CourtWatch

Daniel P. Schack

Bennett loses but gets pat on the back from court

Litigation—including appeals—can be a harsh endeavor, especially when you don’t prevail. When judges rule against you, they don’t usually give you a red ribbon, or a pat on the back and a hearty “Nice effort!” But Secretary of State Ken Bennett and his attorneys recently had the Arizona Supreme Court publicly give them props, even as it rejected their legal arguments. Pedersen v. Bennett, No. 12-0260-AP/EL, (Ariz. Dec. 5, 2012).

Pedersen was faced with a dilemma when a political committee made mistakes in filing its petition to put an initiative on the November ballot. The Quality Education and Jobs Supporting I-16-2012 Committee filed a request with the Secretary of State’s office seeking a serial number for their initiative.

Under the law, the committee had to submit the full text of the proposed law. It did submit the required text, but there was a problem: it submitted two different versions. One version, submitted on paper, omitted 15 lines of text that were included in the other version, which was submitted on a compact disc. Petition circulators had the full CD version. The omitted lines were not inconsequential.

The committee turned in more than 290,000 supporting signatures. But Bennett’s office was faced with a dilemma: what to do about the committee’s goof. The office accepted the petitions. But, having determined that the paper copy of the initiative was the official version, it notified the committee that the initiative did not qualify for the ballot because “the signature pages [were] not attached to a full and correct copy of the initiative measure filed with [the Secretary of State’s] office.”

The committee sued, leading to a judgment that the Secretary of State’s office had arbitrarily rejected the petition. Bennett appealed. Writing for the supreme court, Chief Justice Rebecca White Berch agreed with the superior court, but only as far as its legal ruling went.

Because of Arizona’s strong policy favoring the people’s right of initiative, the legal requirements are liberally construed and merely technical variances from the established procedure can be overlooked. Under the state constitution, “a full and correct copy of the title and text” of an initiative must be attached to “[e]ach sheet containing petitioners’ signatures.” There was no doubt that the committee had complied with this provision as to the petitions that it had circulated.

But in addition to the constitutional provision, a statute requires initiative backers, when filing their petition with the Secretary of State’s office, to attach the full text of the proposed initiative. The question facing the court was whether the committee had complied with this provision by submitting the full text on CD but an abridged paper version of the initiative.

Bennett based his position on his office’s longstanding policy of filing only paper copies, which it deems to be the official versions. He maintained that the committee’s CD version was only a courtesy copy.

Berk rejected Bennett’s position, finding that his official policy “is not embodied in any rule or other written policy statement, nor is it set forth in the Secretary of State’s Handbook.”
Welcome to yet another exciting year at the MCBA. I will be your host for this year’s not-to-be-missed schedule of events. My name is David Edward Funkhouser III. Most people call me Funk—and you may too (if you can’t figure out the genesis of that creative nickname, you probably shouldn’t be a lawyer). It’s nice to meet you!

We have an exciting year ahead of us, one that will include most of the usual MCBA events, including the annual Barstills Ball on Saturday, March 9, 2013 at the Westin Kierland Resort. As usual, this event is handled by our hardworking Young Lawyers Division, and this year’s beneficiary will be the charitable arm of the MCBA, the Maricopa County Bar Foundation. We will also have our Annual Meeting/Hall of Fame Awards Luncheon in October, as well as our membership lunches and outstanding CLE throughout the year.

My focus this year will be on membership, revitalizing some of our dormant sections, divisions and committees, and holding the First Annual MCBA Bench & Bar Retreat.

As to membership, and like most or- ganizations during the great recession, the MCBA was not immune. Membership, our primary revenue driver, requires constant effort. The fact that we administrators were able to weather the storm is testament to our hardworking volunteer leadership, our current and former board members, and the members who continued to renew their membership, please do—we need you. And if you have already renewed your membership, thank you!

In addition, and still relating to membership, I have formed the MCBA Ambassador Program. Those wishing to become an MCBA Ambassador will need to help us by recruiting five attorneys to the MCBA. MCBA Ambassadors will receive special recognition in the Maricopa Lawyer, will be acknowledged at our Holiday Open House in December, 2013, and will receive other special perks. If you are interested in becoming an MCBA Ambassador, please contact me or Isolde Davidson at idavidson@maricopabar.org.

As to revitalizing some of our dormant sections, divisions and committees, I hope to continue the good work of my predecessor David Benton, who oversaw the revitalization of our dormant Bankruptcy Section (with the help of then-board member and now secretary, Kyle Hirsch), and my immediate predecessor, Jennifer Cranston, who oversaw the revitalization of our dormant Litigation Section (also with the help of a fellow board member, Julie LaFave).

There are other sections, committees and/or divisions that are dormant or near-dormant, and we will need your help revitalizing or improving them. Regardless of whether your most applicable section, committee or division is dormant or active, I encourage one and all to step up, get involved, and seek out a leadership position. I promise the benefits will outweigh the costs.

Finally, and in addition to my role as president of the MCBA, I also co-chair the MCBA Bench & Bar Committee along with Judge Christopher Whitten. After revitalizing this committee several years ago (under the guidance of another one of my fantastic predecessors, Jennifer Green), we are now fully functioning. Our 2013 goal is to hold our first retreat for the bench and bar in early 2013. I hope you will consider attending and please also consider joining our committee, which meets quarterly. This is the forum for asking those tough questions of the members of our judiciary or the Clerk’s Office. Trust me, we have spent hours talking about electronic filing, costs associated with the same, time for judges/commissiorners to get documents e-filed, delay on getting signed judgments, per pcees of the judges, and other issues du jour.

It is going to be a great year, and I am honored to be captaining the ship for 2013. I, the members of our Executive Committee, and our entire Board of Directors will work hard for you, our members. Welcome to the MCBA 2013—Where the Legal Community Connects!

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Family Law Section Judicial Reception held Dec. 5

The MCBA Family Law Section thanks the following sponsors of its 2012 Judicial Reception:

- Rebecca L. Owen, PLLC
- Sabnekar & Associates
- Annette T. Burns
- Gallios Law Firm, PC
- Arizona Association of Family Law
- Arpcoint Labs
- Trullinger & Wenk, PLLC
- Hallier & Lawrence, PLC

Join the Family Law Section today. Call (602) 257-4200 or sign up online at www.maricopabar.org.

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Barry Dickerson of Udal Shumway, Annette Burns, Attorney at Law, and Bill Bishop of Bishop & Martin Law Office.

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Finishing Judge Scott McCoy are (left) incoming chair of the Family Law Section, Sara Swiren, Law Offices of Sara A. Swiren, and the outgoing chair, Nicole Siqueirres of Hallier & Lawrence.

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Norma Izzo Milnor of Jennings Strauss & Salamon, a member of the MCBA Board of Directors; Comr. Roger Hartless; and Leslie Satterlee, outgoing Young Lawyers Division chair.

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The Official Publication of the Maricopa County Bar Association

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GIVE US YOUR OPINION
The Maricopa Lawyer welcomes letters to the editors or opinion pieces for publication. Letters and opinion pieces should be typed and preferably submitted electronically. Opinion pieces are limited to 1,500 words and letters to 700 words, and the editors reserve the right to reject submissions or condense for clarity, style and space considerations. Letters must be signed to verify authorship, but names will be withheld upon request. Authors of opinion pieces will have their names published. Letters and opinion pieces should be mailed to: Isolde Davidson, editor, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, AZ 85005-1532. Phone: (602) 257-4200. Fax: (602) 257-0405. Email: idavidson@maricopabar.org.
In 2013, new statute declares “custody” out, “decision-making” in

By Norma Izzo Milner

On May 9, 2012, Senate Bill 1127 was signed by Gov. Jan Brewer. Effective Jan. 1, 2013, Arizona’s new custody statute, Title 25, will eliminate the legal concept of “custody” from divorce proceedings. Instead of relying on the term “custody,” the term “decision-making” will now take its place. In addition, SB1127 replaces the commonly referenced term “visitation” to “parenting time.”

Legal decision-making is now defined as the “… legal right and responsibility to make all nonemergency legal decisions for a child including those regarding education, health care, religious training and personal care decisions.”

In joint legal decision-making, “… both parents share in the decision-making and neither party’s rights or responsibilities are superior except to specified decisions as set forth by the court or the parents in the final judgment or order.” Under SB1127, “sole legal decision-making means one parent has the legal right and responsibility to make major decisions for a child.”

Parenting time now means the schedule of time during which each parent has access to a child at specified times. Each parent, during their scheduled parenting time, is responsible for providing the child with food, clothing and shelter and may make routine decisions concerning the child’s care.

The term “visitation” is now preserved for “… a schedule of time that occurs with a child by someone other than a legal parent.” Grandparent visitation rights and non-legal parent (in loco parentis) rights are now covered in one section, section 25-409, entitled “Third Party Rights.”

An important motivation underscoring the change in law is a need to shift the perspective of ownership associated with the word “custody.” The change supports parents to focus on their rights and responsibilities as parents, rather than their rights and entitlements as parents.

The word “custody” sets a tone of power-struggle, which covertly or overtly, can put the children at risk to be in the middle. When all is said and done, however, the primary factor continues to be children’s rights as highlighted in the constant and unchanged language “best interests of the child.”

Section 25-403 lists the factors the court must look to in order to make a determination on legal decision-making and parenting time, with a focus on the child’s physical and emotional wellbeing.

The new law eliminates the requirement for the court to factor in the wishes of the child’s parent or parents as to custody, and whether or not a parent has provided primary care of the child. However, the court must still consider “[t]he past, present and potential future relationship between the parent and the child.”

A newly drafted section 25-403.01 has been added, providing the court factors to consider when deciding to award sole or joint legal decision-making. Unlike section 25-403, which focuses on the dynamics of the child’s best interests, this section focuses more on the interpersonal relationship between parents and whether or not their specific and personal dynamic will allow for parents to work together and make decisions jointly.

SB1127 provides an additional factor regarding “[t]he past, present and future abilities of the parents to cooperate in decision-making about the child to the extent required by the order of joint legal decision-making.”

Importantly, and without regard to who has legal decision-making authority, each parent “… is entitled to reasonable parenting time to ensure that the minor child has substantial, frequent, meaningful and continuing contact unless the court finds, after a hearing, that parenting time would endanger the child’s physical, mental, moral or emotional health.” The court shall not consider either the parent’s or the child’s gender when approving parenting plans.

While I have shared with you some of the highlights, you will need to familiarize yourself with the new statutory language in order to understand the full scope of all the nuances and changes. As for the effect it will have on your active cases, the court will not apply the new law based on the time when the matter was initiated, but will apply the new law when making a final decision or entering an order as of Jan. 1, 2013.

Will this change in law allow you to re-open a matter? In all likelihood, the answer is no, but time will tell. These changes are a work in progress and the language will likely change again in an attempt to rectify any shortcomings that come to light over the next year.

Norma Izzo Milner is a member of the firm of Jennings, Strouse & Salmon, PLLC focusing on family law, collaborative divorce, mediation, and parenting coordination. She is a member of the MCB-A Board of Directors, State Bar of Arizona Family Law Practice and Procedure Committee, and a board member of the Arizona Chapter of the AFCC.
Happy New Year! Need a resolution?

2012 has come to an end. You made it through another holiday season. Now it’s time to reflect on what went right or wrong in 2012 and set your New Year’s resolutions for 2013. I, like most of you, think New Year’s resolutions are silly and never kept, so why make them anyway?

But, as I have experienced a great deal of transition in 2012, I am challenging myself to look at things from a different angle. So, without further ado, I will provide you with the top five resolutions made every year. Not so fast—this will be MCBA style.

Number 1: Get in shape! Oh how we all resolve to start a new year and lose the 20, 30, 40 pounds we’ve packed on since we started our legal careers. For those who already visit a gym on a regular basis, this can be a frustrating time of year. January and February bring chippers, overly-motivatedresolverstothegym,takingupthedreadmillsandclogginguptheircuittrainingmachinesastheytextortrytofigureouthowtoworktheapparatus.

Come March, you will be able to breathe again in your yoga class and won’t have to start your work out in the parking lot because you had to park a mile from the gym. If the gym isn’t your idea of fun or you have resolved to try new ways to get active, look no further! The MCBA offers events throughout the year to accommodate this resolution, such as Race Judicata (5k) and the Pro Bono Bowl Tournament.

Number 2: Volunteer. After the holiday season, most of us are on a community service high and want to continue giving back to our community by volunteering. As a seasoned volunteer, I know you have plenty of fantastic organizations to choose from that need your time. I chose to volunteer for the Paralegal Division of the MCBA and have done so for the last five years. It is important to me to invest my time in a cause that I believe in, and for that, the division was an easy choice.

I have given much more than I have given over the years in the way of friendships, knowledge and the satisfaction of knowing that I have given back to the paralegal profession and the legal community we all love. The leadership skills I have gained through my involvement with the division are unmatched and will stay with me forever. If those aren’t reasons enough for you, the MCBA also has great snacks.

Number 3: Network more and meet new people. Let’s face it, the legal profession is a crowded field, so it doesn’t hurt to network. There are events specifically for this purpose. For example, the Barristers Ball is a great excuse to dress up and cut a rug with other legal professionals. The Arizona Paralegal Conference in September is another great event at which to catch up with old friends and meet new ones. This is also a great opportunity to see the vendors we abuse..., err... use on a daily basis.

Number 4: Save money. Times are tough...still. We are all looking for ways to save money. The division offers great affordable CLE for paralegals that focus on local issues. In addition to legal topics, we also try to focus on helping you grow as a professional through networking skills, resume writing, and the ever dreaded how to meet your billing requirements.

The MCBA won’t offer you a 12 step program to a better new year, but it can help you balance work and life by offering creative ways to keep your resolutions.

Looking back at my list, I do see that I forgot one—quit smoking. Those of you who have been around the MCBA for a few years know it can even help you with this resolution. I’m pretty sure MCBA’s insurance policy doesn’t allow smoking within a quarter mile of the building!

Happy New Year, and I hope to get to know some of you—it would definitely help me keep one of my resolutions.

New year brings new, improved facilities, services

PARALEGAL DIVISION PRESIDENT
Sarah Fluke

Paralegal Year-End Social

West Court file counter remodel

The first phase of construction is complete and non-criminal file counters (civil, family, tax and probate) are now available on the first floor of the West Court Building. The new space includes file counters and a public lobby designed to better serve our customers.

The area can be accessed from the Central Court Building in downtown Phoenix. A file counter will also remain at the Old Courthouse as another option for all probate and mental health filings.

eFiling in Family Court

Permissive eFiling expanded to all family court divisions on Dec. 1. Attorneys and self-represented parties may now electronically file post-imitation family court documents in any family court case in the Superior Court in Maricopa County. The expansion allows parties or their attorneys to choose which documents to eFile after the case is initiated on paper.

Family court documents are eFiled through the Clerk’s eFiling Online website, not AZTurboCourt. See the Clerk’s website for more information about eFiling: http://clerksfourt.maricopa.gov/eFiling/default.asp.

The Family Court section of the eFiling Guidelines on the Clerk’s website provides important information about format and what can and cannot be eFiled. Similar to depository box filings, eFilings that require payment of a fee must be paid at a Clerk’s facility or over the phone within one business day of eFiling or they will be rejected for non payment and the original submission date and time will be lost.

Electronic court record in juvenile cases

On Oct. 1 the Clerk’s Office began transitioning from paper records to an electronic court record (ECR) in the juvenile guardian/ship case type, meaning paper documents will no longer be placed into a hard copy file. Instead, paper documents will be scanned, audited, and disposed of after a series of quality checks and the ECR will be the official court record, eliminating the need to maintain and store thousands of paper juvenile documents in hard copy files. The juvenile ECR will be implemented in several phases, ongoing through 2013.

The juvenile ECR project does not change the confidentiality of juvenile records. Access to records remains the same, only the format is changing. Juvenile records are available at the Clerk of the Court’s juvenile facilities at Durango Street in Phoenix and on Lewis Drive in Mesa.

Expanded ECR

The Clerk’s Office looks forward to providing these improved resources and services and encourages you to provide your feedback. Contact us through the Clerk’s website at www.clerkofcourt.maricopa.gov.

The Clerk’s Office provides eFiling in additional case types joining the scanning process and timeliness of interacting with the clerks.

Paper and electronic processes will be part of the improvements you will see from the Clerk’s Office in 2013. Newly remodeled file counters and lobby space in downtown Phoenix will enhance the overall experience and timeliness of interacting with the clerks. eFiling will be available in additional case types and divisions and more documents will be added to the electronic court record as additional case types join the scanning process and older documents continue to be back-scanned and added to the repository.

The Clerk’s Office looks forward to providing these improved resources and services and encourages you to provide your feedback. Contact us through the Clerk’s website at www.clerkofcourt.maricopa.gov.
Don’t worry, I am not referring to my term as the YLD president (I am absolutely thrilled to serve the MCBA as the 2013 YLD president). Rather, I refer to the constant refrain that I hear from my clients, a refrain that I would hazard to say most lawyers hear on a regular basis, though perhaps not the same verbiage if that client is corporate or transactional in nature. I did not consciously recognize the origins of this statement until this past year following a tragedy at my former law firm, Doyle Law Group.

One Friday morning, while I was having my morning meeting with my paralegal, I received a call that John C. Doyle had a heart attack on the 17th hole of Pebble Beach Golf Course and passed away. With John’s death, I was now in charge of the firm. John was our trusty leader and skipper of the ship, mentor, and friend. I was thrust into what I later recognized was the same tumult that most of my clients experience, albeit of a different nature.

Specifically, what was going to happen to the staff, the firm, the clients, and my colleagues? What direction should I take with my career? It was only then that I, as a still “rookie lawyer” (four years at the time) finally put my finger on the cause of so much anxiety for my clients and made an observation about human nature: humans struggle immensely with the unknown.

Intuitively, I had structured my practice to address and ease my clients’ emotional frustration regarding the unpredictability of a court case, but it was not until my own professional experience that I truly understood the nature of this issue. Transposing the “unknown” to a client’s experience, I had a glimpse into what it must be like to worry about all aspects of life in a lawsuit: your children, your income, your assets, your debts, your home, your retirement, your employment, the state of your health or an injury, and your financial future due to the injury or death of a loved one.

It was at that point that I streamlined my practice to ensure that the variability that accompanies a lawsuit was directly addressed and assuaged. I did so by instituting policies that shed light on the unknowns that are inherent in the legal system for the client. These were policies that I had always strived to meet, but that I finally formally articulated. They build client trust, prevent misunderstandings about the process, and avoid problems (particularly in family law cases).

The policies are as follows:

1. I explain to clients the process up front and in plain English. I do this in the initial consultation and give a realistic assessment of what the client can expect. I inform them of the procedural process, when to sign, serve, and other pertinent time frames as well as the substantive law.
2. I strive to return client calls or emails within 24 hours (even if just to say that I received their message and will substantively respond at a later time). If I am unavailable, I ensure that my staff returns the call or email.
3. I genuinely empathize with the client if it is warranted. Even if you are not the touchy-feely type, this is critical to building client trust and to the client knowing that their counsel understands how consuming the case is in their day-to-day life.
4. I keep my staff informed of the individual needs of each client, which can shift day-to-day. This prevents miscommunications and keeps administrative efficiency high.
5. I do not let the client’s need to get past the “unknown” rush my legal judgment or my work product.
6. I understand and emphasize to my staff that the client’s case affects more than just them. Their entire family is usually affected and at the end of the day, they want to know “what did your attorney say” and “did your attorney return your call”?
7. With that said, I look forward to a year of the unknown—serving as the YLD president!

A rhetorical question as a transition draws the reader’s attention to the point by breaking up the flow of the sentences. This type of transition is a persuasive technique and should be used sparingly to highlight a critical point. Indeed, the writer should be 100% sure of the answer before posing a rhetorical question. On occasion, a legal writer might use a rhetorical question within a paragraph to make a substantive statement because the question answers itself by the way it is asked. This question can either stand on its own or can be made part of another sentence by setting off the question with a comma or a colon, depending on the complexity and length of the question.

If anyone can start a website or contribute to a blog, how can society police the Internet?

Many parents want to control what their children may read on the Internet. If anyone can start a website or contribute to a blog, how can society police the Internet?

Even though the question strongly hints at the answer, I suggest making the next sentence the answer to avoid potential confusion. This question can either stand on its own or can be made part of another sentence by setting off the question with a comma or a colon, depending on the complexity and length of the question.

No one authority can provide this protection.

Thus, as with most style issues, the writer’s use of a rhetorical question depends on (1) the audience’s preference and (2) the writer’s certainty in the answer.

Can asking a question be an effective writing tool?

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:

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- immigration

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CORRECTIONS

In the November 2012 issue, in the article about the investiture of Judge Randall M. Howe, it was incorrectly stated that Judge Howe has multiple sclerosis. He has cerebral palsy.

In the December 2012 issue, in the article about how to become a commissioner, it incorrectly stated that the Commissioner Nomination Committee includes a representative from the State Bar of Arizona. There is no state bar representative on the committee.

We regret the errors.
‘So You Want to be a Judge’: CLE highlights point the way

By Amber Pershon

Have you ever thought of being a judge? The MCBA recently hosted “So You Want to be a Judge: Answering the Call to Public Service,” the final CLE in the Meet the Judges series. The participating panelists offered excellent insight for those considering the path to a judgeship.

The CLE featured a panel of distinguished speakers, including Arizona Supreme Court Vice Chief Justice Scott Bales; Judge Peter Swann; Appellate Court commissioner, Doug Cole; former general counsel to the governor, Joe Kanefield; Judge David Cunanom, Comr. Rich Northwehr; Judge Jim Sampanier; and Superior Court commissioners Ron Reinstein, Debra Stark, and Don Vogel.

First, those considering a judgeship should reflect on whether a judge’s life is right for them. Changing roles from client advocate to neutral decision-maker can be a big adjustment. Judges must also be concerned with any appearance of impropriety. These considerations can affect prior and current legal relationships.

One of the best things you can do if you are considering becoming a judge in Arizona is to go to court and observe. With judicial rotation, judges handle many different types of dockets. Thus, the panelists recommended spending time in the court at which you are interested in working, particularly if you are not usually exposed to that area of law.

Second, be prepared for a lengthy and in-depth application process. Finished applications are several pages in length and a public interview is required for most positions, but there are plenty of ways to shine using some simple tips.

If time permits, peruse a copy of the application early, provide a full answer to each question (there are a lot!), and have a non-legal friend review your application for clarity. The same advice can apply to the interview. A public interview can be daunting, so practice with a group of friends. Take an afternoon to view one of the public interviews for a judicial position to help prepare yourself.

Third, consider unique ways to make the application your own. The application’s focus should be on experience, character, and community. Lacking litigation experience? There are many ways to gain experience that translates into judicial skills, such as arbitration, mediation, settlement conferences, serving as a judge pro tem, and community legal services involvement.

Reference persons who can speak to your character and temperament, and be sure they know that you’ve listed them as a reference. It is most helpful to have recommendations from people who really know you because they can speak comprehensively about who you are as a person.

Finally, since judges serve the public, involvement in your community is very important. There are many ways to contribute, including volunteering time at your local shelter, hosting campaigns for a cause, or coaching your child’s little league.

Overall, the road to becoming a judge may seem long, but as the panel made clear, it is very rewarding and definitely worth it.

Amber Pershon is a member of the Maricopa Lawyer Editorial Board representing the Phoenix School of Law. She is expects to receive her JD and clerk for Judge Samuel A. Thumma at the Arizona Court of Appeals in 2013.

Legal Briefs

By Meagan Pollnow

Seven applicants vie for seat on Division One; nominees announced to fill Division Two vacancy

The Arizona Commission on Appellate Court Appointments will consider seven applicants to fill a vacant seat on Division One of the Arizona Court of Appeals, which was created by the appointment of Justice Ann Scott Timmer to the Arizona Supreme Court.

Kent E. Cattani, Stephen M. Hopkins, Bradley R. Jardine, Foster Robbers, Patricia A. Sallen, Judith R. Schaffert, and Charles W. Wirken were interviewed by the commission on Dec. 19, 2012. The commission will recommend at least three nominees to Gov. Brewer.

The commission also announced its recommendation of five nominees to fill an opening on Division Two of the Arizona Court of Appeals created by the retirement of Judge J. William Brammer, Jr. It recommended John J. Brady, Michael J. Buser, John N. Iurino, Donald D. Metcalf, and Michael O. Miller. More information is at http://www.azcourts.gov/mediaroom/PressReleasesNews.aspx

Immigration cases continue to rise according to report

Immigration cases continued to increase in fiscal year 2011 according to a report released in December by the U.S. Sentencing Commission. Immigration cases continued to flood federal criminal dockets as the fastest growing offense category in the federal system. In the past ten fiscal years, immigration cases have increased by approximately 150%, accounting for approximately 35% of the total federal criminal caseload.

Immigration cases have been the most common serious federal crime since 2009, when they replaced drug-related offenses, which had been the most common category of federal crime for the past 20 years. The report also revealed that, among all offenses, more than half of federal offenders had not completed college and more than 96% of all offenders pleaded guilty.

Of those who did not plead guilty, approximately one-third received a sentence below the sentencing guideline range. More information can be found at http://www.uscc.gov/Research/Research_Publications/2012FY11_Overview_Federal_Criminal_Cases.pdf

Supreme Court approves allowing 3Ls to take bar exam

Arizona’s three law schools have successfully petitioned the Supreme Court to amend Rule 34 of the Arizona Rules of Procedure to allow third-year law students to sit for the February bar exam during their last semester in law school.

Previously, law students had to wait until they graduated before taking the bar exam. The change to the rule requires law schools to certify that the student will graduate within 120 days of taking the exam. It also requires law schools to develop a policy that describes under what conditions it certifies a student to sit for the exam before graduation.

In their petition, the law schools argued that allowing students to take the bar exam in February and receive their results in May allows graduates to seek employment earlier. Receiving results by May also allows graduates to compete for jobs that require bar admission rather than having to wait until October when July results are released.

Meagan Pollnow is a member of the Maricopa Lawyer Editorial Board and an associate at Asimou & Associates.

January 2013 Calendar

All meetings at MCBA Office, unless otherwise specified.

3 Construction Law Section Executive Board meeting
   Noon

4 Estate Planning, Probate & Trust Executive Board meeting
   7:30 a.m.

CLE: Where There Isn’t a Will, There’s a Way
   11:30 a.m.

7 Litigation Section Board meeting
   Noon

9 Environmental & Natural Resources Law Section Board meeting
   Noon

10 MCBA Executive Committee meeting
   7:30 a.m.

11 CLE: Basic Estate Planning
   11:30 a.m.

12 YLD Board Retreat
   9 a.m.

15 Family Law Section Executive Board meeting
   Noon

16 Bankruptcy Law Section Executive Board meeting
   7:30 a.m.

Lawyer Referral Committee meeting
   Noon

17 Employment Law Section Executive Board meeting
   Noon

MCBA Board of Directors meeting
   4:30 p.m.

18 CLE: Basic Conservatorship/Guardianship for Adults
   11:30 a.m.

21 MLK, Jr. Day – MCBA Office Closed

23 CLE: Legal Decision-Making and Parenting Time: Big Deal or Hyperbole?
   1:30–4 p.m.

23 MCB Foundation Board of Trustees meeting
   7:30 a.m.

25 CLE: Introduction to Probate
   11:30 a.m.
MCBA hosts Member Holiday Social

Judge Patricia Norris, Arizona Court of Appeals, Division 1, talks with Chas Wirken of Gust Rosenfeld, the MCBA's representative to the ABA House of Delegates.

Kelly Kral, 2012 secretary of the MCBA Estate Planning, Probate & Trust Section, congratulates Scott Ferris after he won one of three door prizes. Both are at Dyer & Ferris.

Enjoying the party are Nicole Gonzales of the Law Office of Nicole Gonzales, Jennika McKusick of the Law Office of Jeffrey G. Pollitt, and Brent Kleinman of the Kleinman Law Firm, who is the chair of the MCBA Estate Planning, Probate & Trust Section.

MCBA Board of Directors members Comr. Keelan Bodow and Sarah Smith of Gust Rosenfeld are with David Benton, a Maricopa County attorney and 2012 immediate past president of the MCBA.

From left are Nicole Brickner of the Law Office of Nicole M. Brickner, Comr. Geoffrey Fish, Lisa Streu of the Welsh Law Group, and Marcus Tappe of Bremer Whyte Brown & O'Meara, who is also a member of the MCBA Construction Section Executive Board.

Michelle Laur talks with James Griffith, Law Office of James D. Griffith.
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Historic first:
Women sweep the
presidencies of
nation’s three largest
organizations for
attorneys

With the election of Mary Massaron Ross at the October annual meeting of DRI – The Voice of the Defense Bar in New Orleans, women now lead the nation’s three largest professional organizations for attorneys. In a field that has been typically dominated by men, the event constitutes an historic first for the legal profession.

The presidents are: Mary Massaron Ross, president, DRI - The Voice of the Defense Bar; Laurel Bellows, president, American Bar Association; and Mary Alice McLarty, president, American Association for Justice (plaintiffs bar).

“The story is, of course, much bigger than three women being elected president,” said Ross. “It’s a dramatic demographics shift in the profession. In 1963, only 3.7% of law school students were women. Today, it’s nearly half. And that shift is part of a larger societal shift. For instance, we’ll have a record number of women in the Senate next year. This says that America is more and more fully utilizing the talents of all of its people.”

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Court Shatters Adoption Day Record

For the fifth straight year, National Adoption Day in Maricopa County was the largest adoption day event in the United States.

“The Maricopa County Juvenile Court was thrilled to be part of the widespread joy that accompanies National Adoption Day. This year, 336 children officially become part of permanent, loving homes,” Juvenile Presiding Judge Eddward Ballinger said.

The event, held at the Durango Juvenile Court Center in Phoenix on Nov. 17, surpassed last year’s national, record-breaking total of 320. More than 3,200 attended this year’s event.

National Adoption Day helps raise public awareness about the plight of children without families. Each child and family has an amazing story. The children, who range in age from toddlers to teenagers, are victims of abandonment, neglect or abuse. Some have not been mistreated but have been given up for adoption because of circumstances that made adoption the child’s best possible option for a happy life.

“The numbers of foster children in Arizona have spiked over the last few years. Right now there are more than 13,000 children in the foster care system in Arizona,” said Kathryn Pidgeon, co-chair of the Maricopa County National Adoption Day Foundation. “Of those children, 4,000 kids are eligible for adoption, waiting for homes.”

The festive atmosphere of Maricopa County’s National Adoption Day event was heightened by a visit from the Phoenix Suns Gorilla; games and activities for kids; photos of the newly created families, and cake and ice cream.

“National Adoption Day makes the other 364 days of being a judge worthwhile,” said Superior Court Judge Aimee Anderson. Court staff, members of the public and 42 judicial officers volunteered their Saturday to help with the event.

National Adoption Day is a collective national effort to raise awareness of the 100,000 children in foster care waiting to find permanent, loving families. Maricopa County has participated in each and every National Adoption Day since its inception in 2000.

Guide to Arizona Statutes of Limitation 2011 (2nd edition)
The one reference every lawyer really needs to meet critical deadlines and avoid malpractice

This 174-page book (softcover, 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. It is also useful for legal professionals who are experienced in environmental law but need a quick reference and research aid for questions in unfamiliar subject areas. The book has sixteen chapters and 200 double-spaced pages in a three-ring binder. It is written and edited by the MCBA Environmental & Natural Resources Section and can be downloaded 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 lies flat and is convenient to take to court. Compiled by the MCBA Criminal Law Section. Downloadable online.
The State Bar of Arizona does not approve or accredit CLE activities for the Mandatory Continuing Legal Education requirement. The activities offered by the MCBA may qualify for the indicated number of hours toward your annual CLE requirement for the State Bar of Arizona, including the indicated hours of professional responsibility (ethics), if applicable.
Legal Decision-Making and Parenting Time: Big Deal or Hyperbole?

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BOOK REVIEW

The Partisan: The Life of William Rehnquist

By John A. Jenkins

Reviewer: Hon. George J. Anagnost

With its descriptions of people and places in Phoenix after World War II, John Jenkins’s new biography of William Rehnquist is first and foremost an Arizona story that should be of interest to the local bench and bar. In 1953, Maricopa County boasted lots of sunshine, open land, opportunity, and all of 400 practicing attorneys. Primarily because his in-laws were from Phoenix, after completing a clerkship with U.S. Supreme Court Justice Robert Jackson, a young William Rehnquist joined what was then a “large” law firm of eight attorneys at a salary of $300 a month.

An ardent Republican who befriended others with his conservative viewpoints, he was a key player in the presidential campaign of Barry Goldwater and later a faithful legal advisor to President Richard Nixon.

At the outset, a “spoiler alert” may be in order. Rehnquist’s career and life experiences involved clerking for the Court when it considered the Rosenberg treason trial, desegregation, his political involvement with Nixon during the Watergate crisis, and his long tenure on the Court when it debated the death penalty, affirmative action, states’ rights, and Roe v. Wade.

Jenkins’s biography is not an encomium of Rehnquist’s achievements; like the title of the book, both Rehnquist and the author are “partisans” in their viewpoints and treatment of their particular subject matter. In the final analysis, the challenge for the reader is to decide if Jenkins’s presentation and references adequately validate his portrayal of a justice that was highly political and opinionated. On that score, time will tell.

The Partisan: The Life of William Rehnquist offers us a highly readable, penetrating, and challenging re-examination of the U.S. Supreme Court’s sixteenth chief justice and his career and life experiences involving clerking for the Court when it considered the Rosenberg treason trial, desegregation, his political involvement with Nixon during the Watergate crisis, and his long tenure on the Court when it debated the death penalty, affirmative action, states’ rights, and Roe v. Wade.

Jenkins’s presentation and references adequately validate his portrayal of a justice that was highly political and opinionated. On that score, time will tell.

In 1971, the resignations of justices Hugo Black and John Marshall Harlan created two vacancies on the Court. President Nixon’s “southern strategy” included appointing pro-states’ rights justices to bolster his political base. Nixon’s first two selections, G. Harold Carswell and Clement F. Haynsworth, Jr., were rejected due to perceived racial biases. The third choice, Virginia Richard F. Peck, withdrew for personal reasons before formal nomination. Nixon then instructed his Attorney General, John Mitchell, to press hard for “Tennessee Senator Howard Baker.

As Baker waivered, Nixon told Mitchell to push the position’s health insurance and retirement benefits as well as the opportunity to supplement income from speeches and book writing. When Baker declined, “Rehnburg,” as Nixon first referred to Rehnquist, became the nominee.

Regarding the well-known chevrons that appeared on his robe when he replaced Warren Burger as chief justice, they were supposedly modeled after the robe worn by the Lord Chancellor in Gilbert and Sullivan’s Iolanthe. His dissent in Richmond Newspapers v. Virginia opened with a quote from the comic opera, “The Law is the true embodiment of everything that’s excellent. It has no kind of fault or flaw, and I, my Lords, embody the Law!”

From a jurist’s perspective, Rehnquist saw himself as an outsider whose mission included bringing the rest of the Court to his way of thinking. (His clerks once gave him a Lone Ranger doll as a symbol of his sense of isolation.)

It was in the Rehnquist era that the conservative side of the Court reduced the scope of the interstate commerce power clause, limited the scope of Miranda’s exclusionary rule, began to redefine federalism, curtailed habeas corpus relief, and re-examined the right of privacy.

The last few pages of The Partisan include the author’s interview with Prof. Paul Bender at the Sandra Day O’Connor School of Law at Arizona State. As Bender commented, in retrospect, Rehnquist’s “fragile majorities” ushered in a conservative philosophy that has been extended with the arrival of Chief Justice John G. Roberts (himself a former Rehnquist clerk) and Justice Samuel Alito.

William H. Rehnquist was the Court’s first true conservative justice. His withdrawn and private personality aside, Rehnquist’s judicial beliefs, his characterization of the Tenth Amendment and states’ rights, and the current direction of the Court still demonstrate that his views have support in American society.

As a young man, Rehnquist developed a deep respect for Felix Frankfurter’s sense of judicial restraint and scholarship, a respect that endured even after a liberally inclined Frankfurter joined in the opinion in Brown v. Board of Education.

In his last days, as he battled thyroid cancer, Rehnquist let his family know that they could send emails to a new address. Although his son at first questioned him, Rehnquist said it was correct; the family could keep in touch at “felix@oe-un.gov.” Perhaps William Rehnquist knew that “felix” is from the Latin and that one of its meanings is “lucky.”

Hon. George J. Anagnost is the presiding judge of the City of Peoria Municipal Court.
**Volunteer Lawyers Program Thanks Attorneys**

Volunteer attorneys and volunteer law students are needed to assist families who have problems with debts, debt collection or need to file no asset chapter 7 bankruptcy to stop loss of their limited wages.

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  Burgan Clarke Law Office
  Portland, Oregon

- **Joshua P. De La Ossa**
  Law Office of Joshua De La Ossa
  Phoenix, Arizona

- **Meredith H. Flori**
  Perez Law Group
  Phoenix, Arizona

- **Macie J. Hawkes**
  Hawkes Law Firm
  Phoenix, Arizona

- **William A. Hicks, III**
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- **Sarah J. Michael**
  Law Office of Sarah J. Michael
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- **Robert S. Reder**
  Stinson Morrison Hecker
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- **Shannon E. Hennessey**
  The Fruitkin Law Firm
  New York, New York

**BANKRUPTCY**

- **Florin V. Ivan**
  Sole Practitioner
  Phoenix, Arizona

- **Teresa K. Stars**
  Law Office of Teresa K. Stars
  Phoenix, Arizona

- **Shawn L. Stone (2 Cases)**
  Sole Practitioner
  Phoenix, Arizona

**CONSUMER ISSUES**

- **Ernest F. Modzelewski**
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- **Benjamin C. Nielsen**
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**TURE**

- **Kenneth W. Burford, III**
  Hastings and Hastings

Bennett loses but gets pat on the back

CourtWatch, continued from page 1

Bennett and his attorneys, calling their position “frivolous.”

Bennett disagreed. “Although we recognize the pressures to speed election cases through the courts, we disagree that the defense intervened was inconsequential or wasted judicial resources.”

Bennett, having concluded that the substantial-compliance test “smokes the appropriate balance between protecting our citizens’ right to initiate laws and the integrity of the election process.”

The committee’s mistake, Berch concluded, was merely a clerical error: there was no intent to deceive or defraud. “And in the circumstances of this case,” she continued, “there was no significant danger that voters would be confused or deceived by the discrepancy between the paper and CD versions; the voters who signed the petitions had the opportunity . . . to study the correct provision.”

Further vindicating Bennett’s position, Berch argued that the “law imposes no duty on the Secretary in this unusual circumstance caused by the Committee’s filing of conflicting versions of its initiative,” she explained. “The Secretary proceeded properly in bringing this issue to the court.”

Further vindicating Bennett’s position, Berch refused the committee’s request for attorney’s fees. “Because the Committee prevailed on the merits, it would be entitled to recover its attorneys’ fees had Secretary Bennett been compelled by law to accept the CD version,” she wrote. “But the law is silent on the Secretary’s duty when a party files two different versions of an initiative.”

Finding that “the law imposes no duty on the Secretary in this unusual circumstance,” Berch concluded that an award of fees was neither mandatory nor warranted.

Joining Berch’s opinion were Vice Chief Justice Scott Bales and Justice Robert M. Brutinel.
Bar-supported federal legislation protects privileged information

The Senate gave final approval Dec. 11 to H.R. 4014, legislation supported by the American Bar Association and 12 other state and local bars that would create a single standard for the treatment of privileged information submitted to all federal agencies that supervise banks and other financial institutions, including the Consumer Financial Protection Bureau (CFPB).

President Obama is expected to sign the measure into law. When Congress created the CFPB in 2010 and granted it the authority to measure into law. When Congress created the Bureau (CFPB).

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Lee Bennett
VLP ATTORNEY OF THE MONTH
Corporate attorney makes ‘rewarding’ commitment to VLP

By Peggy Cornelius, VLP Programs Coordinator

When he and his wife left their home in Connecticut to establish one in Arizona, attorney Lee Bennett wasted no time in finding a place to engage in pro bono work. Less than two years later, but more than 200 hours later, Bennett is all but employed at the offices of the Volunteer Lawyers Program.

His exceptional service to those seeking help through the VLP brought him recognition at the “For Love of Justice” awards program in June 2012, and he is being honored once again as VLP’s Attorney of the Month.

Although semi-retired from the corporate world, Bennett remains actively involved with clients in Connecticut. Despite a busy schedule and the demands of travel, he has made a weekly commitment to spend a day at VLP, interviewing clients whose civil law problems involve housing and financial difficulties.

“There are a lot of good people struggling with problems who don’t know their rights or what to do. Many are living on fixed incomes, such as Social Security disability benefits, or they have difficulty becoming gainfully employed after incurring student loan debt. Some, whose minimal wages are being garnished, seek bankruptcy relief. They often come to VLP because they are being treated unfairly or harassed by landlords, collection agencies, and banks,” he said.

The intake interviews Bennett conducts and the subsequent case summaries he writes are the result of which potential pro bono cases are reviewed and evaluated for legal merit and legal remedies. Case summaries are vital to the determination of which cases VLP refers to volunteer lawyers for representation.

But because most applicants do not present problems requiring litigation, the initial interview is frequently their only opportunity to meet with an attorney. Knowing this, Bennett doesn’t limit himself to case assessment. He studies the issues, offers advice, and empowers clients with self-help instruction. And, when needed, he provides further assistance by making calls and writing letters after the interview.

When he reflects on the rewards of his pro bono efforts, the clients Bennett recalls are “those who come in with a desperate feeling that there isn’t much hope, and leave not only with legal help, but with less stress—knowing there is hope.”

Born and raised in New York State, Bennett says his Irish and German heritage includes predecessors who owned a grape farm and a coal business. His interest in law began when his mother told stories about his great grandfather’s life as an attorney and politician.

The industrious and eternally-minded nature of his forbears is evident in Bennett’s life, as well. During the years he held positions such as division general counsel for a large insurance company and executive vice president for a global claims operation, Bennett made time to found and manage Connecticut Lawyers Legal Aid for the Elderly.

He explains, “We addressed concerns that were very similar to those VLP clients present: public benefits, tenant and consumer rights, and family law. A case in which I helped a grandmother gain visitation rights with her grandson was the first of its kind in a Connecticut court. The outcome was gratifying in itself, but it was made more poignant because the need was precipitated by her son’s death. That pro bono program is alive and well today.”

Bennett’s inherent compassion and generosity are no doubt magnified by the loss of one of his two sons, Michael. When asked who he thought might be most proud of his pro bono efforts, he said, “Michael, who worked for Legal Aid in Hawaii.” And he his wife are also the proud parents of a daughter.

“We moved to Arizona to be closer to our children in California, and my wife’s mother and sisters who live here,” he said.

At present, Bennett’s newest endeavor at VLP is serving on a committee to develop a pilot project that will match volunteer attorneys with law students in providing legal advice to low-income debtors.

Whatever the pro bono activities in which he’s engaged, Bennett says, “I believe lawyers have a responsibility to attend; and, regardless of how busy we are, we can always find time to do something. To anyone who hasn’t tried, I’d say, you’re likely to be surprised at how rewarding it is.”

Lee Bennett
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