Conscripting lawyers to serve as arbitrators OK, Ninth Circuit says

System ‘permissible condition of the privilege of practicing law’

By Daniel P. Schaack
Maricopa Lawyer

T

he Ninth Circuit Court of Appeals has upheld Arizona’s compulsory-arbitration system, under which attorneys are required to serve as arbitrators for minimal compensation. In Scheehle v. Justices of the Supreme Court, No. 00-13452 (9th Cir., July 26, 2001), the court rejected claims that the arbitration system places Arizona attorneys into involuntary servitude and takes their property without just compensation.

Attorney Mark V. Scheehle refused an appointment to act as arbitrator in a personal-injury case in Maricopa County Superior Court. He complained that he already had devoted at least four hours to arbitrating assigned cases. He objected to the low payment—$75 for each day spent in arbitrating the case—and the lack of reimbursement for expenses such as postage and photocopying.

Scheehle argued that the system of court-appointed arbitration was unconstitutional. The Superior Court rejected his arguments and fined him $900 for refusing an appointment. The Arizona Supreme Court refused to review his petition for special action, and Scheehle turned to the U.S. District Court.

In his federal action, Scheehle argued that the forced appointment was a taking of property without just compensation and placed him into involuntary servitude in violation of the Thirteenth Amendment. He found no friend in the District Court, which granted a defense motion for summary judgment. Scheehle did not find a more sympathetic ear in the Court of Appeals.

In a short opinion, Judge Michael Daly Hawkins — an Arizona attorney himself — affirmed the District Court’s judgment. He explained that practicing law is a privilege that Arizona conferred on Scheehle.

“As such,” he wrote, “the state can condition his ability to practice law upon the acceptance of certain responsibilities in the furtherance of the administration of justice.” Hawkins noted that the Ninth Circuit long ago rejected an attorney’s challenge to an order requiring him to represent an indigent defendant without compensation. The court had relied on “an ancient and established tradition” obligating lawyers to serve indigents on court order.

“Because an attorney entering the profession is ‘deemed to be aware of the traditions of the profession being joined,’” Hawkins wrote, “the attorney has ‘consented to, and assumed, this obligation...’”

The forced service therefore was neither a taking under the Fifth Amendment nor involuntary servitude under the Thirteenth Amendment.

Hawkins had little difficulty extending the indigent criminal representation rule to the civil setting, pointing out that the District Court had found the burden on attorneys to be “largely de minimis.” He found no likelihood that attorneys would be required to devote undue amounts of time because they are excused if they already have served.

See Courtwatch on page 2

Superior Court consolidates many lower-court appeals

By Mark W. Armstrong
Special to Maricopa Lawyer

A

lthough we commonly refer to the Superior Court of Arizona as our general jurisdiction trial court, the Superior Court also is an appellate court. The Superior Court hears nearly all appeals and special actions from Arizona’s limited jurisdiction courts — the Municipal and Justice courts.

Until June 11, appeals to the Superior Court in Maricopa County from the Municipal and Justice courts (often called lower court appeals, or LCA’s) were heard by many different judges in at least three departments of this court. It was a bewildering, labyrinthine system. Many complained about a lack of consistency and uniformity in our adjudication of these appeals.

For example, as the presiding special assignment judge, I would handle the initial administration of all criminal and civil traffic appeals. When these cases were ripe for decision, oral argument or trial de novo, they were assigned to special assignment judges. Civil appeals were spread over the entire Civil Department. Appeals from protective orders were heard by the Family Court.

See Superior on page 2

Get hip on new health-care privacy provisions

HIPAA will affect you, personally and professionally

By Susan Watchman
Special to Maricopa Lawyer

S

o what’s all this HIPAA stuff? And why should you care?

When the Health Insurance Portability and Accountability Act of 1996, PL 104-191, (HIPAA) became law, the media explained it as legislation that made it easier for people to remain fully insured when they changed jobs by limiting when the new insurer could impose a preexisting condition clause.

Lurking within the legislation, however, were provisions of little interest to the general public governing the electronic transmission of health information. HIPAA identified nine administrative “transactions,” such as billing and prior authorization, that are routinely used in the health-care industry and required the U.S. Department of Health and Human Services (DHHS) to develop a uniform electronic format for these transactions. HIPAA also required the development of uniform standards to protect “individually identifiable health information” related to the HIPAA electronic transactions.

See 42 U.S.C. § 1320d et seq. If Congress failed to enact privacy legislation within 30 months, DHHS was required to issue final privacy regulations within the following six months.

Congress never quite got around to additional privacy legislation. Consequently, DHHS issued proposed privacy regulations in November 1999 followed by the final regulations last December. The effective date of the regulations was delayed by President Bush’s 60-day stay on late-term Clinton administration regulations. Even so, quickly, the health-care industry had a flicker of hope that the regulations would be rescinded. The flicker was dashed when DHHS Secretary Tommy Thompson allowed the regulations to go into effect without change. The final privacy regulations took effect April 14. Covered entities must be in compliance no later than April 14, 2003. Small health plans (under $5 million in gross revenue) have an additional year to comply.

And what about the why-you-should-care part? It’s unlikely that you or someone in your family has not been, is not or will not be a patient, and thereby the intended beneficiary of the regulations. If you or a client have a health plan for your practice or business that has more than 50 beneficiaries, it is governed by the regulations. Those of you who do business with health-care providers and payers probably know you are a HIPAA “business associate.” Your clients shortly will ask you to sign agreements outlining your privacy responsibilities. And those of you who represent individuals or businesses that are on the other side of litigation from health-care entities may find information gathering and formal discovery a bit (or maybe a lot) more
Help celebrate the bar’s stars at the annual MCBA awards event

By Tom Toone
MCBA President

We will hold our annual luncheon and award ceremony on Nov. 15 at the Hyatt Regency. Arizona Supreme Court Chief Justice Tom Zlaket graciously has agreed to serve as our keynote speaker for the event. We will honor outgoing bar leaders and celebrate the outstanding achievements of volunteers. We need your help to identify the bar’s “stars” — those volunteers who have served the MCBA brilliantly during the past year.

There are several categories for nominations. This year’s honorees include the Robert R. Mills Member of the Year Award, the Henry Stevens Judge of the Year Award, the Kenneth Freedman Award for Excellence in CLE, the Quality of Life Award (for the legal firm or employer rated best by its employees for fostering a quality work environment), the ASU faculty award for academic excellence, the ASU student award for exceptional volunteerism and, finally, the President’s Award. If you have attended a special event or high-quality program and would like to salute a star individual or faculty member, please contact us. The deadline for nominations is Sept. 30.

Space limited for CLE ski trip

Now is the time to reserve a space if you plan to attend the MCBA’s annual CLE ski trip. I have been attending the annual ski trip for more than two decades and have never been disappointed with the quality of skiing or the informal yet informative CLE! The ski trip this year is scheduled for March 12-17 to beautiful Telluride, Colorado, at the world-renowned Wynnham Mountain Lodge. These luxurious accommodations offer one-bedroom condominiums with fireplaces, kitchens and daily continental breakfast. The resort is bordered by two convenient ski-in/ski-out runs and is a short walk from the gondola and the core of Mountain Village.

If you have never been to Telluride, it is a must-see! And for those of you who have, you can recall the crisp mountain air, Victorian charm, European elegance and unparalleled views of the San Juan Mountains.

The ski-trip package includes the spectacular resort accommodations as well as deluxe bus transportation. For the fun-filled adventure to the Rocky Mountains, the MCBA has rented a private charter bus that offers TVs, CD players and other comforts. The private bus means no transfers and no airline restrictions on baggage!

You will have four fabulous days of Telluride skiing and six hours of CLE, including three hours of ethics. This year’s destination is extremely popular, so do not delay if you plan to join in the fun. Space is limited! To register please call Jennifer Prevate at 602-257-4200, ext. 137, or at jprevate@mcbar.org

MCBA seeks board members

You’ve heard the expression that it takes an entire village to raise a child. Well, it takes lots of lawyers to “raise the bar...professional excellence.” If you have a little time to spare and expertise to share, please consider running for the MCBA board of directors. The board helps the bar association fulfill its multi-faceted mission of service to the profession, the public and the justice system. We are involved in member recruitment, fundraising and oversight of bar operations, among many other activities. The deadline to submit a letter of interest, bio and photo is Sept. 15.

Send a letter!

We welcome letters to the editor. Letters generally should be no more than 300 words long. Maricopa Lawyer reserves the right to edit all letters for length. Letters to the editor must be typed on your letterhead, signed and submitted to Editor, Maricopa Lawyer, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, 85004.

Subscriptions: $36 yearly

Superior Court...

Continued from page 1

Court Department.

Beginning June 11, most LCAs were assigned to a new LCA calendar within the Special Assignment Department. The new LCA calendar includes all appeals from civil cases, criminal cases (misdemeanor and criminal traffic), civil traffic cases and tax cases, as well as orders of protection and forcible detainers. It does not include cases seeking judicial review of administrative decisions, which will continue to be assigned throughout the Civil Department. At this time, the new LCA calendar includes only appeals and special actions from decisions of the Municipal and Justice courts.

To give you some idea of the number of cases that may be heard by Judge Jones’s division, last calendar year we received for filing 597 civil traffic appeals, 460 criminal appeals, 265 civil and other appeals, 126 special actions, 91 forcible detainer appeals, 16 tax appeals and 10 appeals from orders of protection.

We welcome any comments or suggestions you may have about this new LCA calendar. Feel free to write me at the court or email me at maarmitt@superiorcourt.maricopa.gov.

Proposed amendments to the Civil Traffic rules

Coincidentally, just as we were attempting to streamline our handling of LCAs, the Supreme Court’s Limited Jurisdiction Court Committee began rewriting the Rules of Procedure in Civil Traffic cases in an effort to streamline them as well. The committee’s effort is not completed, although it is well under way. The committee is up to version 6.0, dated Aug. 6. As gleaned from a recent executive summary of the proposed rules, the new rules will provide for two phases with respect to an appeal summarized as follows.

Phase I: trial court

➤ File notice of appeal within 14 days
➤ Pay for copy of hearing (“record fee”)
➤ File appellate memo within 60 days
➤ Trial court sends one-page notice of appeal to Superior Court, attention “LCA.”

Phase II: Superior Court

➤ Superior Court receives notice of appeal
➤ Assigns LCA number and opens file
➤ Notifies appellant to pay appeal fee
➤ When appeal fee is paid, Superior Court advises trial court to send record
➤ Record received, appeal memo(s) already enclosed, case ready for disposition

This summary is not provided as formal notice but simply as a heads up. The proposed rules have a long way to go. If approved by the Limited Jurisdiction Court Committee, they then would have to be considered by the Superior Court Committee and the Arizona Judicial Council before being circulated for public comment. After public comment, the Supreme Court would consider the proposed rules for adoption. In other words, you have plenty of opportunity to review and comment on these proposed rules before they are considered for adoption.

17 to be interviewed for trial court vacancy

The Maricopa County Commission on Trial Court Appointments was to interview 17 candidates on Aug. 30 to fill the Maricopa County Superior Court vacancy resulting from Judge Daniel A. Barker’s appointment to the Arizona Court of Appeals.

Selected for interviews from among 46 candidates were Helene F. Abrams, Elizabeth P. Arriola, A. Craig Blakely II, Harriett E. Chavez, Connie C. Contes, Gerald R. Grant, Larry Grant, Raymond P. Lee, Margaret R. Mahoney, Linda H. Miles, Leah Pallin-Hill, Terry H. Fillingen, Steven Platt, Teresa A. Sanders, Richard J. Trujillo, J. Wayne Turley and David K. Udall.

As of late August, the commission’s nominations to fill two new divisions were awaiting action by Gov. Janice Dee Hull. The commission’s single nominations list included seven candidates who were to be interviewed for the Barker vacancy — Blakes, Chavez, Larry Grant, Miles, Sanders, Turley and Udall — as well as Nancy J. Beck.
Our big move to the new Customer Service Center at 601 W. Jackson may be over, but that doesn’t mean things have stopped moving in the Clerk’s Office. In fact, several areas in our office are moving faster than ever — just look at the Minute Entry Electronic Distribution System (MEEDS).

MEEDS is the program we designed to automate the entire minute-entry process, which includes printing, sorting and distributing the minute entries from the court divisions to the parties, docket and the office’s website. During its first year, MEEDS was used by only one criminal division. As of July, all courtroom clerks are using MEEDS for all case types. This is a real milestone, and I am proud of the efforts of the team that made this happen. By using this program, we are saving considerable time, money and paper by eliminating the manual docketing of these minute entries.

One particular feature about MEEDS that I would like to point out is that once the minute entries are posted to the website, they remain there. This is beneficial because users can go back and access them at any time.

To visit our website and use our minute-entries system feature, go to www.clerkofcourt.maricopa.gov; click on “minute entries” and enter the case number. Criminal cases are available dating back to January 2000; probate cases back to December; civil and tax cases back to April; and Family Court back to May.

Our future plans for MEEDS include emailing the minute entries to additional agencies and attorneys; interfacing with the court’s new case-management system; expanding to the Family Support Center and court administration; and connecting to the Imaging and Electronic Document Management System.

This fall, my office will begin a pilot program to electronically send the minute entries directly to law firms. We will be looking for a few firms who are interested in participating in the project. We will have details on how to get involved in the near future.

One other significant, related event is that we have recently automated the distribution system for all Juvenile Court minute entries. We added the dependency, adoption and severance minutes to the program that was already sending them electronically for delinquency cases. These entries are sent electronically to the attorney general, Department of Economic Security, Foster Care Review Board, legal defender, legal advocate, Court-Appointed Special Advocate, mediation, court-appointed counsel, juvenile probation, county attorney, public defender and victim witness.

Legal Brief

The Maricopa chapter of the Arizona Women Lawyers Association is creating opportunities for women who practice law in the public sector or in the east Valley to meet and network on a regular basis with other women lawyers. The organization has received requests to connect with other women attorneys from public and east Valley lawyers who either are unable to attend the AWLA’s monthly luncheons or who find the AWLA’s downtown Phoenix events inconvenient. The first meeting for the east Valley group is scheduled for 5:30 p.m. Sept. 14 at Monti’s Mesa Grill, 1233 S. Alma School, Mesa (just south of the Bank of America Building). The first meeting of the public lawyers group will be 5:30 p.m. Sept. 25 at Quarles & Brady Streich Lang, 2 N. Central Ave., Phoenix.

For more information, contact Maureen Beyer at mbeyer@omlaw.com or by fax at 602-664-2053.

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For more information on working with neutrals who are experts at smoothing even the most ruffled feathers, call us at 602-734-9300 or visit us at www.adr.org.
The Arizona Court of Appeals has upheld an Arizona statute forbidding the use of public funds to pay for an indigent mother's abortion if the abortion is not necessary to save the mother's life. In Simat Corp. v. Arizona Health Care Cost Containment Sys., No. 1 CA-CV 00-0334, (App. Aug. 7, 2001), the court rejected an attack by doctors who provide abortion services.

The plaintiffs doctors served many AHCCCS patients, including patients whose pregnancy combined with a long list of medical conditions to threaten their health but not necessarily their lives. These medically necessary abortions often required hospitalization and ran into the thousands of dollars. The doctors argued that the state law, A.R.S. § 35-196.02, violates Arizona's right to privacy under Arizona Constitution article 2, § 8, which states: “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” The Superior Court agreed and issued an injunction permanently prohibiting enforcement of the statute. The Court of Appeals reversed.

Writing for the panel, Judge Jon W. Thompson noted that in Roe v. Wade, 410 U.S. 113 (1973), the U.S. Supreme Court held that the constitutional right of privacy protected “a woman’s decision whether or not to terminate her pregnancy.” But, he wrote, the court later refused to extend Roe to preclude the federal government from refusing to fund indigent abortions except in limited circumstances. In Harris v. McRae, 448 U.S. 297 (1980), the court upheld the Hyde Amendment, which precludes federal funds from paying for abortions except when the mother’s life is at stake or she is the victim of rape or incest. Thompson quoted extensively from Harris, including the conclusion that “it simply does not follow that a woman’s freedom of choice carries with it a constitutional entitlement to the financial resources to avail herself of the full range of protected options.” Furthermore, “although government may not place obstacles in the path of a woman’s exercise of her freedom of choice, it need not remove those not of its own creation.”

Thompson found Harris persuasive in analyzing Arizona’s constitutional right of privacy. He found nothing in article 2, § 8 that “suggests that the framers of the Arizona Constitution intended the right to privacy under our constitution to create a right of Arizona citizens to subsidized abortions to which they are not entitled under the United States Constitution, even if Arizona citizens have a greater right to privacy under the Arizona Constitution.”

Thompson also rejected the doctors’ arguments that the statute violates the privileges and immunities clause and the prohibition against special taxes. Judges Ann A. Scott Timmer and Edward C. Voss joined in his opinion. ❏
HIPAA...
Continued from page 1

cumbersome.

Privacy is a good thing. We all want our personal records kept confidential. The requirements of the law may not strike you as too different from current practices. As is so often the case, however, the devil is in the details — and there are a lot of those. The privacy rules, codified at 45 C.F.R. Parts 160 and 164, take up 365 pages. 65 Fed. Reg. 82462 at *937 (Dec. 28, 2000). A 36-page DHHS “Fact Sheet” recently published on the DHHS website provides additional “guidance.” Because HIPAA contains both civil and criminal penalties, you can expect providers and payers to be very wary of responding to any requests for disclosures that do not strictly conform to the HIPAA compliance policies they are developing.

The best illustration of the breadth and unintended consequences of the new law, and why the health-care industry is so nervous, is the DHHS Fact Sheet. DHHS already has acknowledged that additional formal rule-making is necessary to permit a number of routine, ordinary practices, such as telephoning a prescription to a pharmacy the patient has not used before or scheduling an appointment over the telephone for a new patient. DHHS also feels it necessary to promulgate additional rules to increase the “confidence” of providers that they can “[u]se patient names to locate them in waiting areas . . . use sign-up sheets . . . and maintain [ ] patient medical charts at bedside.” Just think about this for a moment. There is now a federal law that requires you to sign a consent before you can get a prescription called in to a new pharmacy or make an appointment for outpatient surgery or with a new physician. This same law arguably can be construed to prevent the physician’s office staff from calling out your name in the waiting area. As they say, just because you’re paranoid doesn’t mean they’re not out to get you.

What entities are governed by the rules?

Covered entities are defined broadly to include health plans, health-care clearinghouses and health-care providers that transmit information in the nine HIPAA transactions. These transactions include billing, payment, EOBs, verifying enrollment and eligibility, referral and authorization, claims statement, EOBs, verifying enrollment and eligibility. These transactions include billing, payment, EOBs, verifying enrollment and eligibility. These transactions include billing, payment, EOBs, verifying enrollment and eligibility.

What information is protected?

The privacy regulations protect “individually identifiable health information.” “Health information” is any information, including verbal information, created or received by a health-care provider, health plan, life insurer, school or health-information clearinghouse related to past, present or future health care to an individual, including payment information. If there is a reasonable basis to believe the individual could be identified from the information, the information is considered “individually identifiable.”

Once an entity falls within HIPAA’s ambit, all protected information held by the entity is subject to the rules regardless of the format of the information or mode of transmission.

The regulations distinguish between a “consent” and an “authorization” to use protected information. A health-care provider must obtain written consent to use or disclose protected information for treatment, payment or health-care operations (“TPO”). There are exceptions to this requirement, such as emergency treatment. All providers who...
The requirements for a valid authorization vary substantially from current Arizona practice in litigation. However, attorneys may find that providers respond differently to requests for information. For one, calling offices will be less likely to respond to telephone inquiries from attorneys or insurers requesting account balances or similar information. Some plaintiff and defense personal-injury attorneys may find that their standard consent forms are not detailed enough to satisfy providers, or that the providers insist on using their own forms. Defense counsel in particular may need to alter their standard discovery forms to provide required “assurances.” For attorneys who represent covered entities in disputes in which the patient is not a party but in which patient records are necessary evidence, changes in the discovery process also will be necessary.

The rule governing disclosure in the context of litigation is 42 C.F.R. § 164.512(e). As in the Arizona law, providers do not need to have an authorization or consent from the patient to disclose protected health information in response to an order of a court or administrative tribunal. However, the provider must take care to disclose only the information “expressly authorized” in the order. Providers therefore may be more concerned about the precise wording of orders than previously.

Providers also may disclose protected information without authorization in response to a subpoena or discovery request if they have received “satisfactory assurances” that the individual whose records are requested received notice of the request or that the requesting party has sought a “qualified protective order.” The “satisfactory assurances” you will have to supply with or in your discovery request is a written statement “and accompanying documentation” showing (1) that you made a good faith effort to notify the individual of the litigation and the specific discovery request in sufficient time for an objection to be filed, (2) that the time for objection has passed, and (3) that no objection was filed or the objection was resolved by the court.

Alternatively, the party requesting disclosure may seek a “qualified protective order” that prohibits the parties from using or disclosing protected health information for purposes other than the litigation. A stipulation is included in the definition of a qualified protective order. The order or stipulation also must require the parties to either destroy the protected information and all copies at the end of the litigation or return it to the provider from which it was obtained. Destruction should be preferred in complex cases, as it will avoid the risk of violating the regulations by inadvertently returning protected information to the wrong source.

If the provider does not receive the necessary satisfactory assurances, it may disclose protected health information by complying with the “satisfactory assurances” requirements itself. The simplest way for a provider to do this will be to submit the requested documents directly to the court as authorized by A.R.S. § 12-2281 et seq. This will make any disclosure a court-initiated (if not ordered) disclosure, protecting the provider.

This brings up the topic of state preemption. HIPAA preempts any contrary state law, unless one of several exceptions applies. These exceptions include state laws that are more stringent than HIPAA, laws for reporting disease, illness or injury, and vital statistics, laws governing licensure, and laws that DHHS has determined are necessary to prevent fraud and abuse, regulate health plans or “serve a compelling need related to public health, safety and welfare.” “Compelling need” will be determined by a type of balancing test in cases in which specific HIPAA rules will be violated if state law is followed. 45 C.F.R. § 160.203. If the state requests an exemption, the HIPAA rules remain in effect until the DHHS secretary decides.

What else?

Policies, of course.

Covered entities must designate a privacy officer and develop policies, procedures and training governing whom in the organization has access to protected information, how it is used and when it is disclosed. Covered entities also must have a process for receiving and addressing complaints. Although the legislation does not create a private right of action, complaints may be filed with the Centers for Medicare and Medicaid Services (formally HCFA) and there are those penalties: civil monetary penalties of $100 per person per violation up to $25,000 per person per year and criminal penalties of up to $50,000 and or one year in prison, more if the offense is under “false pretenses” or the illegal disclosure is for commercial purposes. 42 U.S.C. §§ 1320d-5 and 1320d-6.

This is a very cursory overview of HIPAA’s privacy-related provisions. Additional information can be obtained from either the DHHS website (www.hhs.gov/topics/privacy) or the Centers for Medicare and Medicaid Services website (www.medicare.gov), which has a link to HIPPA information. The National Health Lawyers Association (www.nhla.org) and the American Bar Association’s Health Law Section www.cabanet.org/health also have a variety of publications and seminars, as do other professional organizations that regularly serve the health-care industry.

➤ Susan Holzman practices health-care law at Gannage & Barham.

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EXTRACTION COMPLETE
Law clerk social

The Maricopa County Bar Association threw a party Aug. 9 to give minority and women summer law clerks a chance to network and become familiar with the MCBA’s activities. Those attending the reception included summer law clerks (from left) Zachary Porianla, Stephanie Pesido-Gonzales, Chae Meyer, Gregory Haile and Sherry Haller. The MCBA’s Task Force on the Recruitment and Retention of Minority and Women Attorneys sponsored the event. Representatives of the MCBA board, the Hayzel B. Daniels Bar Association, Los Abogados, the Arizona Asian American Bar Association and the Arizona Women Lawyers Association also attended.

‘Globalization of American Law’ theme for section’s seminars

By Philip A. Robbins
Special to Maricopa Lawyer

Based on the general theme, “Globalization of American Law,” the International Law Section of the Maricopa County Bar Association will present four one-hour luncheon seminars, plus its annual half-day seminar, during the fall and spring.

This year’s theme will allow a different approach to studying international legal issues while providing practical information for Arizona lawyers interested in international practice. Maricopa County is increasingly a center for international trade and commerce and international law practice.

The preeminent position of the United States in the global economy has placed U.S. law and procedure in the spotlight of world jurisprudence. Globalization has led to the necessity for more uniform laws and procedures to govern commercial relations. To what extent has U.S. law influenced, or been influenced by, this developing body of global law? This timely and provocative issue will be the focus of the section’s seminars.

Five specific areas will be covered:

➤ E-commerce and intellectual property (Oct. 16 lunch seminar);
➤ Criminal law (Dec. 18 lunch seminar);
➤ Security for commercial transactions (Feb. 19 lunch seminar);
➤ Product liability (three-hour April 19 seminar); and
➤ Dispute resolution (June 18 lunch seminar)

The lunch seminars will be held from noon to 1:30 p.m. at the MCBA offices and will feature speakers knowledgeable on each subject along with time for discussion and questions.

The half-day seminar April 19, at the Arizona State University — Downtown campus at the Mercado, will allow an in-depth analysis of product liability issues facing U.S. businesses that export products or participate in their manufacture or distribution in foreign countries. It will include information developed by the Tucson-based National Law Center for Inter-American Free Trade for its two-day seminar to be held Sept. 20-21 in Miami on the subject “Product Liability Law of Latin America.”

The International Law Section encourages Maricopa County attorneys to join the International Law Section and become active participants. Section dues are $20. The lunch seminars are free to section members, but $15 for non-members. In addition, section members will receive a discount on their registration for the April seminar. Each of the seminars will provide CLE credit. Additional information and registration forms will be provided in advance of each event.

➤ Philip A. Robbins, an attorney at Robbins & Green, is chair of the MCBA’s International Law Section. For information about joining the section, contact the MCBA, 602-257-4200.

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Nursing home residents are neglected and abused more often than we think. Poor outcomes in the care of the elderly may be a signal of neglect or abuse. However, the investigation and analysis of liability are complex and labor intensive.

In order to maximize recovery, an attorney must possess a working knowledge of federal and state regulations governing nursing homes, as well as an understanding of industry practice (both clinical and fiscal).

Representing nursing home residents and their families in cases of neglect and abuse can have a positive impact on the quality of care given to all residents of nursing homes.
New options for storage let you take it all with you

By Winton Woods
Special to Maricopa Lawyer

Here is the hypothetical:
You have decided, after attending the trial practice section’s program at the bar convention, that you want to work with digital-video depositions. At another program, you got information about electronic discovery and that excites you. At another program, you got information about electronic discovery and that excites you.

Suddenly, before you know it, you have built up about 20 GB of material relating to the case. More is coming down the litigation pipeline. Your desktop computer is demanding more hard-drive space. You want to go on vacation and take the case with you to work on.

What’s a lawyer to do?

**Buy a CD-ROM burner**

This is not a bad choice. Actually, every lawyer needs a CD-ROM burner. They are incredibly cheap and provide about 700 MB of storage on each disk. One CD-ROM can replace about 50 floppy disks or seven Zip disks for less than a dollar.

Not a bad deal, but your 20 GB of material will require about 30 CD-ROM disks. Each CD will hold about an hour of digital video, so the number of CD disks used in your case will grow like wildfire. That’s an incredible amount of storage on each disk. One CD-ROM can replace about 50 floppy disks or seven Zip disks for less than a dollar.

You really have only one solution: put everything on your hard drive. You have real options and new opportunities.

**Buy and install a new hard drive**

Hard drives of the IDE type (typical of most personal computers) are very cheap and getting cheaper by the minute. They are easy to install on your desktop but most servers, except the very newest, require a type of drive called SCSI, which is considerably more expensive, particularly in the 30 GB and larger sizes.

Because you have all of your information on an installed hard drive, however, you can’t take it with you, either on vacation or to the courthouse. Of course, you can always log on to your office computer. If you have a broadband connection on both ends, you will have effective access to your information. But that is a circumstance that I have seldom encountered on the road. Besides, opening your network to the Internet raises substantial security issues about which you have to be concerned.

We have talked about that issue before and the answers have always been problematic. What we need, Gilroy, is a commodious work drive just like any other.

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Follow me here. You can have your entire case on a Fire Wire drive that is on your network but take it with you to court or to the Hilton. It really is just as simple as plugging your computer and back. Inside your computer, that transfer occurs very fast, at the motherboard level. But PCs have a hard time with information transfer outside the motherboard. USB ports solve some of the problem, but they are still slow and have high error rates.

Fire Wire, on the other hand, is very fast, almost as fast as the motherboard transfer, and can be implemented by installing a $50 board in your desktop or a $100 card in your laptop. Once you have a Fire Wire drive installed, you can switch it among all of your computers by just plugging it in. What’s more, once you have it on one of your machines on the network, it becomes a network drive just like any other.

Fire Wire interface hard drives

The dream was an impossible one until the days of DOS. It is now easily attainable.

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**What to buy?**

Over the last year, I have tried all the options. Western Digital has competitors, but I have not seen any drives like WD’s new 60-GB FW drives. I have been using the 60-GB digital (www.westerndigital.com).

Western Digital has been around since the days of DOS. It always has produced high-quality drives at reasonable prices. You probably have a WD drive in your computer. If you don’t, I expect you soon will.

The big problem with portable hard drives is the interface that controls the transfer of information from the drive to the computer and back. Inside your computer, that transfer occurs very fast, at the motherboard level. But PCs have a hard time with information transfer outside the motherboard. USB ports solve some of the problem, but they are still slow and have high error rates.

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Effective August 1, 2001, as part of the Court’s elimination of minute entries project, you are expected to comply with Local Rule 3.2 (i), Stipulations and Motions; Proposed Forms of Orders (Arizona Rules of Court 2001, Local Rules of Practice for the Superior Court, Maricopa County, pp. 727-728). Failure to comply may result in rejection of the proposed order. Specifically:

**STIPULATIONS**

All stipulations shall be accompanied by:
• A proposed form of order;
• A copy of the order for each party who has entered an appearance in the case; and
• An envelope stamped and addressed to each of the parties.

**MOTIONS**

Any motion accompanied by a proposed form of order shall also include:
• A copy of the order for each party who has entered an appearance in the case; and
• An envelope stamped and addressed to each of the parties.

**PARTIES ARE ENCOURAGED TO SUBMIT ORDERS, COPIES AND ENVELOPES WITH MOTIONS WHENEVER POSSIBLE.**

**JUDGMENTS**

When a judgment is submitted with sufficient copies and stamped envelopes for all parties who have not defaulted, the minute entry will be eliminated and the parties will receive confirmed copies of the judgment containing the date of entry.

**PARTIES ARE ENCOURAGED TO SUBMIT PROPOSED JUDGMENTS WITH SUFFICIENT COPIES AND ENVELOPES.**

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Haralson, Miller, Pitt & McAnally, P.L.C.
One South Church Avenue, Suite 900
Tucson, Arizona 85701-1620
Telephone (520) 792-3836
Fax (520) 624-5080

is pleased to announce that
José de Jesus Rivera
has joined the firm
and will be staffing our new office at
3003 North Central, Suite 1400
Phoenix, Arizona 85012-2915
Telephone (602) 604-2151
Fax (602) 604-2124

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Revised Date: 8/10/01
Lexis-Nexis
NEW
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do not move
The Disabled American Veterans organization has given Maricopa County Attorney Richard M. Romley its Outstanding Disabled Veteran of the Year Award. Romley received the award at the group’s 90th annual convention this summer. Romley served in the Marine Corps in Vietnam in 1968-69. He was severely wound-
ed, ultimately losing both of his lower legs to an explosion while attempting to regroup his squad after it had suffered casualties in a minefield. After returning from Vietnam, Romley owned and operated a business and then received his law degree from Arizona State University. He is serving his fourth term as Maricopa County attorney.

Scott Hill, an intellectual property specialist for Duraswitch Industries Inc. recently passed the U.S. Patent and Trademark Office registration examination for patent attorneys and agents. Hill joined Duraswitch in October.

Two Lewis and Roca attorneys will be participating in local leadership programs. Jessica Fotinos has been accepted into Valley Leadership Institute, a nine-month program designed to broaden the knowledge, skills and network of existing and emerging leaders. Dustin Jones will participate in Leadership West, a program that focuses on leadership development in the west Valley and is affiliated with Valley Leadership.

Christopher J. Berry, a partner with the Phoenix office of Morrison & Hecker, is the new director of the Arizona chapter of Justice for Children, an organization that provides legal advocacy to abused children.

Brian W. LaCorte has been appointed to the board of directors of Crias Nursery, a non-profit organization that provides emergency shelter and crisis intervention services to Phoenix-area families with infants and children. LaCorte is a partner in Jones, Skelton & Hochuli who practices intellectual property litigation.

Donald L. Myles Jr., also a partner in Jones, Skelton & Hochuli, has been elected to the executive board of the Arizona Association of Defense Counsel. He will serve as secretary for the next year. Myles concentrates his practice on professional malpractice litigation and bad-faith insurance defense.

Typing...
Paralegal Committee working on future of paralegal profession

By Garth A. Harris and Sybil Taylor Aytch

Special to Maricopa Lawyer

The Maricopa County Bar Association’s Paralegal Committee began in 1999 with 50 members. Committee membership has grown to more than 200 paralegals. The committee now is the largest MCBA standing committee and, among all MCBA entities, is second only to the Young Lawyers Division in membership. The committee is the second largest paralegal organization in Arizona.

In September 2000, we submitted an application to become a section of the MCBA.

In August, we began a series of educational seminars geared toward preparing paralegals to take the Certified Legal Assistant (CLA) examination, sponsored by the National Association of Legal Assistants, and the Paralegal Advanced Competency Examination (PACE), sponsored by the National Federation of Paralegal Associations, leading to the PACE Registered Paralegal (RP) designation. These are the two national certification exams for paralegals.

The committee is preparing for the upcoming Arizona Paralegal Conference in 2002, presently chaired by Christna Jones; the CLA/PACE review courses, headed up by Maricah Burns, is designed to offer the benefits of ADR to resolve issues without going through expensive litigation. The paralegal members will begin by assisting the State Bar ADR coordinator in contacting those individuals who are involved in a dispute and offering them the opportunity to participate in the ADR program. We look forward to the ultimate ongoing additional training, which will allow paralegal members to become more involved in the ADR process.

We are honored to have been asked by the local paralegal educational community to develop and sponsor a paralegal career day. Karen Sterling is the Paralegal Committee liaison for this project. Paralegal Career Day will include representatives from each of the area paralegal programs (including those in Pima and Yavapai counties) and local paralegal associations. This event will consist of a full day of paralegal-related activities, including paralegal speakers, employers and legal vendors. Information and instruction will be provided to anyone interested in becoming a paralegal, to those who are about to enter into the paralegal field and to those who are looking to change practice areas.

The MCBA’s Paralegal Committee is comprised of talented and respected paralegals who have demonstrated their professionalism through their respective employment, membership in various local and national paralegal associations, as volunteers on countless MCBA sponsored projects and through their desire to enhance the development of the paralegal profession. The committee’s success is due in large part to the ability of its members to come together and work for common goals.

If you are interested in learning more about this unique committee, please contact the MCBA.

Garth A. Harris, CLA, and Sybil Taylor Aytch, RP are co-chairs of the MCBA’s Paralegal Committee. Their joint leadership marks the first time in known history of the paralegal profession that two members of different national paralegal associations are jointly chairing an unaffiliated paralegal organization.

Need a Paralegal?

Arizona Paralegal Training Program Provides:

- No fee placements for full and part time
- Place your job lead on our website
- All graduates college degree
- Interns available at no cost
- ABA approved

Contact: Natalie Witt – Career Development – nwitt@paralegal-education.com

WE NEED YOU

At the 10th Annual Domestic Violence Necessities Drive
October 19, 20 and 21

This event gives women and children who have been subjected to domestic violence and have been forced out of their homes or into shelters the opportunity to obtain needed items free of cost. Unfortunately, there are many things that need to be done with few volunteers.

If you are interested in learning more, please check off the appropriate box, write in any comments.

Yes, I can help with the Domestic Violence Necessities Drive! Please sign me up for the following activity(ies):

- Sort/Set Up (sort donated items at the location) Oct 19 or 20
- Transportation (drive women and children to/from the shelters) Oct 20
- Children’s Party (help with activities that keep children busy while their moms shop) Oct 20
- Shopper’s Assistant (help women shop on day of drive) Oct 20
- Clean Up (just like its sounds, clean up after it is done) Oct 21
- Donations (helping solicit monetary donations) August and September
- Yes, I have a truck that can be used for the drive!

Deadline: September 28, 2001

The Maricopa County Bar Association Young Lawyers Division is seeking nominations for four seats. All seats are for three year terms beginning January, 1 2002. You are eligible to serve on the YLD Board if you are thirty-six years of age or under OR if you have been practicing law in any jurisdiction for five years or fewer and are in good standing with the Arizona State Bar. If you wish to run for a YLD Board position, please send a paragraph summarizing your qualifications along with a black and white photo to:

Maricopa County Bar Association
Attention: Shane Clays
303 East Palm Lane
Phoenix, Arizona

Deadline: September 28, 2001
ERISA preempts laws revoking interests in retirement plans

Ex-spouse doesn’t mean ex-beneficiary

By Thomas J. Murphy
Maricopa Lawyer

It’s who’s named beneficiary, stupid.

So ruled the U.S. Supreme Court on March 21 in a controversial 7-2 decision, Egelhoff v. Egelhoff, 121 S.Ct. 1322 (2001). The court ruled that the children of a recently divorced decedent had no rights in the proceeds of their father’s retirement plan because their father had never removed his ex-wife as the beneficiary of his retirement plan.

David and Donna Egelhoff were Washington residents who divorced in 1994. The divorce decree awarded David Egelhoff his entire retirement plan. David Egelhoff had two children from a prior marriage. Two months after the divorce, he was killed in an automobile accident. He had never changed the beneficiary designation in his retirement plan from “Donna R. Egelhoff, wife.”

Washington has a statute that revokes any interest in a “nonprobate asset” that the former spouse of a decedent may have if that interest was acquired during marriage. In such a case, the former spouse is treated as if he or she had predeceased the decedent. Wash. Rev. Code § 11.07.101(2)(a). A “nonprobate asset” includes “a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account.” § 11.07.010(5)(a).

David Egelhoff’s children sued Donna Egelhoff to recoup $46,000 of the plan proceeds that had been distributed to her. The trial court ruled in her favor, but both levels of the Washington appellate courts overruled the trial court and awarded the plan proceeds to David Egelhoff’s children. The U.S. Supreme Court then granted certiorari.

The precise issue before the court was whether Washington’s statutes impermissibly infringe on federal laws governing retirement plans? The court ruled that they did.

The plan in question was governed by ERISA, 29 U.S.C. § 1001 et seq. Justice Clarence Thomas, writing for the majority, noted that ERISA’s preemption statute, 29 U.S.C. § 1144(a), stated that ERISA “shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan” covered by ERISA. ERISA § 1002(b) requires that payment be made to the designated beneficiary.

At issue was whether Washington’s statute that effectively removed a former spouse as beneficiary impermissibly conflicted with ERISA’s mandate of paying the named beneficiary.

The Supreme Court held that the federal rules prevailed, noting that the payment of benefits was a “central matter of plan administration” and that a primary goal of ERISA was to “establish a uniform administrative scheme [that] provides a set of standard procedures.” The court repeatedly expressed a concern that a contrary holding would result in administrative inefficiencies because administrators would have to know the laws in all 50 states before paying benefits.

The court also expressed concern that the employer would be in one state, the employee in another state and the employee’s former spouse in a third state.

As a result, the court ruled that the plan administrator must follow the ERISA statutes that required distributions to the named beneficiary, in this case the former spouse.

Egelhoff’s effect

From a strictly legal standpoint, the case is correctly decided. What the court said is

Affidavits terminating joint tenancy back in style

By Fenton J. McDonough
Special to Maricopa Lawyer

When I first handled probates in the late 1950s, if a decedent owned real estate in joint tenancy it was usual to record an affidavit terminating joint tenancy that recited the applicable legal description.

Later, a rule provided that if you made a public record — by recording a death certificate — that an owner of real estate died, a lien for any unpaid Arizona estate taxes kicked in. Both for probateable and joint-tenancy realty, we then would fill out an Arizona estate tax return showing no state estate taxes due and receive a tax-lien waiver that described the affected real estate. In a probate, the lien waiver would be recorded with the deed from the personal representative. For joint-tenancy ownership, the lien waiver would be recorded simultaneously with a death certificate. An affidavit terminating joint tenancy became superfluous.

Recently, word came from the Arizona Department of Revenue that effective last Feb. 1, it would no longer issue estate tax lien waivers or releases unless a federal estate tax return was filed.

Recording a death certificate only would have no reference to the real estate affected. Once again we are back to using an affidavit terminating joint tenancy, but with a slight addition.

Even if an inventory and appraisement is on file with the court, title companies have no assurance that a decedent’s estate (probateable and non-probateable assets) was required to file a federal estate tax return. Title companies now require a personal representative to sign an affidavit that the estate is not required to file a federal estate tax return.

This new requirement implies two things.

First, if you are going to file an affidavit terminating joint tenancy, be sure to add a paragraph stating that the total value of all assets passing because of decedent’s death does not exceed the amount requiring the filing of a federal estate tax return.

Second, if a personal representative is distributing real estate from an estate, prepare an affidavit that recites language similar to that noted above and record it with the deed and letters certified within 60 days.

➤ Fenton J. McDonough practices probate, estate, conservatorship and trust law in Scottsdale.
that, within certain parameters, ERISA allows the participant to name whomever he or she desires as beneficiary and that a state cannot interfere with this decision. This doesn’t mean that Congress cannot interfere with the passage of the Uniform Services Former Spouses Protection Act, 10 U.S.C. § 1408. Plan administrators, however, have applauded the ruling.

As a practical matter, the Egelhoff case stands for the proposition that an unmarried person can name whomever he or she wants as beneficiary of an ERISA plan — period. But one issue that was never raised concerned David Egelhoff’s intentions when he named Donna Egelhoff as his beneficiary. Arizona has an extremely broad parole evidence rule, meaning that any statement, oral or written, that David Egelhoff made concerning these intentions is admissible at trial. In other words, did David really intend to name Donna as his beneficiary rather than his children, even if the couple later divorced?

This case also is a shot across the bow for divorce lawyers. Clients going through a divorce need to be counseled to change and update their beneficiary designations. Some commentators already have posited that this is malpractice if it is not done. Estate planning attorneys, CPAs and other financial advisors also will need to keep their soon-to-be-divorced clients apprised of this development.

Different result under Arizona law?

Arizona has a statute similar to that of Washington. A.R.S. § 14-2804 states that a divorce “revokes any revocable disposition or appointment of property made by a divorced person to that person’s former spouse.” The issue of preemption is the same as that of Washington, so ERISA would prevail and the ex-wife would still be the beneficiary.

What about IRAs?

What if David Egelhoff had had an IRA rather than an ERISA plan? Would the result have been different?

The answer is probably yes — the result would be different and the children, not Donna Egelhoff, would have taken the proceeds in the plan.

IRAs are not governed by ERISA, which only covers employee-benefit plans. As a result, the preemption issue is not nearly as strong particularly because the law on IRAs is largely silent on this point. As result, state statutes such as A.R.S. § 14-2904 would not be in conflict with any federal law. See PLR 199907055 and Bunny v. Commissioner, 114 TC 239 (2000).

Other examples of non-ERISA retirement plans include Civil Service Retirement System, Federal Employees Retirement System, Federal Thrift Savings Plan, Railroad Retirement System, Military Retirement System and state and municipal retirement plans. However, because each plan has its own statutory scheme, it is not clear if a different result would obtain as to those plans.

Post-Egelhoff developments

The Texas Court of Appeals recently issued the first post-Egelhoff case. In Heg v. American Trading Employees Retirement Account Plan, 2001 Tex. App. LEXIS 3389 (Aug. 9, 2001), the decedent had remarried but had never removed his first wife as beneficiary. The second wife sued to collect the retirement plan proceeds. Citing Egelhoff, the court held for the first wife on pre-emption grounds. The second wife could only look to the terms of the plan.

Particular emphasis was placed on required spousal consent to a non-spousal beneficiary. We will likely see more of this approach in upcoming cases. However, the court, without any discussion on this point, ruled against the second wife.

The second wife also asked the court to apply federal common law and hold that the divorce decree operated as a waiver of pension benefits. The court again ruled against her, holding that ERISA controls. The Egelhoff children apparently raised this theory with the Washington Supreme Court when the Egelhoff case was remanded by the U.S. Supreme Court. Like the Texas court, the Washington court also refused to grant relief on those grounds.

Legal Brief

Effective July 2, any person applying for a U.S. passport on behalf of a child under age 14 must demonstrate that both parents consent to the issuance of a passport or that the applying parent has sole authority to obtain one. Prior to the change, either parent was deemed authorized to apply for a child’s passport, unless one of them had previously registered his or her objection with the State Department. The purpose of the new requirement is to lessen the possibility that one parent can obtain a U.S. passport for a child and take the child abroad. According to the State Department, most parents can satisfy the new requirement by using documents or a statement to establish that the other parent consents to the issuance of a passport. A parent also can obtain a specific court order either decreeing that the applying parent has the authority to unilaterally obtain a passport for a child. The State Department is advising attorneys for divorcing parents to consider putting language in custody agreements and orders dealing with parental authority to apply for passports to children under age 14.

Thank You!

The MCBA YLD would like to thank EVERYONE who so graciously donated to this years school supplies drive. The support from the legal community for this program was outstanding! In all the drive received:

• Nearly $20,000.00 in monetary donations (used to purchase school supplies)
• 15 Backpacks
• Tons of school supplies

This year, for the first time ever, each and every child in each of the DV Shelters we support received a backpack and all the necessary school supplies to start school. Over 125 children at 12 local valley shelters received school supplies that were made possible by those that donated.

DONORS:

Jennifer R. Barnes PC
Kathy Pickering
Larry W. Denslaw
Leonard Clancy & McGovern Investments
Linda Cowley
Paige Martin
Patricia Sallin
Randy Yavitz
Southwest Fiduciary Inc

Our sincerest apologies to anyone who donated that is not on this list. We appreciate all of you who donated!

Tell us!

Have you won an award? Is your law firm involved in an interesting community project?

Tell us about it! Send information for our People in Law column to Maricopa Lawyer, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, AZ 85004, or fax to 602-257-0522.

Thank you for your interest in this form.
Greenberg Traurig has added two associates to its Phoenix office. Leigh Anne Ciccarelli, who received her law degree in 1998 from Arizona State University, joins the firm's labor and employment department. Julie Rystad Bestor, who received her law degree in 1999 from ASU, joins the firm's.

Sheila Carmody and James L. Hohnbaum have joined the commercial litigation practice in Snell & Wilmer's Phoenix office. Carmody, who joined the firm as a partner, concentrates her practice in commercial and product liability litigation with an emphasis in defense of insurance companies and manufacturers in class-action cases and multi-jurisdiction litigation. She is a 1981 ASU law graduate. Hohnbaum, who received his law degree in 1975 from Duke University, joins the firm as an associate. His practice is concentrated in commercial litigation, including construction, civil racketeering, insurance litigation, real estate and eminent domain.

James D. Vieregg has joined Morrison & Hecker’s Phoenix office as a partner. His practice focuses on environmental law, litigation and legislative issues. Vieregg received his law degree in 1972 from Creighton University. Rodrick J. Coffey has returned to the firm’s Phoenix office as a litigation associate. Coffey received his law degree, magna cum laude, in 1999 from Brigham Young University.

Duraswitch Industries Inc. has promoted Frank Freeman to vice president of intellectual property. Freeman, who received his law degree in May from ASU, joined the company in May 2000. He previously owned and operated Group 6 Performance and Aviation. He also holds an MBA from the University of Phoenix.

David K. Jones has become vice president of Young Electric Sign Co., in charge of government relations.

Eric L. Johnson has joined Gust Rosenfield’s estate planning and tax law section. Johnson received his law degree in 2000 from the University of Alabama and also holds an MBA (finance, 1997, Auburn University) and a master’s of law (taxation, 2001, New York University).

Marvin Kantor has joined Allen, Price & Padden as counsel. Kantor, formerly partner in charge of Deloitte & Touche’s Arizona tax practice, specializes in estate planning.

Scott J. Richardson has become associated with Jahnung & Wilk.

Jolyon Grant has returned from a “short retirement” to the fulltime practice of law and has opened an office at 3200 N. Central Ave., Suite 1000, Phoenix, 85012; telephone 602-290-8024; fax 602-290-8047. He practiced in the areas of family law and general trial work for more than 27 years with O’Connor Cavanagh and will once again focus on family law.

Jolyon Grant
Rodrick J. Coffey
Frank Freeman
Jolyon Grant
James L. Hohnbaum
Eric L. Johnson
Jackie Norton
James D. Vieregg

To place a classified ad, call the MCBA at 602-257-4200.
Attorney seeks to remedy property, broken dreams of VLP clients

By Peggi Cornelius
Special to Maricopa Lawyer

In a case recently closed, Calderón’s client requested help because she was unable to take possession of a home on which she had been making large payments for more than a year. The sellers reluctantly agreed to sign a purchase contract in 2000 and to try and avoid having the document notarized. In desperation, they eventually withheld payments to pressure the sellers into meeting their obligation. The sellers’ response was to cease all communication, ignoring letters from attorneys and refusing to speak with her when she visited their home. Calderón and his colleagues at Jennings Strouss and Salmon pursued litigation and collection efforts for two years until they successfully obtained a settlement that reimbursed the client $75 of her loss.

“In that case,” Calderón said, “I felt the client had been targeted for deception because she was an immigrant who did not speak English.”

Being robbed of services or property is an injustice Calderón abhors, but equally repugnant to him is theft of dignity and dreams. When the clients were shown the home by a real estate agent, the residence needed to be in good condition. When the sale was complete, they entered a house stripped of doorknobs, drapery rods, outlet plates and other fixtures. They also discovered undisclosed problems with the air conditioning and heating. The clients’ concern was with the feasibility of their expectations that were unreasonable. The adverse party said the relatively low value of the property and the clients’ modest income did not entitle them to the consideration buyers in a more affluent neighborhood could expect.

“In that case,” said Calderón, “the broken dream was my motivation to make a difference.”

Calderón studied political science as an undergraduate at Northern Arizona University and attended law school at the University of Arizona. After clerking for District Court Judge Walter Craig, Calderón spent the first years of his career as a corporate attorney for Arizona Public Service and Blue Cross Blue Shield. Now, as a partner at Jennings Strouss, he practices commercial litigation, labor and employment law, and corporate advising. He also is president-elect of the State Bar of Arizona.

The firm encourages community service, and participates in VLP’s Attorney Day of the Project, in which volunteer lawyers conduct initial interviews with people seeking help with civil matters. Summaries written by the interviewing attorneys are used to evaluate the merits of each case. Calderón regularly conducts VLP intake interviews. When he accepts VLP cases for representation, Calderón is not alone.

“I always have the support of the firm. David Rosen, Greg Coulier and Greg Stanton are some of the colleagues who have worked with me on VLP cases. Because we’re helping people who are just barely getting by, I experience the greatest sense of accomplishment when we improve their circumstances and the greatest sense of disappointment when we can’t. It’s the highs and lows of life, and it’s rewarding.”

Attorneys who recently accepted cases thanked

The Volunteer Lawyers Program, co-sponsored by Community Legal Services and the Maricopa County Bar Association, thanks the following attorneys who have agreed during the past two months to represent low-income clients with these civil legal needs.

Bankruptcy
Steven V. Leavitt, sole practitioner
Consumer
Daniel P. Bieske, Mho. Hackett Pederson Blakely
Robert G. Schaefer, Lewis and Roca
Greg S. Comis, Lewis and Roca
J. Richard Guerrero, sole practitioner
Jay Douglas Wiley, Snell & Wilmer
Richard A. Halloran, Lewis and Roca
Cody M. Hall, Lewis & Schneider
Christopher G. Hamill, Atkinson Hamill & Barbour
Eric A. Mark, Kurt Sohrner Devlin
Kevin C. McIlvain, Mho. Hackett Pederson Blakely & Randolph
Susan E. Mortensen, Meyer Hendrick & Biens
Michael E. Neumann, Schian Walker
William Charles Thomson, Gallagher & Kennedy
Geoffrey H. Walker, Honderi Walker
Debt collection
John P. Payer, Robbins & Green
Harold D. Burt, sole practitioner
Amy R. McGaw, Lewis and Roca
Peter Pynuczewicz, Dautes & Brady
Shrech Lang
Sarah M. Sabo, sole practitioner
Ed Salanga, Queriel & Brady Shrech Lang
Christine P. Taradash, Bruce Gilbert
Family law/domestic violence
Shelley Kay Hubbell, sole practitioner
Jess A. Lorona, Hone O’Connor Lorona & Salton
Gregory C. Michael, sole practitioner
John P. Moore, sole practitioner
Judith A. Morse, sole practitioner
Sharon Ottenberg, S. Alan Cook
Stephen Roy Smith, Cohen & Fromm
Guardians ad litem for children in Family Court
Audrey E. Juniper, sole practitioner
Irma Bielan, sole practitioner
Steven G. Clark, Mead & Associates
Steven N. Cote, sole practitioner
Francis S. Fanning, sole practitioner
Pauline S. Flemming, sole practitioner
Harold M. Pitt, Gilbert, Mesa Community Action Network
Juliet A. Lin, Fender Musical Instruments
Daniel J. Malloy, Snel & Wilmer
Jay Douglas Wiley, Snell & Wilmer (2 cases)
Adrienne W. Willson, Fennermon Craig
Guardianship (incapacitated adults)
David B. Geis, Arizona House of Representatives
Guarantors
Vanessa Andreoshock, sole practitioner
Margaret A. Gillespie, Leonard Collins & Kelly
Donna M. Houg, sole practitioner
Dwayne Vail, Queriel & Brady Shrech Lang
James F. Wees, Meyers Taber & Meyers
Jay Douglas Wiley, Snel & Wilmer (2 cases)
Adrienne W. Willson, Fennermon Craig
Guardianship (incapacitated adults)
David B. Geis, Arizona House of Representatives
Home ownership
Timothy H. Barnes, Barnes & Lassiter
Ronald W. Carmichael, Carmichael & Powell
Thomas F. Hickey, Keller & Hickey
Gary R. Matthew, Mho. Hackett Pederson Blakely & Randolph
Will B. Potters, Queriel & Brady Shrech Lang
Robert G. Schaefer, Lewis and Roca
Maria Crime Speth, Grant Williams & Dangefield
Warren J. Stapleton, Osborn Maledon
Tenants’ rights
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