could participate.

“No one talked about legal services for the poor,” she says.

By Peggi Cornelius, VLP Programs Coordinator

O’Neill had attended American University because she was newly wedded and her husband was working in D.C. After her graduation, they decided to make a home elsewhere. Her husband was the first to find employment in Scottsdale, Ariz. Opportunities for women lawyers were not as prevalent, but she soon began working at the Maricopa County Attorney’s Office. While criminal law hadn’t been her first interest, she enjoyed trial work and eventually focused on child abuse and domestic violence cases. She was gratified when she helped to write the child abuse statute which became Arizona law. She had found her calling in criminal law, but being a lawyer offered her other avenues for service, too.

As a member of several community and legal groups, O’Neill met colleagues practicing in the civil arena. At a meeting of one of the groups, she heard a presentation by VLP Director and attorney Patricia Gerrich.

“Pat was recruiting volunteers, and one of the options to help was a unique opportunity for public attorneys to participate in pro bono work that would not pose a potential conflict of interest,” she says. “Between 1996 and 2016, I regularly conducted initial fact-gathering interviews with people seeking legal assistance from volunteer attorneys. The evaluation of their potential cases did not involve direct advice or representation, but afforded me the chance to be instrumental in helping them apply for help. It was often a chance to educate them about their legal rights. One of the greatest needs is for public education about indebtedness and collection practices. For instance, I was appalled that some collectors threaten people with debtor’s prison, or such things as taking the family pet for failure to pay a debt. You might say I became the ‘Debt Doctor’ of VLP.”

As she approached retirement, O’Neill was enthusiastic about the possibility of new opportunities for pro bono work. Because Arizona suffers from a shortage of affordable and habitable housing, tenants are among the most frequent applicants for legal advice and assistance at VLP. O’Neill studied the Arizona Residential Landlord and Tenant Act and spent time observing volunteer attorney Peggy LeMoine during advice clinics. She has made a weekly commitment to conduct advice interviews with tenants, and now has the option to provide brief assistance or represent them when she believes the case is compelling. She enjoys and expresses gratitude for the collaborative relationships offered by other volunteer attorneys like Peggy, as well as VLP staff members like Maria Fulgencio.

“VLP gives me the chance to broaden my legal knowledge while helping some of the many people who cannot afford to pay for legal service,” she says, of her long career and commitment to community service. “I am very impressed with the private attorneys who donate so much of their time to helping the disadvantaged. I hope to continue doing this for as long as I can.”

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The Volunteer Lawyers Program provided $3,285,147 in economic benefit to families through cases completed during 2016. Thanks to all who participated and supported VLP!

**Volunteer Lawyers Program Thanks Attorneys**

The Volunteer Lawyers Program thanks the following 22 attorneys and firms for agreeing to provide pro bono representation on cases referred by VLP to help people with low incomes. VLP supports pro bono service of attorneys by screening for financial need and legal merit and provides primary malpractice coverage, donated services from professionals, training, materials, mentors and consultants. Each attorney receives a certificate from MCBA for a CLE discount. For information about ways to help, please contact Pat Gerrich at VLP at (602) 254-4714 or pgerrich@chaz.org.

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**PRO BONO SPOTLIGHT ON CURRENT NEED**

Experienced family law attorneys are needed to provide legal advice and brief help to unrepresented family law litigants at VLP’s Family Lawyers Assistance Project (FLAP) at Superior Court locations.

The Volunteer Lawyers Program is a joint venture of Community Legal Services and the Maricopa County Bar Association

Welcome, Sustaining Members!

The MCBA is proud to welcome the following attorneys who have joined the association as Sustaining Members for 2017:

- Barbara R. Berman
- Bruce L. Bauman
- Kay Bigelow
- Laura Kay Chapman
- Michael A. Curtis
- James C. Duson
- Magaly Fontes
- Kina Harding
- James R. Harrison
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- Hon. Carey Snyder
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- Joseph S. Kelly
- Jack Levine
- Charles F. Myers
- Rich J. Peters
- Donald W. Powell
- Michael Radosevich
- James T. Rayburn
- Terrie S. Rendler

(List updated May 16, 2017)

For a single payment of $500, Sustaining Members receive unlimited attendance at in-person Continuing Legal Education programs and other benefits for the current membership year. For more information or to become a Sustaining Member, please contact Membership Coordinator Cynthia Quinn at 602-682-8582.

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St. Mary’s Food Bank event

MCBA members and their families and friends volunteered at the St. Mary’s Food Bank Pack and Sort event on April 29. With their help, the food bank was able to feed 1,440 families.

THE BULLETIN BOARD

News from the legal community

The Maricopa Lawyer invites members to send news of moves, promotions, honors and special events to post in this space. Photos are welcome.

Send your news to maricopalawyer@maricopabar.org.

HONORS & AWARDS

Congratulations to Kina Harding and The Harding Firm for being among the finalists nominated for the 2017-2018 Annual Business Woman of Year Award and Business of Year Award by the Gilbert Chamber of Commerce. Harding is a skilled attorney who is dedicated to helping her clients in their family affairs. She will further her litigation and trial practice at The Harding Firm as it expands to include adoption and collaborative dissolution.

Jerry D. Worsham II, a shareholder of The Cavanaugh Law Firm who is licensed in Arizona, New Mexico, Texas and the District of Columbia, has recently been re-certified as a Recognized Environmental Law Specialist by the New Mexico Board of Legal Specialization, an agency of the New Mexico Supreme Court. Worsham was initially certified as an Environmental Law Specialist in May 2000 and re-certified in 2006 and 2012. In addition, he was appointed in April 2017 by The Associated General Contractors of America (AGC) to the national steering committee for the AGC’s Environmental Forum.

ANNOUNCEMENTS

The Phoenix law firm Frazer Ryan Goldberg & Arnold, LLP, has opened an office in North Scottsdale at 9933 E. Bell Road.

The new location, which opened May 1, marks Frazer Ryan’s first expansion beyond its main offices at Central Avenue and Earl Drive.

Founded in 1989, Frazer Ryan specializes in trusts and estate law, tax law, tax controversy, ERISA law, elder law and estate controversy.

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. Talks, speeches (unless they are of national stature), CLE presentations and political announcements are not accepted. In addition, the Maricopa Lawyer will not print notices of honors determined by other publications (e.g., Super Lawyers, Best Lawyers, etc.). Notices are printed at no cost, must be submitted in writing and are subject to editing. Items are printed as space is available. News releases regarding lawyers who are not MCBA members in good standing will not be printed.

Court of appeals signals

CourtWatch, continued from page 1

state had not proved that they were ongoing dangers to the community or their victims, and he therefore set bail for both. The state had evidently misunderstood the situation, and which, therefore, may involve a proposition but sufficiently analogous to lend support. Litically, ‘cf.’ means ‘compare.’ Hence, the superior court had failed to recognize that the high court was not likening the two crimes but distinguishing them. ‘Simpson II used the Cf. citation to highlight the difference between the two offenses,’ he wrote.

‘Sexual assault remains a non-bailable offense,’ Thompson concluded. ‘Where proof is evident or the presumption is great that a defendant committed sexual assault, the non-consensual nature of the crime fulfills the requirement for finding inherent dangerousness.’ Joining him in granting relief to the state were Judges Randall M. Howe and Lawless. ‘Fisher v. Kealoha, 132 S. Ct. 1994, 183 L. Ed. 2d 967, 1993 WL 1532271, *3 (9th Cir., May 3, 2017) (Kozinski, J., dissenting)? Ruminating?

Yep.

In Fisher, a Ninth Circuit panel in a per curiam opinion rejected an ex-con’s Second Amendment challenge and upheld Hawaii’s refusal to restore his gun-ownership rights. Part of the plaintiff’s problem was that under Hawaii law the only way for him to have those rights restored was to get a pardon, a form of relief resting entirely in the governor’s discretion. But the court of appeals refused to consider whether that restriction violates the Second Amendment because the plaintiff had not even asked for a pardon.

Kozinski expressed some doubt that the Hawaii standard would withstand a proper Second Amendment challenge under District of Columbia v. Heller, 554 U.S. 570 (2008), writing that the governor’s “unbounded discretion sits in uneasy tension with how rights function.” “Government whim,” he added, “is the last refuge of a precarious right.”

And he predicted that a proper challenge will likely come along. “Despite what some may continue to hope,” he wrote, “the Supreme Court seems unlikely to reconsider Heller. The time has come to treat the Second Amendment as a real constitutional right. It’s here to stay.”

Nevertheless, Kozinski evidently agreed with the judgment of the other two judges, Michael Daly Hawkins and Carlos T. Bea, in rejecting Fisher’s appeal. I say “evidently” because … well … he labels his opinion neither a concurrence nor a dissent, but a rumination.
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