In a case where a majority of the panel of appellate judges would have left the judgment standing, the Ninth Circuit has reversed the grant of summary judgment to Arizona social workers who, without a court order, temporarily removed children from their parents’ custody, fearing that the parents were sexually exploiting them. In the process, the panel ruled that social workers may remove children from their family only when they fear that the children will suffer physical injury or sexual molestation; fear of sexual exploitation is not enough. The full court recently declined to rehear the case en banc.


A Walmart employee contacted Peoria police after discovering that a photo stick, which A.J. Demaree had left for processing, contained images of nude children. The court described one of the photos as portraying “his three children lying down on a towel nude, focusing on their exposed buttocks but with some genitalia showing.” But “none of the photographs portrayed children engaged in sexual activity,” and “none portrayed the children’s genitalia frontally.”

Police detectives interviewed A.J. and his wife Lisa and learned that one or both of them had taken the pictures. Officers obtained a search warrant and seized evidence relevant to a child-pornography investigation: computers, printers, photographs, cell phones, film, floppy discs, DVDs, CDs, VHS tapes, and cameras. Forensic and medical exams were conducted on the girls to investigate possible sexual abuse, but the results were normal, and the children were returned to the Demarees.

Child Protective Services (“CPS”)—now known as the Department of Child Safety—was called, and Laura Pederson drove to the house. A detective told her five of the photos met the statutory definition of sexual exploitation of a minor and he expected charges to be filed against both parents. Pederson decided to take temporary custody of the children. She relied “on the fact that ... at the time there was a pending criminal investigation with both parents named as suspects,” the detective’s “opinion of the criminal acts that were committed,” and her “viewing of the pictures and the fact that ... all of this suggested these children were at risk of further exploitation.” Her supervisor, Amy Van Ness, approved. It was the Memorial Day weekend, and at the time, Arizona law provided no procedure to immediately obtain a court order.

The children were taken to foster homes and later were delivered to their grandparents’ home, where they stayed for about a month before being returned to their parents. The juvenile court did not adjudicate them abused or neglected, and no criminal charges were filed.

The Demarees then filed a § 1983 suit. The district court granted summary judgment, ruling there had been no violation of their constitutional rights. “Pederson and Van Ness could have reasonably concluded the photos were potentially criminal,” wrote District Judge Roslyn Silver. Rejecting the contention that they were obviously innocent family photos, she noted that “[t]he focal point of some of the photos was the children’s genitalia; some of the photos depicted the children in what appeared to be unnatural poses; and some of the photos depicted a partially clothed child, potentially calling attention to the parts that are uncovered.” She ruled that there was a reasonable inference of
MCBA PRESIDENT

Hon. Geoff Fish

Getting the edge

This month’s Maricopa Lawyer focuses on our Real Estate Section. Needless to say in our ever-expanding Valley, this Section is kept busy providing its members with updates on the changes in the law, conducting programs that promote professional development and connecting with outside entities including real estate professionals, legislators and others related to the real estate community. As you can tell from the other columns in this month’s edition, there is a lot more to this practice area than one might realize. If you think you might be interested in joining the Section, please email info@maricopabar.org.

As I write this month’s article, I am actually preparing to rotate my assignment, leaving the Family Department and joining the Criminal Department. This will be my second rotation as a judicial officer, having spent time in the Probate Department as a Commissioner. While I have only been on the bench for about 6 years and certainly don’t have the experience of many of my colleagues, I have learned enough to know what does and what does not make you stand out in court. With that said, I would like to give you my observations in helping you get the edge.

Now, I know there have been scores of columns written by judicial officers on best practices and tips as well as numerous “what not to do” columns from lawyers (I think there should be more “what lawyers want from judges” but that’s a topic for another day). So you must be asking - what can you tell me that I haven’t heard before? Honestly, nothing. But, there is a reason these columns are some of the most read and the reason is that judges are highly attended, and that’s because the issues we see as judicial officers don’t go away. First, act professional and civil not only to the court but to opposing counsel and/or other party. Practicing law is already pressure filled without adding any additional and unneeded stress. As legal professionals, the main focus of work is normally trying to extricate a client from a mess of their own making. Despite the best intentions, lawyers are subject to constant client complaints, no matter how good the result may be. Ever-coming deadlines and responses are always lurking. For those solo and small firm practitioners, you are also running a business on top of trying to be a lawyer, adding a whole other layer of stress. There is no reason then, to treat an other lawyer, legal professional or other party in any other manner than you yourself expect to be treated. This does not mean you have to be a pushover. You can still be firm in your views, yet respectful. Return an email or other correspondence in a timely fashion. I can’t tell you how many times I’ve heard in court “he never responded to our offer.” It doesn’t much take to at least acknowledge receipt. You are doing yourself and your client no favors if the court believes you are a jerk. (I’m sure you’ve appeared before judges acting in the same manner, but again, that’s a topic for a different day).

Next, (and this one still gets me no matter how much it’s drilled in), if you are asking for a continuance, you must get the other’s side’s position or at the very least, indicate your attempts to do so. I cannot tell you how many Motions to Continues are received (even those with the magical word “expedited” in the title) in which the moving party has failed to put forth the opposing party’s position or at least stated their position. As judicial officers, we have no option but to then tickle the matter for response while we grumble to our staff about why the rules are not followed. (Yes, our staff quickly learns which attorneys are respected and which aren’t – please, get into the first category).

Be prepared. This should be an obvious one, but you’d be surprised how many attorneys come to court without being prepared. You must realize that as judicial officers, we

See Getting the edge page 3
In past years, we have had great participation from many different families. This year we are placing a special emphasis on family and we invite you to bring out your friends and family to participate as a group in the event. We will have many great prizes including a raffle for participants. We encourage you to gather your crew and strive to be the best at Race Judicata this year.

The Race Judicata is going to be held on October 20, 2018, at 7:15am at Kiwanis Park in Tempe. Check-in will start at 6:30am. The cost is $25 per person for adults and $15 per person for kids under 12. To register for the event please visit the website at: https://maricopabar.org/ and click on “CLE and Events.” Then click on “Calendar.”

In addition to registering for the race, there are also sponsorship opportunities for those who would like to give a little more and get company recognition. Please contact Lori Katzaroff at lkatzaroff@maricopabar.org for more information on sponsorship or registration for the race. Hope to see you all there!
Behind the scenes processes

This month, Public Lawyers Division Board Member Derek Graffious graciously agreed to write a column describing the behind the scenes processes of Division One of the Arizona Court of Appeals. Derek is a 2016 graduate of the University of Arizona’s James E. Rogers College of Law, and currently clerks for Judge Randall M. Howe of the Arizona Court of Appeals. Thank you Derek for your contribution and insight!

The Appellate Process: A Law Clerk’s Perspective

As a law clerk at the Arizona Court of Appeals, Division One, I routinely get asked two questions: (1) What happens behind the scenes before the Court of Appeals mandates a case and (2) what does a law clerk do? The answer to the first question also answers the second.

After the Clerk of the Court assigns a case to a three-judge panel, the panel’s presiding judge assigns it to one of the judges. Once a case is assigned to a particular judge, that judge determines which of his or her law clerks will work on the case. Law clerks are usually assigned a case one or two months before the case is scheduled to be conferredenced.

At this point, the law clerk will review the briefs, physical exhibits, and an electronic record. Although the law clerk is free to jump into the case however he or she pleases, reading the issues statement in the opening and answering brief allows the law clerk to gain a better understanding of what to look for when reviewing the record. Depending on the type and complexity of case, the record may contain a few dozen documents and transcripts, or a few thousand. After reading the record, referring to the physical exhibits as needed, and reading the briefs on appeal, the law clerk then researches the relevant statutes, regulations, case law, etc. to ensure that the clerk fully understands the issues raised. Depending on the number of issues raised on appeal, this research could resolve fairly quickly, or the law clerk might end up researching how other states and the federal courts deal with the issue. If needed, the law clerk discusses the law and issues with the judge to determine the appropriate analysis and disposition. After the law clerk and the judge have determined the analysis and outcome, the law clerk writes the draft decision accordingly.

The judge and the law clerk will then engage in a back and forth editing process until the judge is satisfied that the draft is appropriate to send out to the other two judges on the panel. The completed “pre-conference” draft is distributed to the panel one week before the scheduled conference date. (Fun fact: Division Two distributes a draft to advocates before they have oral arguments).

The judges then review the next draft and edit the draft and provide any comments that they might have. The law clerk reviews the edits and comments and prepares to present the draft at the scheduled conference.

At the conference, the law clerk presents the draft decision and addresses any comments or concerns that the panel raised during the review period. If the judges all agree and the case does not have oral argument, the discussion of the case is finished. If the case is scheduled for oral argument, the law clerk attends oral argument to determine whether anything said at the oral argument necessitates a change in the draft decision. If the judges wish to discuss the case further, the panel will reconvene after oral argument.

At this post oral argument conference, the judges will address any problems with the decision and the law clerk will often give his or her thoughts on if the decision needs to be changed in light of the arguments made at oral argument.

After conference ends, the law clerk edits and prepares the draft to be checked for citation and record accuracy. Once that stage is completed, the law clerk prepares the decision to be read by the judge’s judicial assistant and the non-authoring law clerk. That is, the judicial assistant and the non-authoring law clerk alternate reading paragraphs of the decision out loud (including punctuation) while the other follows along to ensure the decision is free of any typographical errors. The next step is for the judge to read the decision before signing a “decision approval” form. The decision is then given to the other two panel judges for their final review and signature.

Although edits occasionally occur during this stage, they are rare and the decision is rendered shortly thereafter. When a case results in an opinion as opposed to a memorandum decision, two extra steps occur. First, after the judicial assistant and non-authoring law clerk read the opinion, it is distributed to the other 13 judges on the Court. Each judge reads the opinion and provides comments and any edits that they believe strengthen the opinion. The law clerk discusses these comments and proposed edits with the judge to see which edits will be implemented into the opinion. After the edits are implemented, the opinion is distributed to the panel judges for their signature and the opinion is then rendered.

This process is the helicopter view of how a case makes its way through the Court of Appeals, Division One. While this is the process in the chambers I work in, each judge is free to determine his or her own process by which a law clerk works on a case. A law clerk’s day is usually spent at any one of the stages above and sometimes he or she will be working on different cases at different stages during the same day. This is one of the more interesting aspects about being a law clerk, you can spend the morning researching tort law and then spend the afternoon working on criminal law. Overall, being a law clerk is a rewarding experience and provides an opportunity to learn from some of the brightest minds in the legal field.

Fuzzy verbs

A judge recently asked me if I see a lot of “fuzzy” verbs in legal writing. Specifically, he was asking about rule statements. Many writers avoid concrete rule statements by adding fuzzy verbs that distance the writer from the rule or give the writer some wiggle room. This distance or wiggle room is rarely needed. In fact, the judge pointed out that fuzzy verbs make the writer seem unsure of the point being made.

Consider the following example:

A nexus is deemed to be a close relationship.

Adding the verb “deemed” makes the sentence a passive voice construction, thus taking the focus off of the statement and putting that focus on an unnamed subject who is doing the “deeming.” Most of us do not go around saying the word “deem,” yet I see this word often in rule statements. In my experience, this is the most common fuzzy verb. The fix for this issue is to use the verb “it.”

A nexus may be a close relationship.

If the writer needs to create some wiggle room, I suggest using the simple verb “may,” which all legal drafters agree is a word indicating discretion.

A nexus may be a close relationship.

Other similar fuzzy verbs to avoid include “is considered,” “is decided,” and “is said.”

A related issue is the use of “court” as the subject of a rule statement: The court has decided that a nexus is a close relationship. This construction moves the fuzziness to the main clause and moves the actual rule to the object/clause position, and that move deemphasizes the rule. Although this construction makes sense if the point of the discussion is what a court is doing, such as typical circuit split explanation, most rules do not need a leap in focusing on the court. Each rule statement should be followed by a citation, and the citation has the relevant court information included.

Another bonus of getting rid of fuzzy verbs: more concise writing.

Lesson learned: Embrace the “it”!

Legal Writing

Tamara Herrera

A judge recently asked me if I see a lot of “fuzzy” verbs in legal writing. Specifically, he was asking about rule statements. Many writers avoid concrete rule statements by adding fuzzy verbs that distance the writer from the rule or give the writer some wiggle room. This distance or wiggle room is rarely needed. In fact, the judge pointed out that fuzzy verbs make the writer seem unsure of the point being made.

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Lesson learned: Embrace the “it”!
This isn’t just another “Bar to Bench” piece that looks at the legal, judicial and technical elements of Arizona’s merit selection process, this column considers the human element, the historical influences, and more. This is just one of more articles yet to come, all of which the goal will be to look far deeper into the merit selection process than anything you will ever read or hear at a “Bar to Bench” series or forum. So, let’s pull back the curtain and take a look at a lawmaker’s journey to understand the value of Arizona’s merit selection while questioning its future.

In preparation for Arizona’s Centennial Birthday, the 97th Arizona Town Hall gathered in November 2010 to review the State’s successes and shortcomings over the past 100 years; and to discuss and develop recommendations as a guide for the future of Arizona’s Judicial Branch is not only the best structured of the three branches of government, but it is also one of the best state judiciaries in the nation. This is mostly owing to the effects of merit selection, which produces high-quality, skilled judges who are independent of the interests that would otherwise fund judicial elections.

Admittedly, until 2011 I had given little thought to the processes in which Arizona’s judicial officers found their way to the bench. However, while serving as a State Representative in the first regular session of the Fiftieth Legislature, Arizona’s judicial merits selection process received heavy scrutiny and significant criticism. The intense efforts to eliminate or, at the very least, substantially modify merit selection warranted a deep dive into its history and many meeting with individuals and entities of varying perspectives to ensure that I fully understood and appreciated the issues at hand.

Eight bills were introduced early in the session, none of which were successful; yet it quickly became apparent that a battle on merit selection was imminent. Sure enough, late in the session, a Senator introduced a Strike Everything Amendment to Senate Concurrent Resolution 1001 (“SCR1001”) in the House Judiciary Committee, which was purportedly drafted with input and utilized on it; because there were some reasonable refinements to the process being proposed, such as increasing the judicial retirement age. However, there were other provisions that gave me pause, including the thought it might adversely create an imbalance of concentrated government power. In the end, my vote was influenced by the careful consideration of the remarks of then-Senator O’Connor, recorded in the March 19, 1971 Journal of the Senate, in which she declared that “[t]he people of Arizona are entitled to choose which system of judicial selection they want to have.”

In April of 2011, SCR1001 was approved by the House with bipartisan support and out of the Senate via party-line; and later appeared on the 2012 general election ballot as Proposition 115. The real testament to the success of Arizona’s judicial merit selection process came on November 6, 2012 when the voters overwhelmingly chose to retain the status quo. According to the State digital archives, when the voters were finally provided the opportunity to vote on merit selection in 1974 via Proposition 108, it was narrowly approved with just fewer than 35,500 votes. Whereas in 2012, the voters overwhelmingly (by nearly 900,000 votes) opposed the attempt to significantly modify merit selection.

As a lawmaker, my journey to understand Arizona’s merit selection led to my great respect and admiration of it; but it is my service as a public member on the Judicial Nominating Commission that convinced me that while imperfect, this process is truly one of the best in the country. I hope this series of columns, along with Maricopa County Bar Association’s Bench Bar Conference, will eliminate trepidation and inspire more qualified attorneys to apply to serve as a judicial officer in one of our prestigious Arizona courts.
MEMBER SPOTLIGHT

KEVIN P. NELSON
Chair, Real Estate Law Section
Tiffany & Bosco P.A.

How long have you been a member of the MCBA? Of the Real Estate Law Section?
Since 2008, I believe.

How long have you been practicing real estate law? Was it your first area of practice? If not, what else have you done?
Some portion of my practice has focused on real estate law for the past 13 years. I started practicing in Flagstaff, Arizona working for a small firm and did not have a first area of practice. I just did whatever was put in front of me. Over the years, my main areas of practice have included real estate, banking, construction, employment, insurance (95% not on the defense side), and tribal law. I still actively practice in each of those areas, except for employment.

What do you see as the focus for the Real Estate Law Section this year?
I have three focuses. First, is increasing membership and building a solid Board. If anyone is interested in joining, we welcome your participation. Second, improving the benefits members of our section receive by being a member. Over the coming months, our goal is to improve upon the consistency of our section’s CLEs and to turn our E-Communities page into a resource practitioners may use to learn more about recent case law and legislation as well as County resources available to them.

What issues do you see facing attorneys practicing real estate law in Arizona?
For me, there are two main issues. First, how artificial intelligence will change the practice. Smart contracts and blockchain technology appear to be the buzzwords now and the potential for technology to limit the need for less experienced attorneys or attorneys performing more routine functions is becoming a reality. As the real estate industry starts to incorporate smart contracts, I see a decreasing need for general transactional attorneys and an increasing need for sophisticated litigation attorneys with substantial experience working with and understanding technology.

Second, water. That is an obvious issue.

If you hadn’t been a lawyer, what else would you be?
Good question. Most likely a small business owner, an astronaut, or a programmer.

If you could be any fictional character, on TV/in books/film, who would it be, and why?
Batman, at least for a little while. It would be nice to have an overabundance of wealth that you could use toward helping others by day, then turning to a secret life of fighting crime with the use of sophisticated toys and a sidekick butler by night. But it would have to get lonely after a while. I would miss living in a busy house and I already miss enough sleep.

What’s the strangest job you’ve ever held?
I do not consider any job strange. Work is work. But I worked as a dishwasher, a landscaper, and a camp counselor (supervised by my wife at different points of my life) prior to graduating from law school.

A Primer on Partitions

Ari Ramras
Ramras Legal, PLC

I’m surprised at how often non-spousal joint title to real estate. This could happen for a number of reasons. They may jointly inherit property, or foreclose on property after jointly making a loan. People occasionally put a friend or family member on title with them, as security for a loan. And, with surprising frequency, people simply decide to put their boyfriend or girlfriend on title.

When borrowing money from a friend or family member to purchase property, and there is a desire to secure the loan, the better practice is to execute a formal promissory note secured by a deed of trust. However, if conventional financing is also obtained, e.g. from a bank, the bank will generally not allow this secondary financing. As a work-around, the friend or family member could be added to title. While that may sound like a good idea, litigation could later ensue as to whether the friend or family member has a fee interest, i.e. ownership interest, or an “equitable mortgage,” which is the functional equivalent of a mortgage, i.e. a lien similar to a deed of trust, except that it needs to be foreclosed judicially.

Aside from inviting litigation, adding friends or family to title can cause other unintended consequences, depending on how title is taken. If title is taken at joint tenants with right of survivorship, as opposed to as tenants in common, then the surviving joint tenant owns the entire property. This could be especially problematic when boyfriends and girlfriends become ex-boyfriends and ex-girlfriends.

When two or more people jointly own real estate, for whatever reason, they are like business partners. Ideally, like business partners, they will enter into an agreement that spells out their rights and obligations. If they take title in the form of a limited liability company, this will be an operating agreement. The most important component of such an agreement would be a “buy-sell” provision, which provides a mechanism for one party to buy out the other when they want a “business divorce.”

However, parties do not always have the resources or foresight (or some would say pessimism) to plan for a business divorce. Absent such an agreement, joint ownership in real estate follows Newton’s first law of motion, roughly paraphrased that an object in motion stays in motion unless acted upon. In this context, joint ownership generally continues until title is sorted to the courts. Just like deadlocked owners of a business can ask the court for a judicial dissolution, joint owners of real estate can ask the court for a “partition.”

What happens in a partition action? Under the controlling Arizona statute, the procedure is for the court to hold a hearing at which it determines the shares or interests of each owner, and appoints three commissioners to determine if a fair division of the property can be had. For example, if there are two joint owners, and the property is vacant land that can be split, the court can award part of the land to each owner.

More commonly, the property is a house, which obviously cannot be “divided,” and a report from commissioners is unnecessary. In that case, the court can simply order the sale of the property. The court will appoint a “real estate special commissioner,” usually a real estate broker, to list the property for sale.

Under the statutory procedure, the court cannot give one party the right to buy out the other party, or permit a party to make a credit bid, unless the other party agrees. Also, each owner may not necessarily receive the same amount of proceeds when the property is sold. The court may consider contributions and expenditures made by each party in acquiring and improving the property. For that reason, the party claiming a greater contribution should be prepared to present the court with a spreadsheet of all contributions, with backup documentation like receipts.

In an ideal world, joint owners of real estate will always agree on what to do with the property, but in many circumstances a partition action is the only way to break an impasse.

Ownership of Arizona real estate by Canadian investors

Howard J. Weiss
Jennings, Stroup & Salmon, PLC

While an LLC is generally the preferred form of ownership entity utilized by U.S. real estate investors, starting in 2018 Canadian investors have been advised to purchase and hold U.S. real estate through a limited partnership (LP). Until recently, Canadian investors were often forming limited liability limited partnerships (LLLP’s) or limited liability partnerships (LLP’s) rather than a traditional LP. Others were using an LLC that was owned by an LLLP for purposes of receiving partnership distributions from the LLLP. One of the advantages of the LLLP versus a LP is that the LLLP provides limited liability protection for its general partners, in contrast to a traditional limited partnership where the general partners have liability.

In May 2016, Canada Revenue Agency (CRA) effectively changed the playing field when it announced that it would treat United States LLLP’s as corporations for tax purposes unless the United States LLLP was formed prior to April 26, 2017, and met certain conditions. If the LLLP met those conditions, the LLLP would be provided with administrative grandfathering by CRA and would continue to be treated as a partnership for tax purposes. If the LLLP did not meet those conditions, the LLLP would be treated by CRA as a corporation for tax purposes. Prior to this May 2016 announcement, CRA generally treated these LLLP’s as partnerships.

CRA further clarified its position on administrative grandfathering in April 2017 by stating that it would provide such administrative relief for Delaware or Florida LLLP’s, or LLLP’s in other United States jurisdictions with similar traits, formed prior to April 26, 2017. There were also additional requirements that the entity needs to satisfy, similar to the requirement for administrative relief under the May 2016 CRA announcement. In order to satisfy these requirements, and have the LLP or LLLP be treated by CRA as a partnership for all prior and future years, none of the following conditions can be applicable to the entity:

- One or more members of the entity, or the entity itself, takes inconsistent positions from one taxation year to another, or for the same taxation year, as between partnership or corporate treatment.
- There is a significant change in the membership of the entity or the activities of the entity.
- The entity is being used to facilitate abusive tax avoidance.

The tax considerations for Canadian real estate investors are significantly different than those of similarly situated U.S. investors. Unlike a U.S. real estate investor whose income from an LLC is generally treated as business income, Canada Revenue Agency does not recognize the LLC as a partnership for tax purposes and treats such income as corporate income, which is taxed at a higher rate. Because this area of taxation is very specialized, I strongly recommend that my Canadian clients contact a tax advisor that is experienced with cross-border accounting issues. If you have any questions regarding this article or need a recommendation for a cross-border accountant, please feel free to contact me at hweiss@jsslaw.com.
My money’s where? – social engineering fraud and real estate transactions

Kevin Nelson
Tiffany & Bosco, PA

Like most attorneys I know, I hate answering phone calls late Friday afternoon. Will I do it? Sure. But I know before I pick up the phone that whoever is on the other side will not have an issue that is easy to fix or that can wait until Monday to be addressed. For the past two years, those late Friday phone calls have typically concerned misdirected escrow funds.

Whether the call comes from an escrow agency or a purchaser, the story is too familiar. The caller will have received an email making a modification to escrow instructions from someone involved in the transaction. The modification is not confirmed by phone, but the instructions are followed and the wire is confirmed. No one in the transaction follows up for days, or sometimes weeks, after the funds are due.

Then, one of the parties to the transaction announces that the wire was never received.

The victims of the crime do not fit within any stereotype (at least as far as I can tell). No one is safe, regardless of their level of education, sophistication, or wealth. The problem all boils down to one issue: the transfer of what should be confidential and protected information by email. Fraudsters actively look for it and jump on it as soon as it is found. Simply sending an unsecured email with financial details from an open network is sufficient to pique a fraudster’s interest, and the sophistication level of schemes is only increasing. I have seen networks hacked, email addresses taken over (while the victims are still actively using them), and modifications made to email addresses that are often overlooked.

In the insurance industry, the issue is referred to as “social engineering fraud” and many, if not all, insurers treat it as a loss that is not covered by their policies (including crime policies). Only a handful of insurers have begun issuing social engineering fraud endorsements in select markets. Even then, standard limits are capped at $250,000.00.

Fortunately, there are steps that everyone can (and should) take to protect themselves. Here are my top five:

1. Do not fear your phone. I have held on to numerous lessons from my past mentors that remain in my thoughts as one-liners. This point and “reading all four corners” of any document you are dealing with are two that I can never shake. Too many of us (myself included) are far too comfortable hiding out in our offices, emailing or texting the day away. One problem with that routine is that emails and texts do not convey emotion well. A larger problem is that you never really know who you are dealing with on the other side of the communication. If you take away nothing else, just make a mental note that whenever you are involved in a transaction where the wiring of funds is involved, it never hurts to call the other side of the wire to confirm the wiring instructions within 24 hours before the wire and to confirm receipt of the wire within a couple days. Do not call and ask whether the wiring instructions are still good. Actually read off and confirm the details of the instructions. That step alone prevents most problems.

2. Follow up on missed deadlines. Some industries have adopted the practice of including disclaimers and warnings in their emails. Just think of your own email signature and the obligatory attorney-client privilege statement in small type at the bottom. In the escrow industry, many people include a statement that any change in escrow instructions should be confirmed by phone. The problem is that a lot of people do not read the fine print. Even the people that do read it do not actively read it or recall it when it is important. Do not take comfort in the email warning alone. If a deadline to wire funds is missed, follow up by phone within 24 hours to find out why.

3. Anticipate the issue and draft around it. Whether you are representing a purchaser, seller, or escrow agency, draft language to specifically address the manner in which escrow instructions will be conveyed, the phone numbers that should be used to confirm modifications, and the responsibility to follow up with each party to the transaction by phone. Include that language within the purchase agreement (even if it must be by addendum), provide a separate sheet for the parties to acknowledge the instructions by signing the sheet and taking a copy of the instructions with them (especially those parties that are less sophisticated), and require the language within the purchase agreement to be mirrored in the escrow instructions.

4. Never exchange transaction documents or financial information by unsecured email. There are several programs out there offering encrypted data exchange for little to no cost. Get one and use it. One article outlining the pros and cons of the “5 Best” for 2018 is available at https://www.lifewire.com/best-secure-email-services-4136763.

5. When things go wrong, get to work immediately. First, contact the local authorities. By local, I mean local to your location as well as the last known location of the funds. In the United States, the Federal Bureau of Investigation is a good place to start, but I do not suggest you start by calling them unless you already have a contact. Instead, go to www.ic3.gov/default.aspx and fill out a report. The FBI actively monitors it. If you report the issue within 72 hours of the wire, the FBI is pretty good at getting the funds back. Outside of the United States, you need to phone a friend. In many locations, there are numerous attorneys at larger firms or other business advisors (depending on the issue) who handle issues like this on a daily basis. Those contacts can help you maneuver through the proper systems more efficiently than phone calls to police stations hundreds or thousands of miles away. Second, contact the financial institutions involved beginning with your own. They also have some success stopping the transfer of funds.

If all else fails, you will need to evaluate your next steps carefully. Within days, sophisticated fraudsters can spread the wired funds—no matter the amount—into several different countries in ever decreasing amounts. A misdirected wire of $100,000 (equating to a couple’s life savings) can quickly turn into 20 or more different transfers between accounts. Although the cost of tracing and chasing the first wire may be worthwhile, the cost-benefit analysis quickly shifts as more transfers occur. Once that happens, fingers start to get pointed and we all know where that leads. So remember, please do not fear your phone.

Kevin P. Nelson
Tiffany & Bosco, PA

Howard Weiss
Jennings Strouss

Janet Jackim
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Calling all loyal readers
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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.

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Fall ballot initiatives

Come fall, Arizona residents are going to have a lot of reading to do if they want to be an educated voter.

In addition to the candidates for U.S. Senate, governor, nearly every other statewide office and the entire Legislature, voters will get to decide the fate of several ballot propositions.

Every two years, the Legislature often sends to the November ballot several propositions for voters to approve. Lawmakers place items on the ballot in hopes of either driving out like-minded voters or to alter voter-protected laws.

The Legislature placed two items on the ballot. First, the Legislature is asking voters to limit candidates who participate in the public campaign financing Clean Elections system from giving money to political parties. The proposition would also make the Citizens Clean Elections Commission subject to the rule-making authority of the state.

The public financing of state candidates was approved by voters in the 1990s. Clean Elections has not been popular with some lawmakers but this is the first time it has faced a referendum on its powers.

The Legislature also put on the ballot a proposal to eliminate the prohibition on diminishing retirement benefits according to adjustments made to both the Corrections Officers Retirement Plan and the Elected Officials Retirement Plan. Voters must make the changes proposed by the Legislature.

In addition, a grassroots group of mostly volunteers gathered more than 100,000 signatures in 2017 to force a referendum on the voucher expansion bill known as Empowerment Scholarship Accounts. The bill called for a significant increase in vouchers.

However, the law is placed on hold pending a vote of the people.

Arizona is one of the few states that allow direct democracy on important issues. This year, numerous groups aim to put issues before voters. However, very few of those efforts will be successful.

Two efforts have serious money or momentum that may propel them to the ballot.

Clean Energy for A Healthy Arizona mandates 50 percent of all energy in territories regulated by the Arizona Corporation Commission come from renewable sources by 2030. (Disclosure: Marson Media works for the group Reliable Energy Policy, which opposes the initiative.)

If it makes the ballot, supporters could put in $15 million to pass the initiative. Opponents could pitch in as much as $10 million to oppose the effort.

An education group also wants to double the income tax on the wealthiest Arizonans to fund pay increases for school district employees. The Legislature has reduced income taxes across the board over the last two decades. This would be the first time an income tax increase would be dedicated to a specific fund.

Never have there been more resources to learn about candidates and ballot measures. And this year, expect a voluminous voter pamphlet in November.

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

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

When a law partner leaves for another firm it presents the opportunity for all kinds of emotions, disputes and chicanery. The departing partner will often be concerned with their financial well-being going forward and setting up shop at the new firm, which is understandable. However, the members of a partnership owe each other a duty of loyalty and good faith, and as a fiduciary, a partner must consider his or her partners’ welfare, and refrain from acting for purely private gain. Therefore, when a partner leaves their current firm their departure is subject to the constraints imposed on them by virtue of their status as fiduciaries.

At one end of the spectrum, where a partner is dissatisfied with the existing partnership, taking steps to locate alternative space and firms does not violate a partner’s fiduciary duties. As a matter of ethics, departing partners have been permitted to inform firm clients with whom they have a prior professional relationship about their impending withdrawal and new practice, and to remind the client of their freedom to retain counsel of its choice. Those conversations should take place only after notice to the firm of the partner’s plans to leave.

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At one end of the spectrum, where a partner is dissatisfied with the existing partnership, taking steps to locate alternative space and firms does not violate a partner’s fiduciary duties. As a matter of ethics, departing partners have been permitted to inform firm clients with whom they have a prior professional relationship about their impending withdrawal and new practice, and to remind the client of their freedom to retain counsel of its choice. Those conversations should take place only after notice to the firm of the partner’s plans to leave. At the other end of the spectrum, secretly attempting to lure firm clients to the new firm even those the partner has brought into the firm and personally represented, lying to clients about their rights with respect to the choice of counsel, lying to partners about plans to leave, and abandoning the firm on short notice (taking clients and files) is potentially actionable as a breach of fiduciary duty to the existing partnership.

Ideally, both the current law firm and departing law partner would send a joint letter of notice. A joint letter allows equal treatment of both the departing law partner and the current firm, and minimizes the opportunity for disputes. Those of you that have had a partner leave your firm under particularly acrimonious circumstances may correctly point out that a joint letter might be easier said than done.

The departing partner is allowed to recruit their fellow partners to the new firm, however, recruiting non-equity partners, associates and staff (W-2 employees) while still with the old firm can be a grey area. The American Law Institute refuses to draw a distinction between partners and associates for this purpose, and only prohibits pre-departure and pre-notice of intention to withdraw solicitation of clients. The manner in which the departing partner recruits firm employees matters. The departing partner may not provide the new firm with confidential employee information (salaries, billing information) to facilitate the recruitment of the old firm’s employees. Even where the departing partner waits until after their resignation to offer jobs to the old firm’s employees, it may still be unlawful and unethical if the recruitment is designed in part to interfere with and disrupt the old firm’s relationships with their key at-will employees.

Confusion over these issues can often be avoided by spelling out the agreed procedure for leaving the firm in the partnership agreement, which is usually signed when all of the partners still like each other or at least are not openly hostile. For those of you contending a lateral move and who have an interest in mitigating the risk of an unpleasant dispute with your current firm, consult ABA Formal Opinion 99-414 Ethical Obligations When a Lawyer Changes Firms and the Arizona State Bar’s Ethics Opinion 10-02.

Joseph Brophy is a partner at Jennings Hang Cunningham. For more information about this issue, please contact Joseph Brophy at j-4B@JHC.law or 602.234.7849.

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Deputy Constable of the Year award

Maricopa County is home to the nation’s top Deputy Constable: Arnie Kohl. Kohl just earned the “Deputy Constable of the Year” award from the National Constables and Marshals Association for his outstanding service.

Aside from serving court documents, Deputy Constable Kohl rescued a one-month-old baby who had been left alone in a hot apartment, located and arrested a fleeing theft suspect, and took an evicted disabled veteran to the VA hospital to receive help.

Kohl was a Phoenix Police officer for 33 years and has been with the Constables since 2010. “I think of myself as a person who tries to do the job to the best of his ability and serve the public as well as I can,” he said humbly. “I think it all goes to serving the court and serving the public as well as I can,” he said humbly. “I do the job to the best of his ability and serve the public as well as I can,” he said humbly. “I do the job to the best of his ability and serve the public as well as I can,” he said humbly.

The latest Arizona court professionals to graduate from the Institute for Court Management Fellows program work for courts in Flagstaff, Pinal County, and Phoenix. The Fellows program is the highest certification and most demanding program of court management and the only program of its kind in the United States.

The final step of the Fellows process includes a three-day master class held in Washington, DC, during which participants present and reflect upon the results of their court research and improvement projects. Successful participants are recognized at a graduation ceremony held at the United States Supreme Court and awarded certification as a Fellow of the Institute for Court Management. Of the 28 graduates from the United States and Canada, four are from Arizona.

The new Fellows are:

- Jeff Schrade – Director of Education Services, Arizona Supreme Court whose project was “Arizona’s Court Leadership Pipeline”
- Maia Rodriguez – Administrative Senior Manager of Flagstaff Justice Court whose project was “Justice Court: What Causes Delay in the Life of a Case?”
- Elsa Montiel – Chief Deputy, Pinal County Clerk of the Superior Court whose project was “Kaiyin in the Courts”
- Araceli Ambert – Management Analyst, Maricopa County Juvenile Court whose project was “Reports vs Reality: Improving Performance Measurement”

Mike Malone, who previously worked in court administration at Pinal County’s Justice Courts and Phoenix Municipal Courts, also graduated. Mike now works in court administration for Tacoma, Washington.

To become eligible for a fellowship, applicants must have completed the Certified Court Manager process and the successor program, Certified Court Executive. Both of these programs demand rigorous study covering a broad array of topics including: caseload management; court performance standards; managing financial resources; technology projects; court-community communication; strategic planning and more.

The National Center for State Courts, based in Williamsburg, Virginia, sponsors the Institute for Court Management.

Judge Suzanne Marwil’s Investiture Ceremony

Superior Court recognized the judicial appointment of Judge Suzanne Marwil with an investiture ceremony held in the Board of Supervisors Auditorium on April 20. Currently, Judge Marwil presides over a Family Department calendar.

Maricopa County Bar Association President Geoff Fish presents a ceremonial gavel to Judge Suzanne Marwil.

Judge Anderson Retires

Judge Aimee Anderson sent her retirement letter to Governor Doug Ducey and Chief Justice Scott Bales. Judge Anderson will retire on June 30. Judge Anderson started her judicial career in February of 2001 as a commissioner in Initial Appearance Court and spent a majority of her time as a commissioner overseeing criminal calendars. After more than six years as a commissioner, she was appointed to the bench by Governor Janet Napolitano.

As a judge, she has served on juvenile, family, and civil calendars. “Aimee has been an incredible asset to this Court both as a commissioner and a judge. When she first applied for a hearing officer position with this Court she was described by one of her references as someone who demonstrates extensive knowledge of the intricate case dynamics, a willingness to work hard to accomplish case resolution, extreme professionalism, maturity, and exceptional legal acumen,” Presiding Judge Janet Barton said. “While I am happy for her, the happiness is definitely bittersweet.”

Prior to joining the court, Judge Anderson spent 18 years as a public lawyer, working for the Office of the Attorney General, Maricopa County Legal Defenders Office and the Maricopa County Attorney’s Office. She also served three years as a private attorney at Bowman and Brooke.

Judge Anderson earned her Juris Doctorate and her Bachelor of Science degrees from Arizona State University. She was also a multi-year national race-walking champion on the United States Track and Field Team.

To improve customer service, the Civil Department of the Superior Court of Arizona in Maricopa County, will be assigning new Transcript of Judgment and Excess Proceeds matters evenly between the downtown, northeast and southeast courthouse locations. This change goes into effect immediately.”
CONTINUING LEGAL EDUCATION

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PROGRAM LOCATION
Please note the location of each CLE as they are being hosted throughout the county. Interested in hosting and/or presenting a CLE at your firm? Email cle@maricopabar.org

ATTENDANCE POLICIES

ADVANCE REGISTRATION: Full payment must be received in advance of the program before you are considered registered.

LATE REGISTRATION: Early bird registration ends five days prior to the program date. Late registration is an additional $15. For example, registrations for a Sept. 17 program must be paid by Sept. 12 in order to receive early bird pricing.

WALKINS: You may register at the door if space is available; the $15 fee will apply. If you do not register at least five business days in advance of a program, MCBA cannot guarantee space or availability of materials.

CANCELLATIONS/REFUNDS: Refunds, less a $25 fee, will be issued only if the MCBA receives your cancellation, in writing by mail, fax or email, at least two business days prior to the program.

NO SHOWS: If you registered and paid, but could not attend, you may request that materials be sent to you, free of charge (allow 3-4 weeks). If audio media is available, registrations may be converted to a self-study package for an additional $15 charge.

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

WEDNESDAY
JUNE 6 • 9 AM – 12 PM
Ethical and Effective Law Firm Marketing

PRESENTED BY: The MCBA CLE Department
LOCATION: OSBORN MALEDON, P.A.
2929 N. Central Ave., 21st floor, Phoenix, AZ 85012

SPEAKERS:
Lynda C. Shely, The Shely Firm PC
Joseph Brown, Accident Law Group
Scott Harkey, President, OH Partners

Learn the ethics requirements, common mistakes, and practical aspects of law firm marketing, as well as how to apply a limited advertising budget, based upon practice areas. The panel will discuss:

- Branding (and which trade names/logos are permissible)
- Guidelines for updating firm websites
- Effective marketing budgets for all firm sizes
- SEO tips
- What must be included in all advertising
- Restrictions on online “matching” services
- Paying for referrals
- Why pens, keychains and coffee mugs are regulated

FRIDAY
JUNE 1 • 12 – 1 PM
Blockchain Technology

LUNCH SPONSORED BY: Ryley Carlock & Applewhite
PRESENTED BY: The MCBA CLE Department as part of the First Friday Free series
LOCATION: RYLEY CARLOCK & APPLEWHITE
1 N Central Ave # 1200, Phoenix, AZ 85004

SPEAKER:
David McCarville, Of Counsel, Ryley Carlock & Applewhite

Attendees will be given an overview and understanding of:
- What are the unique characteristics of Blockchain or Distributed Ledger Technology and how do Bitcoin and other cryptocurrencies use blockchain?
- What is Ethereum and how does it enable Smart Contracts or “programmable money”?
- The rise of Initial Coin Offerings (“ICO’s”) and regulatory issues related to this new method of capital formation;
- A brief history of crypto-catastrophes from Silk Road, Mt. Gox, DAO, recent ICO scams and centralized exchange thefts;
- Lessons learned re: best practices in securing private keys for crypto currencies;
- An overview of the developing blockchain economy, infrastructure, use cases and industry verticals.

TUESDAY
JUNE 12 • 8 – 9:30 AM
Retaining an Engineering Expert

PRESENTED BY: The MCBA CLE Department
LOCATION: LOVITT & TOUCHE
1050 W. Washington Street, Suite 233, Tempe, AZ 85281

SPEAKER:
William R. Acorn, PE, FASHRAE

Success in hiring and working with an engineering expert is not mysterious and does not have to be as daunting a task as it sometimes may seem. From the perspective of an expert that has been retained and worked with hundreds of attorneys and dozens of prestigious law firms, you will gain a new perspective on what to look for, how to screen and select the expert, and how to make the process as smooth, cost efficient and effective (i.e., a win for your client) as possible.

Mr. Acorn will explain the distinctions between the scope of expertise of various engineering disciplines, questions to ask in a screening interview, when to hire the expert, how to effectively get the engineer up-to-speed on your case, and how to work with more than one expert to ensure the bases are covered without overlapping testimony.

TUESDAY
JUNE 5 • 2 – 5 PM
Ethics for Probate Practitioners and Estate Planners

PRESENTED BY: The MCBA Estate Planning, Probate & Trust Law Section
SPONSORED BY: Lisa Sullivan, Arizona Bank & Trust and Gammage & Burnham, PLC
LOCATION: GAMMAGE & BURNHAM, PLC
2 N Central Ave, # 15, Phoenix, AZ 85004

SPEAKERS:
Steven M. Guttell, Steven M. Guttell PLC
Stephanie Fierro, Jaburg & Wilk PC
Chris Radditz, Gammage & Burnham PLC

A discussion and review of those ethical issues that regularly impact probate practitioners and estate planners. Presenters will discuss a variety of ethical issues, including conflicts of interests, dealing with clients with diminished capacity, who is your client, and many more. This discussion will benefit everyone from law students to even the most seasoned practitioners.

SUBMISSIONS POLICY:
Members and non-members are encouraged to submit articles for publication. The editorial deadline for each issue is generally the 8th of the month preceding the month of issue.

WRITE A REVIEW
Write a CLE review and get the CLE on the house (up to 1.5 hours max)! Contact Marcy Morales at mmorales@maricopabar.org for more information.
CONTINUING LEGAL EDUCATION

**THURSDAY**
**JUNE 14**  •  12 - 1:30 PM

**Drafting Contracts and Conducting Due Diligence in Commercial Real Estate Transactions**

**PRESENTED BY:** The MCBA Real Estate Law Section
**LOCATION:** JENNINGS STROUSS
One E Washington Street, Suite 1900, Phoenix, AZ 85004
**LUNCH PROVIDED BY:** Jennings Strouss
**SPEAKER:** Howard J. Weiss, Jennings Strouss
This lunch seminar is designed to benefit all attorneys, whether or not real estate is their primary practice area. The seminar will cover such topics as physical inspections, surveys, environmental reports, and review of existing leases.

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Participating in CLE courses just got easier with our new self study website! Go to maricopabar.bizvision.com for downloadable videos and course materials.

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**FRIDAY**
**JUNE 22**  •  9 AM - 12 PM

**TASC & SAGE Counseling; Drugs and Behavioral Health Services for Family Court**

**PRESENTED BY:** The MCBA Family Law Section
**LOCATION:** ARIZONA SUMMIT LAW SCHOOL
1 N Central Ave, Phoenix, AZ 85004
**SPONSORS:** Soberlink, Divorce Real Estate Institute
Jason Fial Insurance Agency
**SPEAKERS:**
Jeff Gingerich, Superior Court Liaison/TASC
Loree Adams, TASC
Jaime Anderson, Laboratory Technical Supervisor/TASC
Brandy Judson, Clinical Director/SAGE Counseling
Steve Grams, Executive Director and Founder/SAGE Counseling
This course will explain the various options for drug testing on the TASC Referral and Release form, in terms of scope and frequency; how a party testing for Family Court becomes a TASC client and gets set up for testing; what to do in situations wherein a testing party has to leave the state and may miss a test; how to go about obtaining the results of a party’s testing for another court or agency; how to interpret Drug Testing Summary Reports; and additional Q&A/FAQs regarding drug testing. Also includes information on the clinical services offered by SAGE Counseling (from assessments to treatment), and the utilization of these services by the family court.

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**Announcements**

Roxanne K. Song Ong, the first Asian woman lawyer and judge in Arizona was inducted into the 2018 Arizona Asian American Bar Association’s Hall of Fame for her lifetime achievement serving the criminal justice system for nearly 40 years and breaking new ground as the first woman and minority to serve as the Chief Presiding Judge of the Phoenix Municipal Court.

Frazer Ryan Goldberg & Arnold, LLP has announced that elder law attorney Marsha Goodman has been admitted to represent veterans before the U.S. Court of Appeals for Veterans Claims, elder law and mental health attorney Josh Mozell has been elected as a partner in the firm, and tax litigation attorney Brandon Keim has received an LLM in Taxation from Georgetown University Law Center.

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**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.
imminent danger sufficient to justify seizing the children.

The Demarees appealed, but the CPS workers argued that their appeal was untimely. A fractured court issued a per curiam opinion. Circuit Judge Marsha Berzon was the only judge concurring in the opinion in toto. Circuit Judge N. Randy Smith argued that the court lacked jurisdiction, but with the majority having concluded the opposite, he joined Berzon on the merits. Judge Jack Zouhary of the Northern District of Ohio believed that the court had jurisdiction but disagreed with the merits ruling.

The majority concluded that the CPS workers had violated the Demarees’ constitutional rights by removing the children without a court order and that the governing law was clear at the time. It held the government may remove children from their families without a court order only when the children are “at imminent risk of serious bodily injury or molestation,” not of sexual exploitation.

“Pederson and Van Ness did not represent that the Demaree children might again be beaten or molested if left in their home,” the court wrote, because “the children were at imminent risk of serious bodily harm.”

The court wrote, because “the children were at imminent risk of serious bodily injury,” it was beyond debate that existing Ninth Circuit precedent establishes that children can only be taken from their parents without a warrant to protect them from imminent physical injury or molestation in the period before a warrant could be obtained.

“[T]o say a child can be removed only if x is likely to happen necessarily means she cannot be removed if there is no indication that x is likely to happen,” the majority reasoned. “That there is no case law concerning a situation in which y, but not x, may be more likely to happen does not make the rule setting the standards for removal any less clear— the rule is that only a reasonable fear of x, not y, can provide a constitutional basis for exigent removal.”

Judge Zouhary disagreed. The majority, he asserted, failed to “identify any circuit precedent that addresses whether an emergency removal is justified under circumstances like these, where the type of abuse alleged is sexual exploitation, and it would take a social worker at least several days to obtain a removal order.”

The serious allegations of abuse here “did not necessarily involve traditional physical injury,” he agreed with the majority. But “the nature of the concern—sexually explicit photos—is not limited to snapping a picture,” he wrote. “The risk was that the parents were sexually exploiting their children.” Pederson had explained that this raised “the concern that there is more to the situation than meets the eye—for example, that the parents may have posed the children, or that the children may have adopted provocative poses based on behavior observed in the home.”

“Without the benefit of clearer guidance,” Zouhary wrote, “a reasonable social worker could be unsure how to proceed under these circumstances.” Furthermore, “this case is unique; no judicial review was available for at least several days.” He found that fact “both critical and, perhaps, unlikely to be repeated.”

“Pederson faced a tough judgment call on that Saturday night,” Zouhary wrote. “She could err on the side of caution and take the children into temporary custody, or she could wait three days until the courts reopened to seek a removal order.” And while “it was clearly established that a child could not be removed from the home without a court order, absent evidence that the child was in imminent danger of abuse,” he wrote, “it was not beyond debate that the confluence of factors [present here] would not support a finding of exigency.”

“Without the benefit of clearer guidance,” Zouhary wrote. “A.J. and Lisa were likely to put their three children in serious bodily harm. The court has made it easy to contribute with a convenient ‘pro bono’ check-off box located in the upper right-hand corner of your form provided in your arbitration packet. For more information, go to maricopabar.org and click on ‘About Us’ on the top menu bar then select ‘Foundation.’

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The court has made it easy to contribute with a convenient “pro bono” check-off box located at the bottom of the form provided in your arbitration packet. For more information, go to maricopabar.org and click on “About Us” on the top menu bar then select “Foundation.”
The month of June presents many opportunities for lawyers to meet and mingle with colleagues at continuing legal education (CLE) programs, but it isn’t all about being studious. The State Bar convention is a ‘get away’ destination where CLE is interspersed with entertainment in a resort atmosphere that dispels the summer doldrums. The Arizona Supreme Court holds an annual judicial conference in June. Both the occasions include the recognition and celebration of outstanding achievements and community service by members of the Arizona Bar.

A few months before, the Volunteer Lawyers Program (VLP) co-sponsored by the Maricopa County Bar Association and Community Legal Services is pleased to nominate VLP members for statewide pro bono awards in June. Some of the most prestigious awards are bestowed by the Arizona Supreme Court and the Arizona Foundation for Legal Services and Education (AFLS&E). This year, volunteer attorney Shawn K. Aiken is the recipient of the Arizona Supreme Court Pro Bono Award, and volunteer attorney Nancy E. Tribbensee is the recipient of the AFLS&E William E. Morris Pro Bono Service Award. For their exceptional volunteer work in 2017, seventeen attorneys nominated by VLP will join many of their colleagues who have been recognized among the ‘Top 50’ pro bono attorneys in Arizona each year since 2001.

Shawn Aiken enrolled in the VLP a few months after being sworn into practice, and thinks, “it’s the best pro bono opportunity in town.” Over more than thirty years, he has accepted myriad civil matters involving tenant and consumer rights, and some family law issues. He notes that situations where people have been victimized by lemon car sales, like law issues. He notes that situations where tenants and consumer rights, and some families have been recognized among the ‘Top 50’ pro bono attorneys in Arizona each year since 2001.

By Peggi Cornelius
VLP Programs Coordinator

Maria Zawocki
Zawocki Law Offices

Diane Drain
Law Office of D.L. Drain

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Osbourn Malcolm

Nancy Tribbensee is Senior Vice President and General Counsel for the Arizona Board of Regents. In that capacity, she does not have the opportunity to represent individuals with their personal legal concerns. As a member of the VLP, however, she has chosen multiple ways to participate in VLP’s Children’s Law Center (CLC) for more than two decades.

Through the CLC, Tribbensee has positively impacted the lives of sixty children, by representing the people who sought to become their legal guardians. Her clients are frequently the grandparents and other relatives who have accepted responsibility for raising the children when parents are absent. They need to become legal guardians to enroll children in school or give permission for medical care. In some cases, there’s a need to access services necessary for a child’s special needs, or to meet requirements for the children to live in their public housing residences.

Tribbensee says, “I have been lucky to work with grandparents, aunts, uncles, sisters, brothers and family friends who have stepped up to raise kids who have lost parents to drugs, accidents, illness and war. These guardians have so few resources themselves but have been dedicated to supporting children when they most need it. I have recently had the chance to work with several families who fled the Democratic Republic of Congo to assist them in taking the final step to formalize the commitment of these refugees to raise their family members in the United States.”

In addition to accepting pro bono cases, Tribbensee has been a trainer and mentor to volunteer lawyers who want to take guardianship cases from the CLC. She has provided continuing legal education to at least 200 VLP members. And she’s served as a mentor to more than 250 attorneys in their representation of pro bono clients.

In her comments related to being the current recipient of the William E. Morris Pro Bono Service Award, Tribbensee credits Arizona State University and the Arizona Board of Regents for supporting her pro bono work. She also thanks Kate Linder, Suzanne Tempelin and Roni Tropper for their individual support. Attorney Roni Tropper, CLC Coordinator, describes Tribbensee as “a wonderful, kind human being with a perfect moral compass and an unwavering commitment to using her legal skills to help those in need.”

Being named a member of the “Top 50” pro bono attorneys in Arizona is a unique distinction created by the Arizona Foundation for Legal Services and Education (AFLS&E) to recognize outstanding contributions by attorneys who participate in volunteer programs funded in part by the AFLS&E, Community Legal Services, DNA People’s Legal Services, Southern Arizona Legal Aid, and the Florence Immigrant and Refugee Rights Project are invited to nominate honorees for the annual recognition at the State Bar of Arizona convention.

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!

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

***PRO BONO SPOTLIGHT ON CURRENT NEED***

**CONVENIENT ONLINE PRO BONO OPPORTUNITY:**

Online Arizona Justice, soon to be Arizona Free Legal Answers, is a confidential question answering system that allows attorneys to give free legal advice online at a time and location convenient for you. Once you are registered, you can log into the site, decide whether you would like to answer any question and send your response via the website. As the volunteer attorney, you decide when to answer a question and when to end an exchange. It is that easy! Register today at: https://onlineazjustice.org/Account/UseAgreement or contact Kim.Bernhart@azflse.org for more information.

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**GUARDIANSHIP OF INCAPACITATED ADULTS:**

AFLS&E. Community Legal Services, DNA People’s Legal Services, Southern Arizona Legal Aid, and the Florence Immigrant and Refugee Rights Project are invited to nominate honorees for the annual recognition at the State Bar of Arizona convention.

June Calendar

Check out maricopabar.org/events and watch your inbox for the latest updates on dates, times, and locations for events and meetings.

The 2017 “Top 50” recipients participating in the VLP sponsored by CLS and the MCBA are:

- Nancy V. Anger
- Hershel Ber
- Shannon L. Clark
- John F. Gordon
- Melissa Ho
- Maria F. Hubbard
- Nancy W. Kelly
- Christopher R. Lazenby
- Tracy M. Marsh
- Judith A. Morse
- Robin E. Petrowski
- Edwin G. Ramos
- Deanna B. Sandler
- Matthew C. Thomas
- Monica R. Thompson
- Kevin J. Walsh
- Olabisi O. Whitney

**ADOPITION:**

M. Zawocki
Zawocki Law Offices

Diane Drain
Law Office of D.L. Drain

Don Powell
Carmichael & Powell

**BANKRUPTCY:**

Kyle Orme
Quarles & Brady

Michael Wrapp
Tiffany & Bosco

**CONSUMER:**

Annette M. Cox
Con Sandowal Law

Joshua Phillip De La Ossa
De La Ossa & Ramos

Elizabeth Feldman
Burt Feldman & Grenier

Cody L. Hayes
Haye Esq

Holly L. Marshall
Holly L. Marshall Law Office

Karen L. Nagle
Nagle Law Group

**COURT ADVISORS FOR CHILDREN IN FAMILY COURT:**

K. Aiken is the recipient of the Arizona Supreme Court Pro Bono Award, and volunteer attorney Nancy E. Tribbensee is the recipient of the AFLS&E William E. Morris Pro Bono Service Award. For their exceptional volunteer work in 2017, seventeen attorneys nominated by VLP will join many of their colleagues who have been recognized among the “Top 50” pro bono attorneys in Arizona each year since 2001.

Shawn Aiken enrolled in the VLP a few months after being sworn into practice, and thinks, “it’s the best pro bono opportunity in town.” Over more than thirty years, he has accepted myriad civil matters involving tenant and consumer rights, and some family law issues. He notes that situations where people have been victimized by lemon car sales or Truth-in-Lending violations stand out as especially egregious to him. When the case settled, Aiken’s client had title to the land, and the family moved back to a home the father built to replace the mobile home that had been there. Aiken said, “In this, as in most VLP cases, the problem was the central issue in the client’s life at the time. It was affecting the entire family. Helping pro bono clients solve their problems may be an opportunity to influence or change the course of their life. If that doesn’t get your motor going, I don’t know what will!”

Aiken expresses gratitude to his wife Lynn Aiken, his legal assistant DeAnn Buchmeier, and his law partners for supporting him in his pro bono work. In reflecting on the honor of receiving the Arizona Supreme Court Pro Bono Award, he says, “All of us enjoy one of the great privileges of our country to offer: the private practice of law. In return, we owe an obligation to serve.”

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**GUARDIANSHIP OF MINOR CHILDREN:**

Sarah Michael
Law Office of Sarah J. Michael

Edwin Ramos
De La Ossa & Ramos

**PROBATE:**

Karen Nagle
Nagle Law Group

**REAL ESTATE:**

Brian Foster
Snel & Willner
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