Legal Gala
Coming Up:
Barristers Ball!

Calendar March 3, 2012
now as a night to dine,
dance and enjoy bidding
in the silent auction
at the Barristers Ball,
to be held at the
Sheraton Phoenix Downtown.

“This year’s beneficiary
is the Arizona Coalition
Against Domestic Violence’s Lay Legal
Advocacy Hotline.
Find details on page
4 of this issue.

Online registration
is open now at www.
maricopabar.org or call
Laurie Williams at
(602) 682-8585.

Jennifer Green, immediate past president, presents a proclamation from Governor Brewer to
2011 MCBA President David Benton at the last MCBA Board of Directors meeting of the year.
The proclamation congratulates Benton for his year of successful service to the bar.

New Board President
Brings Energy, Experience

By Laura Swendseid

One of the characteristics of the 2012
Maricopa County Bar Association governing board is the diversity of practice areas and backgrounds. At the helm of this varied group
is President Jennifer Cranston, a shareholder at
Gallagher & Kennedy who practices in general
litigation with an emphasis on real estate dis-
putes.

Taking her post this month, Cranston—an energetic and long-time active member of the
MCBA—said she is eager to bring to fruition a
number of the organization’s goals. In 2010, a

A Matter of Punctuation: Comma Creates
Division in Arizona Supreme Court Case

What a difference a comma makes. In a split decision determining whether APSA—the Adult Protective Services Act—applies to the state, the factions engaged in a
discussion debate. The majority held that
the lack of a comma in a vital phrase signaled the legislature’s intent to exclude the state.
Estate of Braden v. State, No. CV-10-0300-PR

Jacob Braden was an adult with developmental disabilities. He received care from a private corporation with which the state
had contracted to provide care. In 2005,
Jacob suffered fatal injuries at the private
facility. His estate sued the corporation and the state under APSA, which provides remedies beyond negligence and wrongful-death claims.

The superior court granted summary
judgment, holding that the state was not a proper defendant. In a divided opinion, the
court of appeals reversed. Estate of Braden v.
2010). The supreme court reinstated the
superior court’s judgment.

In his majority opinion, Justice Robert M.
Brutinel called APSA ‘a statutory scheme that
protects vulnerable adults by imposing crimi-
nal penalties on and providing for civil
enforcement against those who violate its
terms.’ As enacted in 1988, APSA encom-
passed criminal sanctions against ‘persons’
who had imperiled, injured, or endangered an
incapacitated adult. In 1989, the legislature
added a provision, A.R.S. § 46-455(B), pro-
viding a civil cause of action against ‘any per-
son or enterprise’ that had violated its terms.

Simultaneously with the addition of § 46-
455(B), the legislature included provisions
‘recognize[ing] the state’s central role in both
civil and criminal enforcement.’ Under
APSA, the state may pursue civil actions on
behalf of vulnerable adults and may intervene
in private actions having special public impor-
tance. The state must also maintain a ‘registry
regarding persons and enterprises against
whom civil or criminal complaints have been
filed for abuse, neglect, or exploitation of vul-
nerable adults.’

Brutinel acknowledged that, as a remedi-
al statute, APSA ‘warrants a broad interpre-
tation.’ But, he wrote, ‘a liberal construc-
tion is not synonymous with a generous
interpretation and we will not impose a
burden or liability not within the terms
or spirit of the law.’

In APSA, the legislature defined ‘enterprise’ as ‘any corporation, partnership, associa-
tion, labor union or other legal entity, or any
group of persons associated in fact although
not a legal entity, that is involved with provid-
care to a vulnerable adult.’ Brutinel
noted that the state is neither corporation, partnership, association, nor group of associ-
ated persons. Thus, he wrote, it ‘is subject to
suit under APSA only if it is included in the
term ‘other legal entity.’’

Brutinel homed in on the provision’s
punctuation. ‘The absence of a comma after
the phrase ‘labor union’ makes a difference,’” he wrote. ‘Syntactically, this suggests
‘other legal entity’ does not function as an
independent catch-all category,’” he continued.

Brutinel backed up this analysis with

CourtWatch

Daniel P. Schaack

Where The Legal Community Connects

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www.maricopabar.org

INSIDE...

Tips for Taking Your First Deposition – p. 4
Another Record Year of Adoptions at Superior Court – p. 8
See Photos from Judicial Reception, Holiday Social – p. 9
Mutts Make the Best Dogs

Jennifer A. Cranston

Don’t get me wrong – I’ve known some lovely purebreds – but there’s something special and intriguing about a dog who looks a little funny and exhibits traits from multiple breeds (like a Boxer/Greyhound or a Rottweiler/Shar Pei/Pit Bull mix). This is not just my belief.

According to the internet (which is almost as authoritative as my mother), mixed breeds tend to have more moderate temperaments and to be healthier because of their good genetic diversity. (See www.yourpurebred-puppy.com.) What a wonderful euphemism – he’s not a mutt, he’s genetically diverse. I have heard this logic applied to humans as well. Personally, I feel I embody some of the better traits of my ethnic origins. Thanks to my Irish lineage, I am spirited, passionate and have a deep and profound love of beer. I like to think that my French blood has blessed me with sophistication, diplomacy, and an appreciation for fine wine. I’m still trying to figure out what my British ancestry adds other than a gift (curse) for meticulous (obsessive) attention to detail.

The point being: mixed-breed people benefit from this same genetic diversity; pure-breeds have their attributes, but the mutts in my life overwhelmingly exhibit great strength of character and refinement of traits.

Strength in Diversity

Taking this concept one step further, I believe that diversity also makes organizations stronger. This is neither a unique nor earth-shattering concept. But I think it’s a concept worth repeating and analyzing, especially as it relates to legal organizations. Many attorneys, myself included, prefer to go it alone. We are capable individuals and often like to do things in our own way, which makes group action a sometimes difficult and frustrating experience.

However, over the years, I have come to appreciate the benefits of a diverse group of individuals who, once joined in collaboration, become capable of bigger and better things.

I have experienced this phenomenon most acutely in connection with my service on the MCBA Board of Directors. Since first joining the board in 2006, I’ve been surrounded by a variety of personal and professional backgrounds that, together, provide an ideal breeding ground (forgive the pun) for the free exchange of ideas and well-reasoned action. As an aside, my personal experience is consistent with scholarly commentary on the subject – for example, if you search “nonprofit board diversity” on the internet, you’ll find a variety of articles discussing the importance of meaningful diversity on nonprofit boards.

A Diverse Board

The 2012 MCBA board of directors is no exception. This year’s board includes representatives from small, medium and large firms, as well as in-house counsel, government attorneys and the judiciary.

Ages and experience levels range from young to seasoned. And our diversity of practice areas is (if I may be so bold) impressive: criminal defense, bankruptcy, commercial litigation, corporate finance, estates and trusts, domestic relations, construction, labor and employment, technology, government affairs, real estate, insurance, healthcare and tax.

I feel confident that this great mutt of a board–with its wide array of perspectives and personalities–will serve as a strong, healthy leadership team capable of tremendous success for the MCBA and its membership.

Here’s to a fantastic 2012 – cheers!

Civil Contempt: Turner v. Rogers and the Uncertainty of a Contingent Right to Counsel

By Hon. George T. Anagnost

Considering America’s popular self-perception as a nation committed to family values and individual responsibility, statistics regarding child support arraignments reveal a darker image. In a study of nine states, one of which was Arizona, from the years 1975 to 2006, the federal Office of Child Support Enforcement reported child support arrears of some $105.4 billion.

The dynamics affecting lower-income wage earners are especially severe. One study noted that fewer than one in five low-income, non-custodial fathers have full-time, year-round employment.

In the event of non-payment, the enforcement spectrum spans warning letters, stipulated modifications, automatic wage garnishments, and suspension of the right to drive or other professional licenses. Court enforcement challenges the resources of an already over-loaded judicial system when compliance efforts necessitate formal civil contempt proceedings.

Turner v. Rogers: A Contingent Right to Counsel in Civil Contempt?

This article will explore the U.S. Supreme Court’s 5-4 decision last term in Turner v. Rogers, 564 U.S. ___ (2011) and the constitutional dimensions of a civil contempt citation for nonpayment of child support in a case from South Carolina. The case is significant not merely for its specific holding as to support-related civil contempt and an indigent’s 14th Amendment due process right to counsel when facing jail, but for the larger question it did not fully analyze: the presence of a contingent right to counsel within a modern-day notion of the 14th Amendment Due Process Clause.

Arizona, for instance, has over 160 limited jurisdiction courts that generate OSCs commanding defendants to appear and show cause why fines were not timely paid, or whether classes, drug tests, and other requirements were not completed. How does Turner affect these recurrent court procedures?

Nor can Turner be easily limited to its stated issue of child support. If there is a constitutional nexus between the right to counsel and potential incarceration, then the particular basis of any non-compliance becomes secondary. In plain terms, jail is jail.

Instead, Turner appears to reshape the underlying rationale of the right to an attorney at state expense. When someone who is indigent is charged with a crime and faces jail or probation, there is a fixed constitutional right to counsel. American constitutional jurisprudence has never viewed that right as a trade-off that may be set aside if it appears that minimal due process was otherwise fully provided.

In this context, Turner is significant for taking the court down a new path of due process reasoning where the right to counsel is balanced against a fair hearing. (Indeed, more intriguing is to what extent should a right to counsel attach to civil proceedings under state constitutional provisions that also safeguard a right to due process? How would 5th Amendment “due process” apply in federal civil contempt matters?)
Chances are, if you are a member of the Maricopa County Bar Association, you have participated in one of the Young Lawyer’s Division (YLD) events, supported the YLD, or at least heard about the programs offered by the YLD. As this year’s president, it is my goal to further increase participation in the YLD.

If you are under 36 years old or have practiced for less than 5 years, you are automatically a member of the YLD — so there is no excuse not to participate. And for those of you who don’t fit the definition of a “YLD” member, you are still welcome and encouraged to participate in YLD events and programs.

Many Ways to Participate

For example, you can attend one of our sponsored events like the Barrister’s Ball if wineing and dining is your thing, or run a 5K for the Race Judicata and improve your health while benefitting the YLD domestic violence committee.

You could volunteer to speak at a domestic violence shelter to provide victims with legal assistance, or simply donate items to our Necessities Drive which supports local shelters. Alternatively, you can help law school students hone their interviewing skills through mock interviews, or encourage high schoolers to become more civically engaged during Law Week.

You can attend any of our monthly board meetings, or simply attend one or more of our CLE programs. Even purchasing our newly revised Statute of Limitations Guide (now on sale) supports the YLD. In short – the opportunities are plentiful!

Don’t just take my word for it. I spoke to some previous YLD members to get their input on the personal and professional growth they derived from their involvement with the YLD.

Making Contacts and Friends

Andrew Turk, a shareholder at Polsinelli Shughart, was a member of the YLD in the late 90s. As a member of the YLD, Andy said he found it most rewarding to participate in the Barristers Ball, Necessities Drive, and the Organ Donation Program (a prior program of the YLD). Andy credited the YLD with helping him make good business contacts and longtime friends. He also said: “Being on the YLD board gave me leadership experience, board experience, and a wealth of life experience that I continue to draw on today.”

Andy’s recommendation for current young lawyers is to simply “get involved in something, anything. It will enrich your life.”

Making a Difference

Julie A. LaFave, a partner at the Sorenson Law Firm, LLC, was involved in the YLD from 2001 to 2007. She served as treasurer, president-elect, president, and immediate past-president on the YLD board, and served on every one of the YLD committees at some point during her six years of involvement.

Julie said she is most proud of the Race Judicata: “I went to an ABA conference and heard about [Race Judicatas] that YLDs were doing in other cities and brought it back and pitched it to our group. So that was my ‘baby’, and I am still so pleased to see it doing so well and to see that it is still a project the YLD believes in.”

She credits her involvement with the YLD for many of her career opportunities which came as a direct result of people she knew from the YLD/MCBA.

Bettering the Community

LaShawn Jenkins, who started his own firm, The Jenkins Law Firm in 2009, participated on the YLD board from 2003 to 2010. He got involved “to serve and better the legal community and greater community in a capacity outside of the office, and to connect with other young lawyers in my cohort.”

LaShawn was successful in meeting these goals because during his tenure he was able to work on committees within the YLD (including co-founding Race Judicata, Law Week, and the DV Necessities Drive) as well as preside over the YLD.

His recommendation to YLDers: “Get involved on a committee and take ownership and personal responsibility for making it better than it was before you came in some way. Strive to build positive relationships with your fellow YLDers since you will likely practice with them in this small legal community for years to come.”

Even after you are no longer a “young lawyer,” LaShawn urged all attorneys to “commit to supporting YLD events throughout your legal career by participating in and/or promoting events within your firm since YLD is the heartbeat of the Phoenix legal community.”

I hope that I have inspired you to get involved in the YLD and look forward to working with you this year!

What Can the YLD Do for You?

The Arizona Court of Appeals (Division One) ruled in favor last month of the state in a lawsuit challenging Proposition 204, a voter-enacted initiative, required the state to fund health care benefits for all childless adults living at or below the federal poverty level under the state’s Medicaid program, the Arizona Health Care Cost Containment System (AHCCCS).

The court’s opinion determines that whether the Legislature, as required by Proposition 204, has appropriated supplemental funding from “any other available sources” is a political question not appropriate for judicial review.

Proposition 204, enacted in 2000, extend health care coverage to all eligible individuals, including childless adults. Proposition 204 funded benefits for the expanded population from the Tobacco Litigation Settlement Fund and additionally stated that the Settlement Fund “shall be supplemented, as necessary by any other available sources including legislative appropriations and federal monies.”

Because the Settlement Fund has historically failed to provide sufficient funding for the expanded coverage, the Legislature has made up the shortfall with appropriations from the state’s general fund.

But, faced with the state’s budget difficulties, in early 2011 the Legislature reduced AHCCCS funding by nearly $1.6 billion after finding the amount it had appropriated for Proposition 204 services included “all available sources of funding.”

AHCCCS subsequently closed new childless adult enrollment as of July 8, although it has continued to provide benefits to childless adults enrolled before that date.

In their lawsuit against the state and AHCCCS, petitioners alleged the Legislature failed to provide sufficient funding for all eligible childless adults from “other available sources.” They also argued the July 8 enrollment freeze violated Proposition 204 and the Voter Protection Act was a controversy that presented a “nonjusticiable political question,” that is, a political question not subject to judicial resolution.

The court explained, first, the Arizona Constitution assigns funding and budget decisions to the Legislative and Executive branches of State government, and second, Proposition 204 failed to provide the court with any objective standards it could apply to determine whether the Legislature had in fact provided funding from “any other available sources.”

The court wrote: “In deciding what other available sources exist, the Legislature has had to make (and will have to make) subjective policy choices: should it allocate monies that would otherwise be used to fund our schools, prisons, parks, and highways…” or “is it just fair to raise taxes to obtain other available sources? These are not issues a court should review; it is not our constitutional role to assess the soundness of the state’s financial priorities.”


Arizona Appeals Court Rules on AHCCCS Case

Arizona Court of Appeals
Division One

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Tips for Taking Your First Deposition

ASK AN ASSOCIATE
Nicole Siqueiros

QUESTION
I’m a very new associate. I’ve been asked to take a deposition. I know what they are and what they’re for, but that’s about it. Can you give me some advice for my first deposition? – Grateful in Goodyear

Here is a helpful script and a few pointers to help you get started.

The Basic Questions

When taking a deposition you cannot go wrong by starting out with the following script (obviously tailored to meet the needs of your case):

- Obtain basic information about the deponent for the record like names, social security numbers and addresses.
- Ask whether the deponent has ever had their deposition taken. If so, find out where and when.
- If the deponent has never had their deposition taken, explain to him/her that you will be asking a number of questions and he/she will answer them under oath. Tell them a transcript is being generated as they speak.
- Remind the deponent not to answer questions with “uh huh.”
- Remind the deponent that they should not talk over you because it makes it difficult for the court reporter to make an accurate transcript.
- Explain to the deponent that if they need to take a break at any time they should tell you, and that you will still ask that they finish answering any pending questions before breaking.
- Explain to the deponent that if they do not understand any of your questions, they should tell you.
- Ask whether the deponent is under the influence of any drugs or medications or alcohol that would interfere with their ability to answer questions.
- Ask whether the deponent is presently under the care of a doctor or therapist? If so, who? For what?
- Ask the deponent to tell you everything he or she did to get ready for the deposition, including what documents were reviewed and whether the deponent met with counsel.

Helpful Tips for a First Time

Take Your Time:

Take notes during your pauses and think of supplemental questions.

Prepare:

I’m sure you already know this, but take the time to put together an outline of questions and pick your exhibits in advance. Know your case!

Remember the Purpose of the Deposition:

The two main reasons to take a deposition are to obtain information and to “lock down” testimony. Once you know why you are taking the deposition, phrase your questions accordingly. When you need information, use open-ended questions. When you want very specific testimony to use at trial, make your questions very precise.

Follow Up:

Make sure you really understand the testimony and keep asking questions until you do. Cover every issue in the case and delve deeper than you might otherwise at trial.

Don’t Give Up or Give In:

If there is an objection, do not let it rattle you and do not debate the other attorney on the record.

Objections at depositions should be limited to those involving privilege against disclosure of information or to the form of the question or answer. See, Ariz. R. Civ. P. 32(d), Comment to 1991 Amendment. (It is not grounds for objection that the information sought be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.)

Proper objections should be short and sweet, and should not suggest answers to the deponent. Do not be afraid to ask the objecting attorney the basis for their objection. Remember, you can always just rephrase the question and keep going.

Good luck!

“Ask an Associate” is a monthly column which allows attorneys to anonymously submit questions to a real-life associate attorney. Questions cover a wide range of issues from marketing to office dynamics. To send your questions, please e-mail Nicole Siqueiros at nsiqueiros@hallier-law.com.

Lawyer Referral Service Needs You

Potential clients can be yours with the MCBA Lawyer Referral Service. The LRS receives more than 100,000 calls per year from people seeking legal assistance as well as attorneys referring clients outside their practice area.

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

Spanish-speaking and West Valley attorneys are also needed.

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Happy New Year and Bring on 2012!

I hope everyone had a wonderful holiday season and is settling into the new year.

This year we have five new members joining the Paralegal Division board. I’d like to start by welcoming to the board Sarah Fluke (president elect); Eda Barolli (board of directors); Irene Gregory (board of directors); Eboni Rogers (board of directors); and Veronica Tewksbury (board of directors).

I also want to thank and welcome back Kelly Braniger (immediate past president); Nilda Jimenez (treasurer); Julie Eslick (secretary); Erica Lake (board of directors); and Jennifer Caccavale (board of directors).

I am excited to see so many new faces on the board this year. If you would like to get to know more about me and the other members of the 2012 board of directors, please visit our website at www.maricopabar.org.

As the president of the MCBA Paralegal Division this year, my goal is to see the division continue to grow and be something great to be a part of by providing networking opportunities, community involvement/outreach events, and great social gatherings.

I know that life is busy with jobs and family, but I hope that there will be some excellent events this year that will make it worthwhile for you to leave your family for a few hours and socialize with fellow paralegals.

Help Wanted

We need your help in order to provide you with an organization that will promote the paralegal profession, continue to provide a forum for the development of the paralegal, and provide networking opportunities.

We need help in all committees, which are Technology (maintaining the website and maybe creating and maintaining a social media page for the Paralegal Division), Resource (arranging quarterly meetings, Happy Hours, etc.), Maricopa Lawyer newspaper (attending the Maricopa Lawyer meetings and assisting in the Paralegal Division’s portion of the newspaper), Outreach (assisting with coordinating our yearly Dental Drive, Toy Drive, and any other community involvement events we would like to do), Membership (helping promote memberships), Scholarship and Career Day (organizing Paralegal Career Day and facilitating awarding scholarships), and last, but not least, the Conference committee.

Conference Brainstorming, Jan. 10

Our Annual Paralegal Conference is usually held the last Friday of September and is our biggest event. The conference takes months of planning and is a great way to get involved if you are wondering what you can do to get active.

The Conference Committee will be forming and could use your participation. The Conference Committee will be meeting on Tuesday, Jan. 10, 2012, at 5:30 p.m. at the MCBA office and every second Tuesday of each month thereafter.

We’d love to see you all there and help us continue to grow and make the conference bigger and better each year!

Monthly Division Meetings

The Paralegal Division board meetings will be held on the second Monday of each month. The first board meeting for 2012 is Monday, Jan. 9, 2012, at 5:30 p.m. All members are encouraged to attend.

All division meetings and events will be held at the Maricopa County Bar office located at 303 E. Palm Lane, unless otherwise noted.

Please refer to the website for upcoming events and updates throughout the month, including the next Paralegal Division’s quarterly meeting/lunch (including CLE) and a networking Happy Hour. An e-mail blast will be sent out providing more details on those events.

We Want to Hear from You!

Please feel free to send your suggestions for division activities you think would be worth attending or how to improve the division to our e-mail at paralegal@maricopabar.org. I look forward to serving as your president in 2012 and would love to see many new faces getting active in the professional organization you have decided to join!
January is traditionally the time to make resolutions for the upcoming year, and I have a resolution all legal writers can embrace: “I will always edit my writing for subject/verb placement.”

If a writer only has time to edit for one detail, subject/verb placement is my No. 1 choice. Specifically, writers should edit each sentence to make sure the subject (actor) and verb (action) are located right next to each other with no intervening information unless there is a compelling reason for another structure. This simple edit enhances readability.

Specifically, this edit puts the sentence in a format that allows a reader to comprehend the sentence. A reader searches every sentence to find out who is doing what. If information is presented in a different order, the reader will have to search longer and harder to comprehend the sentence.

If the writer’s goal is clarity, she wants the reader to read each sentence just once in order to absorb the information.

In addition, I generally find that unclear writing suffers from a lack of a concrete subject and verb because the subject is likely buried in the sentence or non-existent. This is the passive voice. Passive voice is useful in persuasive writing and in instances where the actor is unknown, but generally a writer should avoid the passive voice if her goal is clarity.

Because many writers have trouble spotting passive voice and confuse it for the past tense, I suggest editing for subject/verb placement instead. Look at each verb and ask “who did this action” and then lead the sentence with who this “who.” This edit generally solves any passive voice problems.

Finally, I also notice that unclear writing is often packed with long sentences that contain more than two subjects and actions. By editing for subject/verb placement, the writer will realize that information can be broken apart into more useful chunks by focusing each sentence on the relevant subject/actor.

Following is an example (and a solution) that illustrates the problems I have outlined above:

Not clear: Sufficient evidence, which showed that the company may have known about the alleged irregularities in the report, was found to exist and was enough for denial by the court of the pending motion for summary judgment.

Clear: The court found sufficient evidence to deny the pending motion for summary judgment. Specifically, the company may have known about the alleged irregularities in the report.

Happy New Year and Happy Editing!

**Making Partner Takes Roughly Seven Years, Survey Reveals**

Does it take longer than it used to for law firm associates to make partner? Not according to a new survey from Robert Half Legal, a legal-staffing firm. Attorneys interviewed said they believe it takes an average of seven years to reach partner status today, down from eight years when the survey was conducted in 2003.

The time it takes to make partner has declined slightly, but competition remains high,” said Charles Volkert, executive director of Robert Half Legal. “Some firms have reduced the number of partner positions, which has prompted associates to seek alternative career options, such as a non-equity partner track or another less traditional path.”

The demographics at a given firm also can impede or hasten an associate’s route to partner, Volkert noted. “If a firm’s most senior partners have postponed retirement, there may be fewer openings for associates,” he said.

Robert Half Legal offered the following advice to lawyers interested in advancing their careers:

- Focus on professional development. In addition to legal skills, concentrate on helping the firm improve client service levels and grow revenue.
- Align yourself with a mentor or career coach. Find a mentor or career coach. Find a more senior attorney who can help provide advice and guidance, as well as help you identify ways to raise your visibility at the firm.
- Immerse yourself in the profession. Become involved in the local chapter of the bar association, do pro bono work, volunteer in the community or contribute to well-regarded legal publications or forums online. All these activities will enhance your professional reputation.
- Network consistently. Expand your roster of professional contacts and stay in regular communication with them. The more people you know, the more likely it is that you’ll hear of new opportunities that could help you keep your career on track.

**PLAP Prepares for Launch**

**New Program Will Serve Low-Income Individuals with Probate Matters—Volunteers Needed**

By Kelly L. Kraal, director, Probate Lawyers Assistance Project

The Estate Planning, Probate and Trust Section of the Maricopa County Bar Association and the Volunteer Lawyers Program of Community Legal Services are pleased to announce the formation of the Probate Lawyers Assistance Project (PLAP). PLAP is a pro bono program that will provide free legal advice to low-income individuals who need assistance with Probate Matters.

**Attorneys to Provide Half-Hour Consultations**

The program will consist of volunteer attorneys who will provide free half-hour consultations to individuals in order to answer legal questions, provide advice as to what forms to use from the Maricopa County Superior Court Self-Service Center, review completed Self-Service Center forms for accuracy or provide general information about what to expect at a court hearing and how to prepare for trial. The goal of the program is to help those who need assistance with Probate Court matters such as guardianships, conservatorships, informal and formal probates and trust litigation.

**Location and Hours of Operation**

All consultations will be by appointment only and will be held on Wednesdays at the Maricopa County Bar Association offices located at 303 E. Palm Lane, Phoenix, AZ 85004. Appointments will be held in the
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A Record 320 Adoptions at Superior Court Adoption Day

For the fourth straight year, Superior Court in Maricopa County had the largest National Adoption Day (NAD) event in the United States.

On Nov. 19, 320 adoptions were finalized on NAD, breaking Maricopa County’s own nationwide record of 310 adoptions. The 2011 event was heightened by the Phoenix Suns “Operation Orange” campaign, a visit from the Arizona Avenger, and many family-friendly events and activities. Sixty judicial officers—a record number—volunteered their Saturday to preside over the hearings. Other volunteer groups included court staff, juvenile court administration, court security, Court Appointed Special Advocate, foster and adoption agencies, state and county agencies, private attorneys and the clerk’s office.

Maricopa County’s event is part of National Adoption Day, a nationwide effort to raise awareness that more than 120,000 children need permanent families.

Jail to be a Museum Center

After many years in the planning stage, the historic old courthouse jail in downtown Phoenix is being renamed as part of Arizona’s 100th birthday. The courthouse jail has been designated as one of the Arizona Centennial Legacy projects by the state’s Historical Advisory Commission.

The project includes the creation of the Maricopa County Justice Museum and Learning Center in and around a restored cellblock located on the 6th floor of Maricopa County’s historic courthouse.

The Museum and Learning Center, a project which the MCBA has actively supported, including as a beneficiary of prior years’ Barristers Balls, will accurately portray a significant aspect of Arizona history through the restored cellblock and cellblock artwork, as well as displays and artifacts about famous cases.

For the Arizona Centennial, museum displays will include an interactive exhibit on trials, a special display honoring of Justice Sandra Day O’Connor and Justice William Rehnquist, a prisoner-experience walk through the jail, and Arizona civil rights trials. The Miranda and Gault decisions are examples of people and places that have changed the law in Arizona and the United States.

The museum will be accessible to a large number of visitors/users through impromptu visits by the public in addition to structured tours through a partnership with the Maricopa County Bar Association and schools. The “Court Experience” program draws over 3,000 students per year.

This project is the result of the hard work of many judicial officers, attorneys, court administrators, and community partners. In 2010, the Maricopa County Museum and Justice Learning Center Foundation was formed to oversee the construction and opening of the museum.

Through the efforts of the Foundation, more than $100,000 has been raised to fund construction and renovation costs. More recently, American Express made a generous $50,000 corporate donation to this historic preservation brick-mortar project.

These commitments and efforts help to ensure the museum to be an enduring project beyond the 2012 Arizona Centennial celebration.

Courthouse Experience Needs Attorneys to Volunteer

Do you have a few hours a month to help children learn about the judicial system? Maricopa County Superior Court is launching its 20th year of the Courthouse Experience Program. This program gives students an opportunity to see and understand what really goes on behind closed courtroom doors. But to reach these children and help make a difference in their lives, Superior Court needs the help of volunteer attorneys.

The program’s success is due greatly to attorney volunteers who provide valuable time to lead student groups, varying from sixth grade through college age, on a personal tour of the court.

A Courthouse Experience often includes visits with judicial officers and staff, observations of court proceedings including trials and court visits to the jury assembly room, the law library, and informative question-and-answer periods.

If you are interested in becoming a volunteer for this year’s program, please send a confirmation email with your name, phone number and email address to: courtpio@ mail.maricopa.gov.

Happy New Families

Presiding Judge Lauds Efforts to Improve Warrant Handling

To address this problem, I created our Criminal Department Warrants Unit to work with Court Technology Services (CTS), the Court’s Research and Planning Department, the Clerk of Court, the Sheriff’s Office, and other agencies to find solutions and remedy this problem as soon as possible.

This effort identified the need to revise data-entry and file-naming protocols to allow direct comparison of data.

Given the peculiar features of computer information systems maintained by each organization and the complexity of individual identification in any criminal justice system, it is not unusual for errors to occur.

For example, some of the scenarios that were addressed included:

- A warrant for a deceased criminal defendant could still be active when the court has not been notified of the death;
- A hyphenated or transposed name may not exactly match the name entered in another system because of varying naming protocols by different agencies;
- A person with multiple warrants may have multiple entries or a singular entry in different systems that prevents all issued warrants from matching in all systems;
- Cases transferred to Superior Court when the Regional Court Center was created were still listed with justice court case numbers;
- Inconsistent business processes for listing case numbers (abbreviations; truncated entries; numeric entries that duplicated

See Presiding Judge Lauds Efforts page 15

Happy New Families

by Presiding Judge Norman Davis

The Maricopa County Superior Court issues nearly 19,000 arrest warrants each year. These warrants are primarily issued when a criminal defendant fails to appear for a hearing or trial, but also includes arrest warrants following a grand jury proceeding, child support arrest warrants from the family court, probation violation warrants from the probation department and fiduciary arrest warrants from the probate court.

The efficacy of these warrants depends on the correct and timely entry of warrant information into the Arizona Crime Information Center (ACIC) computer, where it can be accessed by law enforcement in the normal course of their duties.

In Maricopa County, the court, the Clerk of Court, the Sheriff’s Office, the County Attorney, the Integrated Criminal Justice Information System, the Attorney General, and the Arizona Department of Public Safety all play a role in processing and ensuring the accuracy of arrest warrant information.

Last year, as part of the Superior Court’s project to upgrade its case management computer system (ICISng), the ICISng design team identified a significant number of warrants entered in either the ICIS system or the ACIC system that did not match exactly.

People and places that have changed the law in Arizona and the United States.

The program’s success is due greatly to attorney volunteers who provide valuable
time to lead student groups, varying from
December Board of Directors Meeting: Recognitions and Thanks

Retiring members of the MCBA Board of Directors are Jennifer Green, U.S. Attorney’s Office, immediate past president; Stefan Paly, Stinson Morrison Hecker, YLD president; Holly Davies, Lorber, Greenfield and Polito; and Hon. Benjamin Vatz.

2011 president, David Benton, applauds along with the rest of the Board of Directors as Allen Kimbrough, executive director, is recognized for his five years of service to the MCBA at the December Board meeting.

Family Law Section Judicial Reception

Engaged in lively conversation at the Family Law Section’s annual social on Dec. 1 are, from left, Hon. James Scott Walker, Hon. Jan Crawford, Melvin Sternberg of the Law Offices of Sternberg and Singer, and Hon. Scott McKay.

MCBA Leadership Holiday Social

From left, past president Jay Zweig of Bryan Cave talks with Stan Watts of Dohrer & Watts, a member of the Maricopa Lawyer Editorial Board; past president Jennifer Green of the U.S. Attorney’s Office; and 2012 president, Jennifer Cranston of Gallagher & Kennedy.

Around a table at the Leadership social are, from left, Amanda Sheridan of Snell & Wilmer, Casey Blais of Burch & Cracchiolo, and Flynn Carey of Gallagher & Kennedy, all YLD Board members, and Jennifer Deckert, MCBA Lawyer Referral Service Director.
VLP ATTORNEY OF THE MONTH
Attorney Sobampo’s Heritage Inspires Ethics, Values in His Work
By: Peggi Cornelius, VLP Programs Coordinator

“My parents were seasonal farm workers who crossed the Mexican/ U.S. border to pick lettuce, citrus, and cotton in Arizona. My father supplemented the family income as a cowboy during cattle roundups.” The rural life of that Javier Sobampo describes as the foundation underlying his present life as an urban attorney may be unusual, but it’s not incongruous.

The ethics and values he learned in his youth are evident in the commitment he’s made to community service through the Volunteer Lawyers Program (VLP). Sobampo is the VLP’s most recent recipient of the “Attorney of the Month” award. A first-generation college graduate, Sobampo obtained an undergraduate degree in business administration, and two Master’s degrees, one in business and one in education. During the 17 years that followed, he managed several large finance companies and owned several businesses. But, his earlier interest in becoming a lawyer remained an aspiration.

Eventually combining work and family life with the disciplines of a student, he earned a JD degree from the Phoenix School of Law. “I was influenced and enabled by my loving wife’s support and a desire to be a role model for my three children. My daughter wants to be a lawyer,“ he said.

As a businessman, Sobampo began community service through the Volunteer Income Tax Assistance Program sponsored by the IRS. In like pursuit, he joined the Volunteer Lawyers Program shortly after graduation from law school. He credits colleague, friend and mentor Otilia Diaz for introducing him to the VLP.

In his solo practice, Sobampo serves clients with family, consumer and criminal law concerns. In the six months since his introduction to VLP, he has provided pro bono advice to many unrepresented litigants through the Family Lawyers Assistance Project at Superior Court, and has agreed to provide pro bono representation to three VLP clients in no asset bankruptcy proceedings.

Sobampo’s bilingual ability is a valued asset to the VLP, but the compassion and perspective demonstrated in his assistance to others are the outstanding contributions Sobampo brings to his volunteer endeavors. Of his assistance to family law litigants, he comments, “Domestic issues interest me most, because they are so emotionally charged and there is so much at stake. Any benefit I can see Attorney Sobampo’s Heritage page 11

New Board President Brings Energy, Experience continued from page 1
Strategic Plan Committee developed a five-year strategic plan under the leadership of then-president, Jennifer Green. Cranston said she would like to see the board continue to focus on bringing about the ideas outlined in the plan.

“I want to see membership grow, our CLE department thrive, see the organization use technology the best way it can,” she said.

Cranston said she believes the organization is doing very well, yet there is room for growth and finding ways to better serve the members, the public, and the judiciary. Through her longstanding involvement with the MCBA starting in 2003 as a member of the Young Lawyers Division, Cranston understands many of the organization’s needs and modus operandi.

Growing with the MCBA
As a YLD member, Cranston hit the ground running when she was asked to co-chair the MCBA’s annual Barristers Ball. She said she enjoyed many aspects of the YLD, including the philanthropic and community involvement through projects such as the annual Necessities Drive and Ask-A-Lawyer event.

In 2006, Cranston represented the YLD on the Association’s board of directors and most recently held the position of chair of the Finance Committee as president-elect. She said her involvement with the MCBA has brought about many opportunities for development both professionally and personally.

“[It] makes a huge difference in dealing with the lawyers who are either opposing you or representing other parties, if you have a pre-existing relationship. It makes the practice that much less adversarial,” she explained.

Cranston said that Phoenix’s legal community is still fairly small—not even six degrees of separation but more like three—and when you know the other attorney, it makes it a lot easier to disagree professionally but still have that friendly relationship with them.

She said her involvement has also allowed her to have more face-to-face time with people versus the now more-frequent correspondence of emailing and texting. “I think that the MCBA is an opportunity to get back to that (more personal communication). With email, it’s less personal.” And that is helpful, she said, because the nature of lawyers is to be adversarial.

Creating More Cohesiveness
Another goal is to bring about more cohesion among the Association’s sections and divisions so that each one does not feel isolated.

“I would like to see more collaboration and a greater sense of community among the sections and divisions,” Cranston said.

Most recently, steps were taken towards meeting that effort with the MCBA Leadership holiday party held last month. The party successfully brought together section and division leaders for a time to laugh, eat, and get to know one another.

Life and Work
On a personal level, Cranston, who has been an attorney at Gallagher & Kennedy since 2000, shortly after earning her JD from the University of Arizona, said she is enjoying life as a newlywed. She and her husband Jake, whom she met at a coffee shop he manages, married in 2009 and own two dogs: a boxer/greyhound and a mastiff mix they found at an animal shelter.

Cranston said she’s glad to have a husband who works in a different field. “For me, to go home and to have a dose of reality that is not impacted by the law or influenced by the law is nice,” she said.

Volunteer Lawyers Program Thanks Attorneys
The Volunteer Lawyers Program thanks the following attorneys and firms for agreeing to accept 31 referrals from VLP to help low-income families. VLP supports pro bono service of attorneys by screening for financial need and legal merit and provides primary malpractice coverage, donated services from support professionals, training, materials, mentors, and consultants. Each attorney receives a certificate from MCBA for a CLE discount. For information about cases and other ways to help, please contact Pat Gerrich at VLP at 602-254-4714 or pgerrich@claz.org.

**PRO BONO SPOTLIGHT ON CURRENT NEED**
Volunteer attorneys are needed for no asset Chapter 7 bankruptcy cases for families having their limited wages garnished.

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Strategic Revitalization
As president, Cranston said her objective is to help with identifying and heading efforts to achieve the Association’s goals. Within the strategic plan, which can be accessed through the MCBA website at www.maricopabat.org, are a number of objectives to be accomplished by 2015, including benchmark goals for 2011 and 2013.

Many of the goals have specific, objective metrics, such as improving the profitability of certain programs by a certain percentage. This month, at its annual retreat, the board will meet to review its progress in 2011 and identify specific goals for 2012 to help stay on track and accomplish the larger 2015 goals.

Since implementing the plan, Cranston said she has seen an increase in activity with current board members jumping on various MCBA committees, and previously inactive sections and divisions, such as the Bankruptcy Section, being revitalized. She hopes to see more of that this year. And, like most organizations, the MCBA has not been immune to the rollercoaster ride of the recession, yet the plan is to work towards not just staying afloat but continuing to grow.

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By: Peggi Cornelius, VLP Programs Coordinator

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Continuing from page 10

Of those VLP clients he has represented, Sobampo recalls the compelling circumstances of an elderly woman who was struggling to make ends meet. “She had incurred much of her personal debt by assisting her children with their financial needs. When she sought legal help, her pay check was being garnished, leaving insufficient funds for food and rent. During the time I represented her, she underwent open heart surgery. Bankruptcy solved many of her financial problems, freeing her to focus on recuperation and a return to work,” he said.

Childhood experiences and adult knowledge have come full circle, giving meaning to Sobampo’s professional life and help to people needing his expertise. He says, “Many of the people seeking pro bono assistance share concerns, financial woes, and the same need for information that my parents had. As an attorney, I’m sometimes in a unique position to help change someone’s life for the better.”

“Most importantly, I benefit from learning something new in every situation and every case. I invite any and all colleagues to dedicate a little of their time to the VLP. The work is little and the rewards are many.”

Maricopa Lawyer January 2012 • 11
THE ESSENTIAL CRIMINAL LAW PRACTITIONER’S REFERENCE

This book is a compilation of the most frequently referenced criminal statutes, rules, guidelines, timelines, and sentencing information, among other useful information. This second edition contains updates and additional sections to make it more practical and helpful for use as a portable criminal law desk reference. Use it as a quick reference during Arizona criminal proceedings. Spiral bound, 210 pages, the book lays flat and is convenient to take to court. Compiled by the MCBA Criminal Law Section. Downloadable online.

Order books online at www.maricopabar.org. You may purchase online with Visa, MasterCard or American Express, or download an order form and purchase by check. Save 15% on your purchase of 5 or more books. The book is spiral bound, newly updated through 2011, includes most, if not all, statutes where a time limitation is specified. Compiled, updated and edited by the MCBA Young Lawyers Division, the Guide is intended for use as an aid to Arizona attorneys in all areas of practice.

The Most Frequently Asked Questions in Environmental Law (2nd edition)

The environmental answer book for Arizona businesses and non-specialists

Completely up-to-date and comprehensive, this publication of 16 chapters covers every major area of environmental law of interest to persons and organizations in the Arizona business community. Each chapter has been drafted and updated by experienced local practitioners and provides fully referenced, Arizona-specific information. The content is presented in an informative, non-technical manner for use by non-environmental practitioners and non-lawyers. Also useful for legal professionals experienced in environmental law but needing a quick reference and research aid for questions in unfamiliar subject areas. Sixteen chapters, 200 double-spaced pages in a three-ring binder. Written and edited by the MCBA Environmental & Natural Resources Section.

Downloadable online.


The essential criminal law practitioner’s reference

This book is a compilation of the most frequently referenced criminal statutes, rules, guidelines, timelines, and sentencing information, among other useful information. This second edition contains updates and additional sections to make it more practical and helpful for use as a portable criminal law desk reference. Use it as a quick reference during Arizona criminal proceedings. Spiral bound, 210 pages, the book lays flat and is convenient to take to court. Compiled by the MCBA Criminal Law Section. Downloadable online.

Order books online at www.maricopabar.org. You may purchase online with Visa, MasterCard or American Express, or download an order form and purchase by check. Save 15% on your purchase of 5 or more books. The book is spiral bound, newly updated through 2011, includes most, if not all, statutes where a time limitation is specified. Compiled, updated and edited by the MCBA Young Lawyers Division, the Guide is intended for use as an aid to Arizona attorneys in all areas of practice.

If your client suspects fraud in their business, we can help solve the mystery.

According to the Association of Certified Fraud Examiners (ACFE), 5% of an organization’s gross revenue is lost to fraud. Don’t let your client become part of this statistic!

Our forensic accounting and investigation professionals have over 60 years of experience investigating and uncovering acts of financial fraud. We can help you build a stronger case!

- Asset Misappropriation
- Contractor Fraud
- Bribery and Corruption
- Financial Statement Fraud
- Conflict of Interest
- Breach of Fiduciary Duty

Call Chris Linscott today for a free consultation!
Civil Contempt: *Turner v. Rogers* and the Uncertainty of a Contingent Right to Counsel

continued from page 2

determine indigency, and (c) no counsel had been provided as an adequate safeguard that the court might erroneously send him to jail, the case was remanded.

*Turner* is a worthy read for several reasons. First, it is a casebook study in the court’s analysis of mootness and standing. By the time the case reached the Supreme Court, Mr. Turner had already served 12 months in jail and had been released from custody. Applying the “capable of repetition” doctrine, the court determined that case was still ripe for review. Mr. Turner was still exposed to the same issue in the future in the event of a missed child support payment.

Second, as to why the court granted certiorari, a clear split of decisions in both federal circuits and state courts on the question of right to counsel for civil contempt warranted a definitive ruling. Third, the court’s opinion is a helpful re-cap of the distinction between “civil” and “criminal” contempt and the traditional concepts that the former is coercive in nature, while the latter is punitive. In matters of civil contempt, the contemnor holds the key to the jail; in the criminal contempt setting, the defendant is being punished.

The Uncertain Corollary of Due Process, a Sixth Amendment Right to Counsel, and Civil Contempt

To offer up a full description of the Anglo-American history of the 14th Amendment’s guarantee of a person’s right to due process to protect a “liberty” interest is beyond the scope of this article. (For an excellent book on this, see Uofsky and Finkelman’s *A March of Liberty.*)

The notion of a right to counsel as an aspect of the 14th Amendment came to fruition in *Powell v. Alabama*, 287 U.S. 45 (1932), when the court held that the Sixth Amendment right to counsel was a fundamental right applicable to the states in capital cases. Significantly, and perhaps not that well known, early English law itself denied the accused counsel in felony trials except in a limited capacity to pose legal questions. The Powell court actually relied on rights guaranteed by colonial charters as the basis of an enlarged right to counsel in serious felony matters. This basic principle — that the Sixth Amendment guarantee of right to counsel by its own wording applied in criminal cases — was identified by Justice Breyer in *Turner*.

From that starting point, one sees a visible shift in the court’s reasoning. After describing the historical setting of the Sixth Amendment’s right to counsel, the opinion proceeds down a new pathway and reads into the Due Process Clause a contingent requirement to provide counsel in civil contempt matters. In effect, *Turner* jumps the rails and creates a new principle of constitutional law in the interests of fairness. It is here that several valid concerns begin and why *Turner* is confusing.

The Challenge of Providing Counsel in Civil Contempt Proceedings

The appointment of counsel creates a legal relationship that inherently takes on its own significance. Like any attorney, the court-appointed advocate is at once ethically and professionally obligated to demonstrate competence and commitment to the client’s cause. Implicit in this calculus is the duty to investigate facts, strategize the case, conduct discovery, meet and confer with the client, and challenge the claims of the opposing side. If such diligence is not exercised, the claim of inadequate representation creates a second layer of concerns as to the quality of the attorney’s assistance.

In the area of civil contempt, the realities of the situation are not conducive to the performance of such attorney-client obligations for several reasons. First, there is the practical issue of halting proceedings to join counsel to the case.

What is the attorney’s role? Is the attorney required to pursue a contested hearing in all instances or seek appellate review if the hearing outcome is adverse? Is the attorney allowed to withdraw at the end of the proceeding because the hearing only involved limited representation?

Second, in Arizona, by constitutional design, such proceedings are not required to be on the record or transcribed in limited jurisdiction courts. The added cost to create a well-papered record to appoint counsel at additional expense to the state is highly problematic. Finally, what formalities must a court undertake to show a knowing, voluntary, and intelligent waiver of the right to counsel?

Conclusion: The Challenge of Implementing *Turner* in Civil Contempt Proceedings

In the final analysis, *Turner*’s holding — that, absent adequate procedural safeguards, due process may require appointment of counsel under the 14th Amendment in state civil contempt matters — creates an ephemeral constitutional standard.

How does any state know if its procedure meets the criteria without more test cases? What is so talismanic about a financial questionnaire that it is the key to assuring a fair process that might obviate a right to counsel?

Because civil contempt citations can involve non-compliance beyond payment of money, how does the *Turner* analysis apply to those myriad types of proceedings?

Yes, the prospect that someone can go to jail for contempt is ominous, but the attorney’s function as an advocate and officer of the court is not necessarily responsive to the issues that face the court or the parties.

In the final analysis, perhaps *Turner* would have been better decided had it focused on the procedural due process core of “notice and hearing” or “opportunity to be heard.” Instead, in using the 14th Amendment to articulate a right to court-appointed counsel in civil contempt matters, the court finds itself in a realm where clear legal precedent is lacking.

> Judge Anagnost is the presiding judge of the Porrja Municipal Court. He attended Cornell University and Tulane Law School.

Arizona Supreme Court

OCTOBER AND NOVEMBER 2011 PETITIONS

Granted Petitions for Review

Compiled by Ardy Feken, Arizona Attorney General’s Office

<table>
<thead>
<tr>
<th>Case Caption &amp; Court Origination</th>
<th>Issue(s) Granted to be Reviewed</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Nunez v. Professional Transit Management</em> CV-11-0186-PR Ariz. Ct. App. Div. 2</td>
<td>The Court granted review for issue 1 only. Issue 1: Did the Court of Appeals err in ruling that Appellants, as common carriers, owed a duty to conduct themselves with the highest degree of care?</td>
</tr>
<tr>
<td><em>City of Tucson v. State</em> CV-11-0150-PR Ariz. Ct. App. Div. 1</td>
<td>Petition for Review from State: 1. Are a municipality’s voting procedures subject to state regulation, where: (1) the Legislature found that certain municipal voting procedures are of statewide concern; (2) the evidence presented at the summary judgment stage supported the legislative finding; and (3) federal law imposes consequences on the State based on the voting procedures of its political subdivisions? 2. Did the court of appeals err in holding that the city charter provision at issue conflicted with A.R.S. § 9-821.01(B), where that statute can be enforced without amending Tucson’s charter?</td>
</tr>
<tr>
<td><em>Sourcecorp Inc v. D. Norcotta/S. Norcotta</em> CV-11-0269-PR Ariz. Ct. App. Div. 1</td>
<td>Petition for Review from Intervenors: Does the Charter conflict with the prohibition on partisan elections contained in A.R.S. § 9-821.01.B given that the Charter (1) does not expressly provide for partisan city council elections and (2) incorporates the general laws of the State of Arizona to govern election related issues that are not expressly addressed in the Charter?</td>
</tr>
<tr>
<td><em>Welsh v. Advanced Cardiac</em> CV-11-0198-PR Ariz. Ct. App. Div. 1</td>
<td>Buyers purchased for cash real property in which they had no prior interest. There was a mortgage and a judgment lien on the property, but because of an error by the buyers’ title insurer the buyers were not made aware of the judgment lien. The purchase money was used to pay off the mortgage, but the buyers had no express or implied subrogation agreement or any expectation they would assume the position of the paid-off mortgagee. Are the buyers nevertheless entitled to move ahead of the judgment lien holder under the doctrine of equitable subrogation?</td>
</tr>
<tr>
<td><em>State v. Botto-Flores</em> CR-11-0180-PR Ariz. Ct. App. Div. 2</td>
<td>Where wrongful death damages for all claimants were stipulated or conceded at trial by defendant, but the jury disregarded plaintiffs’ undisputed evidence supporting the stipulation or concession, are claimants who were awarded “zero” damages by the jury entitled as a matter of law to a new trial on the amounts of their wrongful death damages?</td>
</tr>
<tr>
<td><em>Hogan v. Washington Mutual Bank</em>, et al. CV-11-0115-PR Consolidated with CV-11-0132-PR Ariz. Ct. App. Div. 1</td>
<td>Whether the trial court abused its discretion when it failed to suppress Nelson’s Statements that were the result of an improper detention and arrest?</td>
</tr>
<tr>
<td><em>Can a lender foreclose its deed of trust without owning the note which the deed of trust secures?</em> Added issue presented to but not decided by the Court of Appeals which may need to be decided is review is granted: What is the legal affect of an assignment of a deed of trust without the corresponding note?</td>
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</tbody>
</table>

PLAP Gearing Up to Help the Community

continued from page 6

morning between 8:30 and 11:30 a.m. and in the afternoon between 1:30 and 4:30 p.m. PLAP will begin providing services in December 2011.

**Attorney Volunteers Sought**

At this time we are compiling a list of attorneys willing to volunteer their time to assist with this project. Attorneys on the volunteer list will then be contacted to sign up for a three-hour block of time on a date that is convenient for the attorney. The program is designed to provide brief consultations to individuals, and attorneys will not be expected to provide client representation. Primary professional liability coverage will be provided by the Volunteer Lawyers Program.

**Contact Information/Enrollment Form**

If you are interested in becoming a volunteer attorney for PLAP, please complete a Volunteer Attorney Enrollment Form that can be found on the MCBA homepage at www.maricopabar.org and fax the completed form to the MCBA office at (602) 257-0522 or email the completed form to Kelly Kral at klkral@dyerferris.com. Thank you in advance for your support.
The Maricopa Lawyer invites members to send news of moves, promotions, honors and special events to post in this space. Photos welcome. Send your news via e-mail to maricopabar@maricopabar.org.

**Elections**

Andrea M. Palmer, an attorney at Ryley Carlock and Applewhite, has been elected to a shareholdership in the firm. Palmer practices in the areas of bankruptcy, creditors’ rights and lending. She has extensive experience representing lenders with respect to the enforcement of their loan and credit agreements, including representation in judicial and non-judicial foreclosures, deficiency litigation, and receivership actions.

She received her J.D. from Northern Kentucky University, Salmon P. Chase College of Law, where she graduated summa cum laude and served on the Northern Kentucky Law Review as Kentucky Survey issue editor.

**Recognitions**

Phoenix attorney Anne Chapman has been named a partner by Odom Maledon, P.A. Chapman’s practice focuses on criminal defense, internal and governmental investigations, professional liability and ethics and complex commercial litigation.

Before joining Odom Maledon, she spent five years as an assistant federal public defender in the Eastern District of Virginia. She has extensive experience trying and defending cases involving a broad range of complex issues, including bank, mail and wire fraud, money laundering, terrorisms offenses, immigration issues, firearms smuggling, criminal copyright and trademark allegations and the Classified Information Procedural Act.

**New Hires**

Lewis and Roca announces that Melanie Pate has joined the firm’s Phoenix office as a partner in the labor and employment practice group. Previously, Pate served as counsel of the Arizona Civil Rights Division at the Arizona Attorney General’s Office, where she worked for 15 years in litigation and management-level employment-related positions. Before that, Pate served for nine years as a litigator in the employment law section of the Attorney General’s Office. Pate earned her Juris Doctor from the University of Arizona James E. Rogers College of Law. She earned her bachelor’s degree from the University of Arizona in business, communications and political science in 1992.

**Appointments**

Kelly Singer is the immediate past president of the Arizona Asian Pacific American Association (APAAC) selected Yavapai County Attorney Sheila Polk to succeed Derek Rapier, Greenlee County Attorney, as council chair, where she focused on educating members about their involvement. Previously, Balch served as chair of the VSHRA’s legislative action committee.

**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.
A Matter of Punctuation: Comma Creates Division in Arizona Supreme Court Case

CourWatch, continued from page 1

canons of statutory construction. He noted that “other legal enterprise” in APSA follows the enumeration of terms that normally refer to business organizations. Under standard canons, Brutinel concluded, “the phrase is most reasonably interpreted as applying to such entities rather than to governmental bodies.”

Brutinel also pointed out that in numerous other statutes, the legislature had specifically referred to the government. “This consistent pattern,” he wrote, “persuades us that if the legislature had intended to include the state within its definition of ‘enterprise’ in [APSA], it would have expressly done so.”

He rejected the notion that APSA should be interpreted as applying to the state because governmental liability is the general rule and immunity is the exception. “When a statute, such as APSA, specifically limits those who may be held liable,” he wrote, “the courts cannot extend liability . . . to those who do not fall within the categories of potential defendants described by the statute.”

“Immunity principles cannot create state statutory liability where none would otherwise exist,” Brutinel wrote.

He also observed that making the state potentially liable would be inconsistent with provisions requiring the state to enforce the Act. “Despite expressly obligating the state to enforce APSA,” he wrote, “the legislature did not mention public entities in its list of potential defendants.” According to Brutinel, the Act does not “address, or seemingly contemplate, the conflict of interest that could arise if the state, which bears the primary responsibility for enforcing APSA, becomes a defendant under it.”

In conclusion, in concluding that the legislature did not intend APSA to cover the state were Chief Justice Rebecca White Berch and Justice A. John Pelander.

Justice W. Scott Bales disagreed with Brutinel. He wrote that “APSA’s definition of ‘enterprise’ echoes the definition used in the federal racketeering statutes, a definition that federal courts had broadly construed to include public entities.” Combining APSA’s broad language with the fact that the state is a legal entity persuaded Bales that “the state can be liable under the statute.”

Bales disputed the majority’s conclusion that the legislature had tied “other legal entity” to labor unions. “The absence of a comma sheds no light on the meaning of ‘legal entity’ under APSA,” he wrote. “Whatever force this argument may have in other contexts, it is singularly unconvincing with respect to APSA’s definition of ‘enterprise.’”

Bales noted that there is disagreement among grammarians about the advisability of using the serial comma. But he believed that the debate was mooted by the Arizona Legislature’s style manual, which “expressly advises that a comma should not be inserted before the conjunction ‘or’ at the end of a series of items.”

He also noted that previous versions of the statute actually included a comma in the pertinent place. The comma disappeared, he noted, when the legislature made nonsubstantive changes in 2009. A conclusion that the lack of a comma indicated the legislature’s intent to exclude the state from APSA, Bales wrote, “implausibly suggests that when the legislature expressly expanded civil liability under APSA, it also silently narrowed the field of potential ‘other legal entity’ defendants to only those somehow related to labor unions.”

“Judges should not infer that the legislature hides elephants in mouseholes,” Bales wrote, “much less in the deletion of a comma.”

Bales also rejected the majority’s conclusion that public entities are excluded from the list of potential defendants. “That argument fails,” he wrote, “because the entities specifically enumerated in the statute are not limited to business entities.” The Act, he noted, applies to any corporation or association, and corporations can be either private or public. Bales was unimpressed by the legislature’s failure to specifically refer to the government in its definition. “The statutory language cited by the majority,” he contended, “suggests the legislature recognizes that public entities are included in but do not exhaust the class of legal entities.”

Nord did Bales any tension between the state being a potential defendant and its role as statutory enforcer. He noted that the state enforces the Arizona Disabilities Act and is also potentially liable under it.

In Bales’s opinion, the Arizona doctrine generally holding the government liable for its transgressions complicated the conclusion that the state was not restricted from APSA’s ambit. “If the legislature had intended to exclude the state from the legal entities potentially liable under APSA, it could have said so,” he wrote.

Joining Bales in concluding that APSA covers the state was Vice Chief Justice Andrew D. Hurwitz. ■

Editor’s note: Daniel P. Schaeck, an assistant attorney general, was one of the attorneys representing the state in Braden v. State. ■

Don’t Be An Ostrich, Court Warns

If you ever have to argue in the United States Court of Appeals for the Seventh Circuit, be careful. That court recently issued a scornful opinion warning attorneys that they must face up to and deal with adverse authorities. Gonzalez-Servin v. Ford Motor Co., No. 11-1665 (7th Cir. Nov. 23, 2011).

In separate cases, different attorneys failed to acknowledge and address on-point cases that their adversaries had argued in their briefs. This led to a scolding from Judge Richard A. Posner. “When there is apparently dispositive precedent...” he wrote, “an appellant may urge its overruling or distinguishing or reserve a challenge to it for a petition for certiorari but may not simply ignore it.”

“Maybe appellants think that if they ignore our precedents their appeals will not be assigned to the same panel as decided the cases that established the precedents,” he continued. “Whatever the reason, such advocacy is unacceptable.”

Posner then wrote: “The ostrich is a noble animal, but not a proper model for an appellate advocate... The ostrich-like tactic of pretending that potentially dispositive authority against a litigant’s contention does not exist is as unprofessional as it is pointless.”

Posner then graphically illustrated his point:

Joining Posner were Chief Judge Frank H. Easterbrook and Judge Daniel Tinder.

Presiding Judge Lauds Efforts

continued from page 8

each other when the alpha identifier was omitted); ■ No routine matching protocol existed with any agency to ensure continuing accuracy.

During the last year, these entities have collaborated and synchronized more than 20,000 warrants issued last 40 years. This project is now nearing completion with a goal to ensure every warrant issued, modified, or quashed by the court is mirrored in the ACIC system within 24 hours of the activity.

Significantly, this collaborative project has identified needed improvements in our warrants system nationwide that are actively being pursued in various sectors. For example, the clerk has streamlined the entry of warrants issued from a grand jury proceeding. CTS has created an additional case type in ICIS to accommodate Fugitive of Justice warrants issued in cases originating in other jurisdictions. The Sheriff’s Office has accelerated the review and processing of unmatched warrants to increase accuracy.

The court’s Warrants Unit, Research and Planning Department, and CTS are jointly working with other court departments and key stakeholders to eliminate paper warrants and complete an all-electronic warrants system to transmit all warrants seamlessly to ACIC without the need for multiple re-entry and potential for error.

They are also developing a diagnostic computer program to identify and alert court management if even one warrant fails to match in both the ICISng and ACIC systems, allowing for immediate remediation.

Another significant upgrade to the court’s ICISng system will enable all departments to enter and track warrant information without reliance on the criminal department. The development of a new warrants screen will be available to all authorized court personnel to track warrants issued by any department (family court, criminal, civil, tax, juvenile, and probate).

My personal thanks to our court team and other justice system stakeholders for their work on this collaborative project, and for their dedication to the remaining work that needs to be done. ■
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