Voters’ choice: Six candidates vie for five seats on MCBA Board

Five incumbents and one newcomer have entered this year’s election for the 2013 MCBA Board of Directors. The candidates are:

- Kcedan Bodow, a commissioner of the Maricopa County Superior Court, a member of the Board for six years.
- Lizabeth Bullock, associate at Quares & Brady, LLP, seeking her second two-year term on the Board.
- Kyle Hirsch, Bryan Cave, LLP, is seeking his second two-year term on the Board.
- Julie LaFave, a member of the Sorenson Law Firm, LLC, running for her second two-year term on the Board.
- Amanda C. Sheridan, associate at Snell & Wilmer, seeking election to the Board for the first time.
- Sarah C. Smith, associate at Gust Rosenfeld, PLC, who was appointed to the Board in December of 2011, seeking election to her first full term.

This will be the first contested election since 2010, when 11 candidates ran for five available seats.

Voting in the 2012 election begins Nov. 1 and ends Nov. 15. Winners are announced shortly after the election ends.

Eligible MCBA voters are all attorneys currently licensed to practice in Arizona and who are members in good standing with both the MCBA and the State Bar of Arizona.

The Board election will again be held electronically with members receiving voting information by email. Within the email, voters will find a link to the voting website and their individual usernames and passwords.

The voting process is quick and simple: After receiving the email with voting information, members go to the voting website by clicking on the link, type in their designated username and password, and vote.

Biographical information and photographs of the candidates can be found on page 9.

MCB Foundation Awards $12,000 in Grants

The Maricopa County Bar Foundation presented $12,000 in grants last month to five organizations that provide law-related services to the public:

- Chaplaincy for the Homeless
- Arizona identification to obtain employment, housing, and to use many of the social services meant to help them regain their self-sufficiency. It does not matter how motivated a person is to end their homelessness it will not happen without identification. But seeking out and paying for the necessary documents to obtain legal identification can be a daunting obstacle to people with no resources, and this is where the Chaplaincy can help.

- Arizona for Children
  The Justice League Program of this organization, which is supported by the Maricopa County Bar Foundation, is designed to prevent delinquency by positively affecting attitudes and increasing understanding of laws and the justice system among youth in foster care. The program also aims to empower these youth to advocate effectively for themselves in their own dependency hearings and case planning and to become informed citizens able to function in and contribute to the society in which they live.

- Partners for Paiute Neighborhood Center
  The Paiute Law Clinic has operated over 10 years at the center to offer legal services to low and moderate income households in south Scottsdale. The Scottsdale Bar Association provides pro bono legal advice at Paiute when the clinic is open one evening per month. Due to the large population of Spanish speaking families in this area, this grant from the MCB Foundation will fund translation services for the clinic. This service was previously provided by the
Hey, let's be careful out there

I always liked the TV show Hill Street Blues. It's touted as a groundbreaking cop show that paved the way for modern crime drama. But what I remember most is the trademark opening roll call scene. The staff sergeant would list the precinct's workload for the day – which typically included cases ranging from comical to gruesome – while being heckled by the group of rowdy policemen and women. Upon releasing them to the streets, the sergeant would shift from his edgy, cynical tone to a more paternal demeanor as he instructed his officers: “Hey, let’s be careful out there.” I was and continue to be struck by this contrast between the group’s cavalier attitude toward the dangers of the job and the simple (but heartfelt) reminder of the importance of personal well-being.

Now, I know that we, as attorneys, do not face the same kind of daily perils as police officers. But the concept of placing a priority on well-being is nonetheless relevant to our profession. We’ve all heard the statistics about the number of premature deaths that are linked to preventable risk factors. In fact, heart disease has toppled the list of causes of death in the United States for as long as most of us have been alive. Additionally, studies indicate that lawyers lead the nation with the highest incidence of depression. So, clearly we need to take care of ourselves.

Now, I won’t spend too much time repeating the standard health exhortations: exercise regularly, eat a balanced diet, get enough sleep, don’t smoke. If you want to know more about these rules for healthy living, go to www.heart.org and www.cdc.gov. Instead, here are some tips that you may not have heard before:

Practice ambidexterity. Using your non-dominant hand for little tasks, like opening doors and brushing your teeth, can improve brain function and reduce aggression. Also, according to a UCS study, stackers who used their opposite hand consumed 30% less food than those using the dominant hand (which would help avoid weight gain associated with heart disease).

A recent bankruptcy decision has golf courses seeing ‘green’

By Nancy J. March

In many Chapter 11 bankruptcy reorganization cases, the first skirmish between a debtor and its primary secured lender is over the use of “cash collateral.” In simple terms, “cash collateral” is cash that is: (1) generated by a debtor after filing bankruptcy, (2) based upon a pre-bankruptcy security interest, and (3) permitted to continue after the bankruptcy.

The Bankruptcy Code prohibits a debtor from using cash that constitutes “cash collateral,” unless the lender consents or unless the Bankruptcy Court authorizes the debtor to use it (usually because the debtor has provided additional collateral). Borrowers that rely primarily on rental income from apartment complexes or shopping centers, or income from the sales of inventory, for example, are often required by their lenders to agree and adhere to strict budgets in order to be allowed to continue to operate in Chapter 11. As a result, a lender with a cash collateral interest can exert considerable power over the direction of a Chapter 11 bankruptcy case.

Because of this significant benefit given to a lender with cash collateral rights (and the hurdles a debtor must clear to continue to operate in the face of an objection to the use of cash collateral), a debtor has a vested interest in limiting the reach of its lender’s security interest in revenues earned after filing bankruptcy.

As a result, a great deal of litigation has arisen over whether a security interest in a particular type of collateral or revenue gives rise to an interest in cash collateral. A recently decided appellate case provides some guidance to debtors that own and operate golf clubs or courses and their lenders. A brief description of the relevant statutes and caselaw is helpful to an understanding of the result.

Contextual Background

The genesis of “cash collateral” is that property acquired by a debtor after filing bankruptcy is not subject to a lender’s pre-bankruptcy security interest. Thus, income earned by a borrower for services rendered after filing bankruptcy is not subject to a lender’s security interest and, because “an entity other than the estate” does not have an interest in the income, it is not cash collateral.

The Bankruptcy Code provides an exception, however, for a lender’s valid and perfected pre-bankruptcy security interest in property of the debtor that extends to the post-bankruptcy “proceeds, products, offspring, or profits” of the property. Examples of situations that fall within the exception include money generated post-bankruptcy from the sale of inventory and the post-petition generation and collection of accounts receivable, both of which are usually subject to a lender’s security interest in bankruptcy.

“Real estate” bankruptcies – those involving hotels, apartment complexes, shopping centers, nursing homes, and golf courses – are very common in Arizona, whether or not they are involved in bankruptcy. The Bankruptcy Code provides an exception, however, for a lender’s valid and perfected pre-bankruptcy security interest in property of the debtor that extends to the post-bankruptcy “proceeds, products, offspring, or profits” of the property. Examples of situations that fall within the exception include money generated post-bankruptcy from the sale of inventory and the post-petition generation and collection of accounts receivable, both of which are usually subject to a lender’s security interest in bankruptcy.

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Phoenix Noir: A Dark Night in the City

HISTORY & HEARSAY

Stan Watts

Could have been a lot of places, a lot of times. But it was Phoenix and it was a sweltering August in 1929.

It was a louzy, sweaty town full of louzy, thirty people. That night, the cold neon of the Owl Drug sign reflected off the wet pavement at the corner of Central and Monroe. The girl was worth a long bullet look, but she wasn’t worth a bullet through the heart. Not a single bullet, not a single, single heart.

Things are quieter now. The cops, the cowboys, and the public could often enjoy a private dip at the home of one of their well-healed buddies. Charles Dunning, Reynolds’ joke was more than a little ironic — he was found dead in his car on the border of Peoria with a .38 caliber bullet in his heart.

Motive and Opportunity

For the better part of the next two weeks, the Reynolds murder and its investigation by the feds, the Sheriff’s Office, and the various police departments was splashed all over the front page. Theory after theory was checked out and tossed away. The cops crowed on Monday, the 11th, that they were ready to close in on the trigger man. But two weeks later, they were no closer to proving a case than they had been that first morning.

At first, attention focused on Reynolds’ ongoing investigation of rum and drug runners described as one of the largest, best-organized, and most startling underworld rings Maricopa County has ever known. The cops believed he had the goods on some big fish, including what the papers called “higher ups,” and planned to make a bust that Friday night.

Some good flatfoot work established that Reynolds had driven his rented Chevy to one of his hangouts, the Arbor Dance Hall on north 7th Street. It was pretty well known that quite a bit more than dancing went on at the Arbor.

Further examination of his well-healed buddy Charles Dunning revealed two well-known local attorneys were implicated. G. Ayline, a former assistant U.S. attorney, and John Sullivan had recently turned up at the U.S. Attorney’s Office. The night it happened, he was seen looking over his files in the air-conditioned lobby. Tiring of his paperwork, around 9:30 that muggy Friday night, he made his way to the Arizona DriveWell System at 17 E. Jefferson and rented his usual Chevy coup.

He kidded that he would be heading over to Glendale for a swim — when in town he often enjoyed a private dip at the home of his well-healed buddy. Charles Dunning. Reynolds’ joke was more than a little ironic — more like a premonition. He was found dead in his car on the Arizona DriveWell System at 17 E. Jefferson and rented his usual Chevy coup.

A DaVinci Code

Reynolds had been working cases in the Gold Spot for a couple years and had just closed a big drug smuggling case in Nogales. He knew his way around the U.S. Attorney’s office on the 3rd floor of the Federal Building at 1st Avenue and Monroe, and was a regular in the 2nd floor courtroom of U.S. Commissioner Henry C. Davidson.

It was a time and place where black and white were hard to come by — Reynolds dealt in grays.

About a month earlier, he had been in town to grill an ex-Phoenix cop named Buck Guernsey who had rolled when he didn’t want to take a fall for hijacking a liquor shipment and killing three Mexican burglars.

Tens of thousands of criminal cases make their way through the Superior Court in Maricopa County each year. Many cases result in restitution orders to compensate victims. Unfortunately, victims often move or their status changes with no notification to the Clerk’s Office. This results in the Clerk holding restitution money that was paid but can’t be forwarded to the victim.

Two years ago, the Clerk’s Office partnered with the Maricopa County Attorney’s Office to locate victims of crime and get them the funds they are owed. Volunteer investigators in the County Attorney’s office use their expertise and resources to locate victims during non-duty hours.

When an updated address is obtained, the Clerk’s Office sends the funds. A successful location can take multiple attempts, but when an address is validated it results in getting money back in the hands of those it belongs to — the victims of crime.

Last year the Victim Locate Program was awarded an Achievement Award from the National Association of Counties, providing national recognition for Maricopa County’s innovative program. With continued success locating victims and outreach to victims to keep their addresses updated with the Clerk, the program could become unnecessary in the future.

Prior to this program, approximately $74,000 per month in court-ordered restitution was not mailed to victims because of invalid addresses on file with the Clerk’s Office. The Clerk’s Office cannot hold restitution funds indefinitely. If unclaimed and the rightful owner is not found within the statutory time-frames, the funds are sent to the State Department of Revenue as unclaimed property.

In addition to the Victim- Locate Program, the Clerk’s Office has a link on its website called “Finding Funds” that allows individuals and businesses to enter their name or the name of their business to search for court-ordered restitution monies or assets owing to them.

If funds exist, forms can be printed and completed and either faxed or mailed to the Clerk’s Criminal Financial Obligations Unit. To search for funds on the Clerk’s website, go to http://www.clerkofcourt.maricopa.gov/Unclaimed/default_new.asp. Victims should update their address with the Clerk in writing by sending their name, case number(s) and old and new address information by mail to: Clerk of the Court, ATTN: CFO, 201 W. Jefferson, Phoenix, AZ 85003 or by emailing their information to CFOResponse@mail.maricopa.gov.

“higher ups in Arizona rum and drug running rings, public officials, and prominent citizens who were operating an alleged “monster par- don mill.” Allegedly, pardons had been procured for more than 20 convicted bootleggers for between $500 and $3,000 each.

Not the Usual Suspects

Two well-known local attorneys were implicated. Guy Ayline, a former assistant U.S. attorney, and John Sullivan had recently moved to the Superior Court.

See Phoenix Noir: A Dark Night in the City page 15

$1 million released to victims of crime

Clerk’s Corner

Michael K. Jeans
Clerk of the Superior Court

志愿者调查人员在县检察官办公室使用他们的专业知识和资源找到受害者。这些志愿者在非工作时间工作。当地址被验证时，结果是将金钱返回给那些它属于的人——犯罪的受害者。

去年的受害者定位计划获得了国家协会的认可，并被授予了成就奖。该项目的创新性为马里科帕县的受害者提供了全国性的认可。随着持续的成功，志愿者和受害者在受害者地址更新时与经纪人合作，该计划可能会成为不必要的。

在该计划实施前，大约每月74,000美元的法定赔偿资金未能发送给受害者，因为无效的地址在文件中。如果未被发现且正确的所有者不在法定的时间框架内，资金将被发送到州部门的收入作为未申报的财产。

除此之外，受害者定位计划，该计划的链接在网站上，称为“找到资金”，允许个人和企业输入他们的名称或他们的企业的名称，以搜索法院命令的恢复资金或资产，该资产归他们所有。

如果资金存在，可以打印并填写表格，然后通过传真或邮寄给律师的刑事财务义务单位。要搜索资金，可以访问http://www.clerkofcourt.maricopa.gov/Unclaimed/default_new.asp。受害者应该更新他们的地址与律师的书面通信，发送他们的名称，情况编号（（如果有的话）和旧和新地址信息通过邮寄到：法院的首席，ATTN：CFO，201 W. Jefferson，Phoenix，AZ 85003或通过电子邮件将他们的信息发送到CFOResponse@mail.maricopa.gov。

“更高层在亚利桑那州朗和药物贩运环中，政府官员和著名的市民中，他们正在进行一场所谓的“赦免大赦网”。据称，审批了超过20名被判刑的走私者的赦免。

不是寻常的罪犯

两名著名的当地律师被牵涉其中。古伊线，前助理美国律师，和约翰·史宾纳在最近搬到了高级法院。
Attorneys: Help employers avoid missteps as DREAM Act/ DACA employees apply for ‘deferred action’

On June 15, 2012, the Obama administration announced that it would offer “deferred action” to immigrants who were brought to the United States as children and meet other specific requirements. The move temporarily eliminates the possibility of deportation for many youths who would qualify for relief under the DREAM Act. Though it is not a route to citizenship, it allows young people to stay and work in the United States. Employers now have an opportunity to craft a bipartisan solution that could give permanent residence to qualifying young people. For employers and their attorneys, however, it can create a complex scenario that requires careful consideration.

By Jared C. Leung, John Balitis, and Nancy-Jo Merritt

Beginning August 15, eligible individuals could submit applications for “deferred action” through the “Deferred Action for Childhood Arrivals” (DACA) process. Simply put, the DACA process is a method by which U.S. Citizenship and Immigration Services (USCIS) prioritizes its resources with respect to enforced removal (deportation) of undocumented individuals. The Department of Homeland Security (DHS) has identified individuals with criminal backgrounds and convictions as priority for removal. Young people, often brought to the U.S. by their parents, are considered to be low priority if they meet the DACA criteria and are eligible to apply for “deferred action,” a “deportation deferral” for two years, subject to renewal. The criteria for DACA are:

- The applicant was under the age of 31 on June 15, 2012;
- The applicant came to the U.S. before June 15, 2012;
- The applicant was physically present in the U.S. since June 15, 2007, to the present;
- The applicant was physically present in the U.S. on June 15, 2012;
- The applicant entered “without inspection,” meaning not through a U.S. Port of Entry, before June 15, 2012, or his/her lawful immigration status expired as of June 15, 2012;
- The applicant is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general education development (GED) certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
- The applicant has not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and does not otherwise pose a threat to national security or public safety. More information can be found on the US Citizenship and Immigration Services’ website at http://www.uscis.gov/childhoodarrivals. DACA applicants can apply for work authorization at the same time and such applications may raise issues for employers:

- A new applicant may apply for a position with an “Employment Authorization Document” (EAD) from the DACA process. Whether the individual does or does not have “lawful” or “legal” status is an open question. Nonetheless, with a properly issued USCIS EAD for him or she is authorized to seek and accept employment.
- A current employee may come forth with a new EAD from the DACA process, which may contain information inconsistent with the documents provided to the employer during the initial I-9 process. By virtue of the requirements of DACA, the employee may not have had lawful status in the U.S. when initially hired, which suggests he or she may not have provided a genuine document when initially completing the I-9 process.

In the first scenario, the EAD issued under the DACA process is an acceptable List A document for the Form I-9. As a result, the employment process can proceed. The employer must treat that person similarly to the other work authorized applicants.

Because U.S. immigration law allows issuance of EADs to individuals in various kinds of interim or “limbo” immigration statuses, it is likely that employers have in the past accepted applications from individuals with varying levels of work authorization status. An individual may not techni-
OPINION

Vote “NO” on Prop. 115 or we’ll lose merit selection and our independent judiciary

By Mark L. Harrison

Proposition 115, the Arizona Legislature’s referendum on the November ballot, will, if enacted, make dangerous changes to Arizona’s merit selection of judges.

In 1974, Arizonans voted decisively to amend Arizona’s constitution to adopt merit selection of judges. Pursuant to the voters’ mandate, all applicants for positions on the Supreme Court and Court of Appeals, as well as trial judges in Maricopa, Pima, and Pinal counties (those with populations over 250,000), are intensive-ly evaluated by Judicial Nominating Commissions, which review applications, interview qualified applicants, and nominate at least 3 individuals to the governor to fill a judicial vacancy. The governor then chooses the judge.

Commissions are composed of ten non-lawyers appointed by the governor and five lawyers. The lawyers are nominated by the State Bar of Arizona Board of Governors, appointed by the governor, and confirmed by the Senate.

The merit selection process was strengthened by 1992 constitutional amendments that created an evaluation process for judges appointed under merit selection. This process, administered by the Commission on Judicial Performance Review, includes surveys of jurors, witnesses, litigants, administrative staff, and attorneys who have interacted with the judge in a judicial or administrative setting.

The Arizona system is widely admired and emulated around the country. For example, an October 2000 report by the U.S. Chamber of Commerce Institute for Legal Reform, entitled, “Promoting Merit in Merit Selection, a Best Practices Guide to Commission-Based Judicial Selection,” states that “Arizona leads the nation with the procedures it has put in place to fulfill the promise of true nonpartisan ‘merit’ selection.”

Among the “Best Practices” advocated by the Chamber’s Institute are several that would be eliminated by Prop. 115. The report specifically recommends that state bar organizations choose lawyer members of nominating commissions.


Another example of this praise came from the 2010 Arizona Town Hall meeting. In its report, “Arizona’s Government: the Next 100 Years,” the Town Hall reviewed the status of Arizona’s government and concluded, “[T]he state’s judicial merit selection system and the courts’ judicial education program … have combined to give Arizona a court system that is widely praised by litigants and lawyers in Arizona and other observers nationally.” http://aztownhall.org/Resources/Document s/97th_Final_Report.pdf

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MCBA Public Forum on Proposition 115

On Sept. 25 (past the deadline for this issue of the Maricopa Lawyer), MCBA held a free public forum that addressed the effects of Proposition 115, which is slated for the November ballot and will change Arizona’s current judicial merit selection process. The MCBA Board of Directors has stated its opposition to Prop 115, which will be printed in the ballot’s publicity pamphlet. The State Bar of Arizona, on the other hand, favors the proposition.

All sides of the issue were debated by a distinguished panel moderated by Michael Grant of Gallagher & Kennedy. The panelists were Hon. Ruth V. McGregor, retired chief justice, Arizona Supreme Court; Mark J. Harrison of Osborn Maledon; Peter Gentala, counsel to the majority, Arizona House of Representatives; and Joseph A. Kanefield of Ballard Spahr, immediate past president of the State Bar of Arizona.

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See Vote “No” on Prop. 115 page 14
Joan Sinclair appointed to Maricopa County Superior Court

Gov. Jan Brewer last month appointed Court Commissioner Joan Sinclair to the Maricopa County Superior Court. The governor’s appointment of Sinclair fills the opening created by the recent appointment of Judge Samuel Thumma to the Arizona Court of Appeals.

“With more than two decades of courtroom experience in Arizona, Joan is well-rounded and well-suited for this important judicial role,” said Gov. Brewer. “Her strong background in both civil and criminal law – in addition to an obvious affinity for public service – will be a valuable asset to both the court and community.”

Commissioner Sinclair has been a Maricopa County Superior Court commissioner since 2006. She originally presided over initial appearances in criminal matters and has been assigned to juvenile court since the end of 2007.

Licensed to practice law in Arizona since 1995, she also is a member of the New York and Georgia state bars. Prior to serving as a commissioner, Sinclair worked for several years in Atlanta, Ga., where her roles included: Social Security Disability Litigation Unit; Federal Highway Administration; and Dekalb County Juvenile Court Solicitor’s Office.

Since earning her license to practice in Arizona, Sinclair served as a Maricopa County attorney and worked for the Arizona Death Penalty Judicial Assistance Program. She also clerked for Chief Justice Bud Jones at the firms Meagher & Geer and Dodge Anderson.

Additional noteworthy qualifications include service on the Arizona State Bar’s Criminal Jury Instruction Committee (1998-2000) and a recent appointment to the State Bar’s disciplinary panel. Sinclair graduated from the State University of New York at Buffalo School of Law (1986). She received her undergraduate degree from Le Moyne College (1983). ■

Presiding Judge Appoints Wingard Commissioner to Superior Court

The Superior Court announced the appointment of William Wingard as its newest commissioner.

“Bill has been a private practitioner for many years, specializing in family law matters and has served for the last six years as a judge pro tem in the family and juvenile departments,” Presiding Judge Norman Davis said. “He comes highly recommended by our Commissioner Selection Committee as well as numerous people in the legal community who are familiar with his work.”

Comr. Wingard assumed his position on Sept. 24 in Juvenile Court. ■

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The MCBA YLD, Domestic Violence Committee, asks your help by donating necessities to be delivered to victims of domestic violence who are currently residing in local shelters.

Every October, in honor of Domestic Violence Awareness Month, the YLD committee organizes this Necessities Drive to collect those basic items that we all take for granted in our own lives. But these are not items easily obtained by the women, men, and children in Phoenix-area domestic violence and homeless shelters. Most arrive at shelters with very little.

The YLD also provides a “Survivors Guide,” which contains basic legal information to assist survivors of domestic violence. With this project, the Domestic Violence Committee’s goal is to empower and assist victims of domestic violence to make a new start.

The success of the Necessities Drive depends largely on the donations from the community—and this is how you can help. The following necessities are sought:

- Shampoos and conditioners
- Brush and comb sets
- Toothbrushes/toothpaste
- Body lotion
- Deodorant
- Diapers (assorted sizes)
- Sanitary pads and tampons
- Gift cards to Target or Wal-Mart
- Going shopping soon? The YLD asks that you please remember to pick up an item or two to donate for this worthy cause. You may drop off the necessities at the MCBA Office and deliver to Laurie Williams or Bree Bohlke.

If you would prefer to make a monetary donation instead, please make a check payable to the MCBA and mail it directly to the attention of Laurie Williams at the MCBA Office at 303 E. Palm Lane, Phoenix, AZ 85004. Please make your donation by Oct. 12.

Donations for Young Lawyers Division Necessities Drive Needed
Candidate Biographies for 2013 Board of Directors Election

KEELAN S. BODOW
Keelan S. Bodow is a current MCBA Board member, and has sincerely enjoyed her position for the last 6 years. She currently works as a commissioner for the Superior Court of Arizona. She formerly was assigned as a commissioner to the Family Court Division, and currently is assigned to the Criminal Division.

Some of her activities include: chairperson of MCBA Membership Committee; liaison for the MCBA Maricopa Lawyer; former liaison for MCBA Criminal Section; founding member of the Maricopa County Justice Museum and Learning Center; member of AWLA; member of the East Valley JCC; and officer for the Brown Club of Phoenix.

She formerly worked as unit chief counsel for the Arizona Attorney General’s Office, and worked in the Child and Family Protection Division for nine years. Prior to the AG’s Office, Comr. Bodow worked in different areas of private practice. She is a former chairperson of the MCBA Tolerance Project and Speakers Bureau, and a former officer for the State Bar of Arizona YLD. Comr. Bodow received her JD in 1994 from the University of Buffalo School of Law, and her BA in 1989 from Brown University. Comr. Bodow is admitted to practice in Arizona and New York.

LYZZETTE BULLOCK
Lyzzette Bullock is a litigation associate at Quares & Brady, LLP, and an incumbent member of the MCBA Board of Directors, and a member of its Diversity Committee. During her tenure on the Board, Lyzzette has actively worked to promote the mission of the MCBA—to serve its members, the legal profession, the judicial system, and the public. In addition to her service with the MCBA, the Arizona Foundation for Legal Services & Education recently named her one of the top 50 pro bono attorneys in Arizona. She is also an active member of the Horace Rumpole Inn of Court.

If reelected to the MCBA Board, Lyzzette hopes to help the MCBA continue to meet the needs and expectations of its membership, expand its educational and networking programs, and reenergize its diversity initiatives. Lyzzette believes that the MCBA should be a powerful advocate for its members and would be honored to serve on the Board for another term.

JULIE LAFAVE
Julie LaFave’s practice focuses on commercial litigation and insurance defense. She has experience litigating professional negligence and product liability claims, insurance defense matters, medical malpractice, aviation claims, and general tort liability defense in both state and federal courts. LaFave has a background in complex litigation matters, including oversight management of local counsels in four states for over 100 active product liability, tort defense and personal injury cases, for a large multi-national corporate client. LaFave is AV Rated® by Martindale-Hubbell.

She has served the local legal community in a variety of roles including the following: Maricopa County Bar Association Board of Directors, 2005-2007, 2010-present; Young Lawyers Division—president, 2006; Young Lawyers Division—Board of Directors, 2001-2007; and Young Lawyers Division—Member of the Year, 2005. Other organizations are: American Bar Association, member; Arizona Association of Defense Counsel, member; and Arizona Women’s Lawyers Association, member. LaFave is also active in the following community activities: Arizona Foster Care Review Board, member 2010-present; and Phoenix College adjunct professor, 2003-present.

Don’t just get a bite of the apple... get to the core!

“Virtually all cases involve the discovery of electronic data” — Zebulake

Court decisions over the past year have indicated they are not willing to overlook e-discovery abuses and will impose sanctions, apply adverse inference guidance and default judgments.

- Computer Forensics
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- Fraud Investigations
- Expert Witness Testimony
- Business Valuation
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(480) 443-9064
www.expertinsights.net

AMANDA C. SHERIDAN
Amanda is an active board member of the MCBA’s Young Lawyers Division, serving as chairperson of the YLD’s Mock Interview and Mentoring committee, as-co-chairperson of the Race Judicata Committee, and YLD liaison to the MCBA Membership Committee. Amanda is interested in serving as a member of MCBA’s Board of Directors because she strongly believes that it is important to dedicate her time and resources towards strengthening the local legal community.

She is currently a fourth-year associate with Snell & Wilmer, focusing on product liability, commercial litigation and criminal defense. Her dedication to the legal community as a whole has been consistently demonstrated throughout her legal career and she would sincerely appreciate your support.

SARAH C. SMITH
Sarah C. Smith is an associate in the Phoenix office of Gust Rosenfeld, PLC, where she practices in the areas of public finance and public law. She is currently a member of the Board of Directors for the Maricopa County Bar Association and a liaison to its Criminal Division. She formerly worked as unit chief counsel for the Arizona Attorney General’s Office, and worked in the Child and Family Protection Division for nine years. Prior to the AG’s Office, she was employed full-time as an office manager for a public accounting firm. She lives in Chandler with her husband, Brian, and their dog, Sydney.
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Thanks to our conference participants—and now, get involved with the division

13th Annual Arizona Paralegal Conference

I hope that everyone enjoyed our 13th Annual Paralegal Conference. We had a great turn out this year and I hope that you all enjoyed the new location.

First and foremost, I want to everyone that and participated in this year’s conference. I want to thank the Conference Committee for all their hard work throughout this year in putting it together. Thank you to Laurie Williams and Bree Boehlke from the MCBA for always being there to help and guide us with what needed to be done. We had a lot of new faces this year on the committee, their help was invaluable.

Thank you to all the businesses that came in to be vendors this year. We always love getting a chance to chat with you all. Thank you to our speakers, Vincent Creta of Hammerman & Hultgren, PC; Richard Drake of Barski Drake, PLLC; Roman Kostenko of Law Office of Roman A. Kostenko, PLC; Karin Ham of the Maricopa County Attorney’s Office; Britt Royle of Law Office of Britt A. Royle, PLLC; Thomas J. Murphy of Murphy Law Firm, Inc.; and Patrick X. Fowler of Snell & Wilmer. We appreciate you all taking time out of your day to speak to us!

What were your thoughts on the conference? Have any ideas to make it better? We are already starting to think about 2013’s conference and would absolutely LOVE help with what needed to be done. We had a lot of new faces this year on the committee, their help was invaluable.

We Need Your Involvement with the MCBA Paralegal Division in 2013!

The open positions for next year’s board are president elect, treasurer, secretary, and three general board positions. We can always use help, fresh faces, and fresh ideas in the division.

If you are interested in getting more involved with the division, becoming a member of the board, or just helping out in any of the various committees, and if you have any questions, please contact me Cami Barnella at barnella@sackstierney.com or Sarah Fluke at sfhke42016@gmail.com.

Benefits of Board Involvement

■ Resume Building-It’s a great addition to your resume.
■ Bringing new ideas to the division and assisting in keeping the MCBA Paralegal Division current and relevant for all the paralegals in Maricopa County and surrounding counties.
■ Engaging with fellow paralegals-especially for those paralegals working with a solo practitioner or small law firm.
■ Having the support from other paralegals in different areas of law—as an estate planning/probate paralegal, I love that I have people I can go to when questions arise in other areas of law.
■ Long lasting friendships—I have met some outstanding people while being involved in the MCBA Paralegal Division that I truly consider friends. And these friends sometimes can understand you in ways that others can’t since they are in the same profession.
■ Discount on conference admission—We are doing something new this next year, and the members of the board will receive a discount on the annual conference.
■ Build your leadership skills—Whether you are a natural born leader or tend to stay in the background, this is a great opportunity to fine tune your skills or step outside your comfort zone and challenge yourself in new and rewarding ways.

Paralegal dental drive delivers

The annual Paralegal Division Dental Drive ran from June through August of this year. The division donated over 500 toothbrushes and toothpastes in addition to other supplies like mouthwash, floss, and stickers for the kids to the John C Lincoln Desert Mission Children’s Dental Clinic. The clinic sees an average of 10,000 underprivileged kids for annual school check-ups.

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Maricopa County invites applications for the position of:

Attorney-Prosecution (Contract/Part-Time)

Department: County Attorney
Job Type: Contract/Part-Time
Location: Phoenix, 85003, Arizona
Salary: $56,950.40 - $109,699.20 Annually

Position Overview:

Currently Hiring 8 CONTRACT/PART-TIME ATTORNEY POSITIONS For Juvenile and Superior Or Justice Court Coverage

Schedule: 8:00 am – 12:00 pm (or) 1:00 pm – 5:00 pm 20 hour work week

Apply Online: www.maricopa.gov/jobs

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Schedule: 8:00 am – 12:00 pm (or) 1:00 pm – 5:00 pm 20 hour work week

Apply Online: www.maricopa.gov/jobs
FRIDAY PHONE
If you registered and paid, but could not attend, you may request that materials be sent to you, free of charge (allow
Most CLEs are available for simultaneous webcast or later viewing through West LegalEd at http://tiny.cc/kg4cjw (                icon indicates confirmed webcast)
Court Appointments
Superior Court
Viola
Hon.
PRESENTERS:
So You Want to be a Judge?
SESSION 4
Bethany Hicks
Maricopa County Superior Court
PRESENTERS:
the bench.
for yourself what the judicial officers expect, appreciate
help clients, attorneys and the courts more effectively
in civil practice areas with attendees to identify topics,
This ethics CLE opportunity will combine judicial
toward your annual ETHICs CLE requirement for
the State Bar of Arizona.
• Effective Networking: Using non-attorney
• Tips for Rainmaking: Steps for turning con-
tacts into business in a cost-efficient manner
• Your Marketing Plan: Creating and executing
your marketing plan, including use of tradi-
tional advertising and social media
• Questions and answers segment
Best of all, this is FREE to all MCBA Young Lawyer Division members (Remember: if you an MCBA member, under 36 years old or in practice for less
than five years, you are a YLD member!)
PRESENTERS:
Matt Fendos, Fendos Law Firm, PC
Brent Kleimann, Kleimann Law Firm, PLLC
Racies Mohamed, Wong Fuji Carter, PC
THURSDAY OCT. 25
1:00-4:00 PM (Lunch included)
Keys to Your First DUI Trial
SPONSORED by: Criminal Law Section
This program activity may qualify for up to 3 hours

TUESDAY OCT. 16
4:30 - 6:00 PM
Even the Best Make Mistakes
SPONSORED by: Litigation Section
This program activity may qualify for up to 1.5 hours
toward your annual ETHICs CLE requirement for
the State Bar of Arizona. Happy Hour to follow CLE.
Experience is simply the name we give our mistakes . —Oscar Wilde

THURSDAY OCT. 11
7:30-8:30 A.M.  (Breakfast included)
Trust Company Roundtable Discussion on Trust Modification
SPONSORED by: Estate Planning, Probate & Trust Section
This program activity may qualify for up to 1 hour

THURSDAY NOV. 1
12:00-1:30 PM (Lunch included)
The Intersection of Autism and Family Law:
What the Bench and Bar Should Know
SPONSORED by: Family Law Section
This program activity may qualify for up to 1.5 hours
toward your annual standard CLE requirement for
the State Bar of Arizona.
There has been a dramatic increase in the num-
ber of children who have been diagnosed with
autism, Asperger’s Syndrome or autism spectrum
disorders. In fact, a recent study found in 88 chil-
dren will be diagnosed with an autistic spectrum
disorders. In advocating for and determining what is
the best interests of children diagnosed with autistic spectrum disorders, attorneys and judges
must have at least a basic understanding of the
diagnosis of autism spectrum disorders and the
unique needs of these children. Further, the ser-
dices and treatment available for children diag-
nosed with autism spectrum disorders differ
dely, and knowledge of these can be vitally
important to both the bench and bar.
This seminar offers participants the unique opportunity to learn about autistic spectrum disorders, and the intersection of autism and family law. As a parent of a child with autism, the newer attorney has a wide range of knowledge and experience in this area. From a panel of professionals who have a wide range of experience, the opportunity to learn about autistic spectrum disorders and the intersection of autism and family law will be offered.

Has the Law Shaped Arizona or Has Arizona Shaped the Law?

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**Recognitions**

Quarles & Brady, LLP announced that C. Bradley Vynalek, a partner in the firm’s Phoenix office, was elected president of the University of Arizona’s Law College Association. He has held various officer positions with the association and will serve a two-year term as president.

In 2013, Vynalek received a Service Award from the State Bar of Arizona for the work he did on the State Bar’s behalf for the American Bar Association and was named a Fellow in the Flinn-Brown Civic Leadership Academy. He currently serves as Vice Chair of the Make-A-Wish Arizona Chapter and is active in the American Bar Association.

He received his law degree from the University of Arizona and his bachelor’s degree, with honors, from Stanford University. He is a graduate of Valley Leadership Institute Class XXVI.

**New Hires**

Jennings, Strouss & Salmon, PLC announces that six attorneys have joined the firm’s Phoenix office, expanding the firm’s services to include surety, fidelity and family law.

Jay M. Mann, Richard S. Wisner, Scott F. Freichs, Andy J. Chambers and Patrick F. Welch are members of the firm’s new surety and fidelity law practice and bring additional experience in the areas of construction law and commercial litigation. Norma Izzo Milner (featured in last month’s Bulletin Board) leads the firm’s family law and domestic relations practice.

Jay M. Mann is a chair of the firm’s Surety and Fidelity Group. He is a frequent lecturer and author in the areas of construction, surety and fidelity law. Mann is also active in numerous professional and civic organizations, including the American Bar Association, where he serves as a vice chair of the Fidelity and Surety Law Committee, the State Bar of Arizona, the Maricopa County Bar Association, as well as numerous other organizations focused on construction, surety and fidelity law. He earned a JD, with honors, from Loyola University of Chicago and a BA from the University of Illinois.

Richard S. Wisner is special counsel in the Surety and Fidelity Group. He is recognized as a leader in the surety and fidelity field, and is the recipient of Lifetime Achievement Awards from the American Bar Association, Surety and Fidelity Law Society and Surety Law Committee (“FSLC”) and the National Bond Claims Association. Wisner is a Past Chair of FSLC and currently serves on the Board of Directors of the Surety & Fidelity Claims Institute. Wisner earned a JD from DePaul University and a B.A. from Loyola University.

Scott F. Freichs is a member in the Surety and Fidelity group. He focuses his practice in the areas of commercial and construction litigation, personal injury defense, professional and products liability, and appellate law. Freichs earned both a J.D., cum laude, and B.S. from Arizona State University.

Andy J. Chambers is a member in the Surety and Fidelity Group. He focuses his practice on fidelity law, commercial litigation, and surety and construction law. Chambers earned a JD, cum laude, from the Washington College of Law at American University and a BA from the University of California, Santa Barbara.

Patrick F. Welch is an associate in the Surety and Fidelity Group. He focuses his practice in the areas of commercial litigation, construction, fidelity and surety, and employment. Welch earned a JD from the New England School of Law and ABA from Connecticut College.

Megan K. Scanlon has joined Quarles & Brady, LLC’s Phoenix office as an associate in the Health Law Group. While in law school, Scanlon served as an extern for Hon. Stephen M. McNamee, U.S. District Court, District of Arizona, and as editor-in-chief of the Arizona State Law Journal. Prior to joining the firm, she worked as a judicial law clerk at the Arizona Supreme Court for Chief Justice Rebecca Berch.

Scanlon received her law degree, cum laude, from ASU; Sandra Day O’Connor College of Law; her master’s degree from Bowling Green State University; and her undergraduate degree from the College of William & Mary.

**Fennemore wins Gold Standard Award for Women in Leadership**

The Women in Law Empowerment Forum (WILEF) honored Fennemore Craig for integrating women into leadership positions at its Gold Standard Awards Luncheon last month in New York City. Twenty-six percent of the equity partners are women across Fennemore Craig’s six offices in Arizona, Colorado and Nevada. Fennemore Craig is one of three of nation-wide certification winners that met or exceeded all six criteria set by WILEF. There were a total of 50 firms that received the Gold Standard Certification.

Half of the committee members responsible for managing Fennemore Craig are female partners, bypassing the 20 percent mark set by WILEF. Additionally over a quarter of the firm’s equity partners and department heads are women.
Phoenix Law named one of country’s most innovative

Pushing the boundaries of the traditional law school model

The National Jurist, a leading news source in legal education, has named Phoenix School of Law (PSL) one of the country’s 20 most innovative law schools. The school will be featured in the Back to School issue in the August edition of its preLaw magazine. More than 40 schools submitted nominations to be considered for their curriculum innovations.

PSL was in large part recognized due to its General Practice Skills (GPS) “capstone course.” The course began in 2007 and teaches the skills and values needed by lawyers to be successful in the practice of law. The PSL GPS course was selected as a winner of the E. Smythe Gambrell Professionalism Award in 2009. This is an award presented by the American Bar Association Standing Committee on Professionalism. The GPS course consists of six two-week modules. Each module is taught by a team of two practicing lawyers under the direction of a supervising faculty member and an assistant director. The modules cover the skills and values needed for practice in the areas of law office management, family practice, representing creditors and debtors, representing small businesses, estate planning, criminal law practice, and personal injury practice.

In the context of each module students are taught and practice the skills and professional values identified as essential by the MacCrate Report (1992), the Carnegie Report (2007), and a survey taken of Arizona attorneys. The GPS course is designed as a required single semester, six credit, pass/fail course which meets twice each week for three hours.

“We are honored to have PSL named as one of the ‘Most Innovative Law Schools’ in the country. Our ability to preserve some of the fundamental values of the discipline of law, all the while adding a fresh, outside-the-box perspective to our curriculum speaks to the…diversity that rests at the core of PSL’s mission,” said Shirley Mays, dean of Phoenix School of Law.

For a complete list of the 20 Most Innovative Law Schools in the United States please visit: http://www.thenationaljurist.com/content/most-innovative-law-schools-announced.

Golf courses seeing ‘green’

continued from page 2

and they generate most of the controversial cash collateral issues. Not all income generated by these types of debtors is equal when it comes to a lender’s post-petition security interest.

The key to whether income is cash collateral is whether it is derived from the use or occupancy of real property, rather than by services that are provided on the property. Thus, rent collected by an apartment complex is subject to a post-petition security interest and is cash collateral, since it is based on tenants occupying real property. Similarly, rent received from tenants in a strip shopping center is cash collateral that may not be used in bankruptcy without the secured lender’s consent.

At one time, courts had ruled inconsistently over whether revenues from hotel rooms constituted cash collateral – was the income generated from the occupancy of real property or through personal services rendered? Congress put an end to that dispute in 1994, when it amended Section 363(a) of the Bankruptcy Code to include in the definition of cash collateral, “the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest.”

As a result of this change, hotel debtors are advised to account for, and even segregate from room revenues, the income they earn from restaurants, shops, spas, and other retail or service operations, in order to argue that they can have unencumbered use of, and unencumbered rights to, such income after bankruptcy.

Golf Course Revenues

It was in this context that the Ninth Circuit Bankruptcy Appellate Panel recently decided In re Premier Golf Properties, LP, BAP No. SC-11-1508-HF-Ju (Aug. 13, 2012). In a case appealed from a bankruptcy court in the Southern District of California, the Panel considered whether income from the debtor’s ownership and operation of the Cottonwood Golf Club (including a golf club with two 18-hole golf courses, a driving range, clubhouse restaurant, and pro shop) constituted its lender’s “cash collateral.”

The debtor generated income from the sale of annual memberships, green and driving range fees, golf cart rentals, pro shop sales, food and beverage services, and golf lessons. The lender had a blanket lien against all of the real and personal property owned by the debtor. In addition, the loan and security documents, which included a deed of trust, security agreement, and assignment of leases and rents, granted the lender a security interest in every conceivable category of collateral, including “all revenues, receipts, income, accounts, customer obligations, installment payment obligations…accounts receivable…license fees, golf club and membership initiation fees, green fees, driving range fees, golf cart fees, membership fees and dues, revenues, receipts, …and profits…arising from rentals, …license, concession, or other grant of right of possession, use or occupancy of all provision or sale of any goods and services…,” as well as “all proceeds thereof.”

The assignment of rents gave the lender an absolute assignment of “all agreements affecting the use, enjoyment or occupancy of the Land now or hereafter entered into… and all rents, prepayments, security deposits, termination payments, royalties, profits, issues and revenues from the Land… accruing under the Leases…” Before the bankruptcy, the lender had an extensive security interest against all income earned by the debtor. The appeal asked the court to rule on whether that security interest extended to certain post-petition revenues.

After its bankruptcy filing, the debtor segregated, for the lender’s benefit, receipts from goods and inventory sold, but did not treat the revenue received from green fees, driving range fees, sale of golf memberships, cart rentals, and proceeds of sales of food and beverages at the lender’s cash collateral. The primary issue, both in the lower court and on appeal, was whether the green fees and driving range fees were “rents” generated through the use and occupancy of the property, and therefore the lender’s “cash collateral.”

The Appellate Panel agreed with the Bankruptcy Court that “the key to a golf club’s generation of income is due to the regular planting, seeding, mowing, repositioning holes, watering, fertilizing, and maintaining the golf course.” The revenue was not produced primarily by occupancy of the land, but rather by virtue of the other services that were performed on the land.

The panel distinguished between hotels, where the real property is used for shelter or occupancy (and the income is therefore subject to the lender’s post-petition security interest as cash collateral), and golf courses, which derive their income primarily from the use of the real property for entertainment.

Lessons to Be Learned

The decision of the Appellate Panel should remind debtors’ counsel that not all post-bankruptcy revenue remains subject to a lender’s security interest. Debtors and lenders alike should all be on notice that it is the lender’s burden to prove that a particular type of revenue constitutes its cash collateral.

Debtors should not give in to lenders’ demands without a fight. They should also account for and segregate different types of revenues at the beginning of a Chapter 11 case, so that they can be in a position to spend those types of revenues that are not determined to be cash collateral.

Nancy J. March is a director at Fennemore Craig, where she focuses on commercial bankruptcy, collection, and related litigation and transactional matters in Arizona and in federal courts in other states including Delaware, New York, California, Texas, Pennsylvania, Nevada, and the District of Columbia. She represents creditors, debtors, trustees, and official committees.

Phoenix Noir: A Dark Night in the City

continued from page 3

40’s, but eventually had to resign after a conviction for bribery involving a protection scheme for illegal gambling halls.

When the leads dried up on theories linking the murder to the special agent’s investigations, the focus shifted to his colorful personal life and the facts that had emerged out of the papers. Although Reynolds was secretly married and had a child in Boise, none of the women he dated in Phoenix seemed to know about it. Not that it would have mattered, but it wasn’t something he advertised.

Reynolds enjoyed the company of beautiful women. At various times, he spent meaningful time with the wives and girlfriends of some thoroughly dangerous men. There was Sadie Morris, the wife of the notoriously jealous bootlegger, Morris Fenenboek. Agents found a thorough motive involving both business and pleas-

Judge Davidson was reported to be both violent and jealous. When he learned that Ms. Godon had been having an affair with a bootlegger named Charles Underwood while she had been socializing with the judge, Davidson bought a gun and threatened to kill the bootlegger.

With no shortage of suspects, at least three of whom were distinguished members of the Maricopa County bar, and a sack full of possible motives involving both business and pleasure, every lead wound up a dead end.

After a few weeks, amid veiled accusations of cover up and corruption, the top G-men headed back to D.C. and the local law enforcement moved on to something else. Somebody told Paul Reynolds for a ride that hot August night, but we still don’t know who or why. Somebody knows, but he’s not talking.

Note: The killing of Paul Reynolds remains the only unsolved murder of an FBI Special Agent.
WHAT ARE YOU WAITING FOR?

PRO-BONO GOLF CLASSIC
2012

TEAM UP WITH US TODAY...

CASE, HUFF & ASSOCIATES INC.
2012 PRO BONO GOLF CLASSIC
AT THE LEGACY GOLF RESORT NOVEMBER 3, 2012
REGISTRATION 6:30 AM | SHOTGUN START 7:00 AM

The Golf Classic benefits the Maricopa County Bar Foundation and Volunteer Lawyers Program, which supports victims of domestic violence and legal services for low-income families.

To register or for more information, please contact Laurie Williams: 602-682-8583 | lwilliams@maricopabar.org

www.maricopabar.org