
If you didn’t hear the howls of protest when a spokesman for the Governor revealed the vote was 5-2 before the court issued its opinion, well, you weren’t paying attention.

The issue addressed in the opinion was whether the proponents of the initiative—which proposed to increase taxes on well-heeled taxpayers to help fund public education—had complied with a statute requiring an accurate description of the initiative be provided with the signature petitions.

Back in law school, after interviews, my roommates and I, upon receiving the obligatory follow-up letters, were adept at quickly discerning whether we were being offered a job. Those letters always began with upbeat words, expressing the interviewer’s pleasure at having had the opportunity to meet us. Those words meant nothing. The key was the first word of the next sentence. We looked for key words: “nonetheless;” “but;” “unfortunately;” “regrettably.” If one was present, the result was unfortunate. We called these bits of bad news “ding letters.”

The court began its opinion: “We greatly respect the initiative process, including the civic activism required to collect the signatures necessary to qualify a ballot measure, and we do not lightly disturb the fruits of such efforts.”

Oh, you just know it’s going to be bad news for the initiative. The next word is key.

“However, … .” Ding!

“The court held that the proponents’ description ‘omitted material provisions and created a significant danger of confusion or unfairness to those who signed petitions to place the measure on the ballot.’”

According to the court, “[e]liminating indexing would affect tax rates at all income levels. And because indexing would not apply at all to the new brackets” the initiative would create, “the relatively modest initial tax impact would expand over time, resulting in a tax increase to most taxpayers.” This was not mentioned in the initiative’s description.

The proponents contended that this change was unintended and the initiative should not be so interpreted. But the court declined “to credit intent rather than text.” The initiative “establishes tax brackets” that “on their face, … .”

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“The court held that the proponents’ description “omitted material provisions and created a significant danger of confusion or unfairness to those who signed petitions to place the measure on the ballot.”

Here’s what the proponents wrote: “The Invest in Education Act increases the class-room site fund by raising the income tax rate by 3.46% on individual incomes over a quarter million dollars (or household incomes over half a million dollars), and by 4.46% on individual incomes over half a million dollars (or household incomes over a million dollars) … .” The court did not find this description fraudulent, but it did find potential confusion.

First, the description failed to note that the initiative would roll back income-tax indexing that had recently been enacted. After an analysis, legislative staff concluded that under the initiative, “most taxpayers would have a small portion of their income taxed in a higher bracket, resulting in a small increase on most taxpayers.” Staff recognized that the initiative’s drafters might have intended a different purpose, but they concluded that “[t]he language of the initiative does not accomplish this purpose.”

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Time Flies

“The bad news is time flies. The good news is you’re the pole” — Michael Alhousler.

It’s hard for me to imagine that it’s already December and my year as president of the MCBA is almost over. This has been a busy year and, as with many years, has had its challenges and successes.

We began the year without a permanent home for the first time in a very long time. We’ve had staff leave. We’ve experienced technological challenges.

On the other hand, we put on another successful Barrister’s Ball. Our staff has performed admirably under tough circumstances. The Hall of Fame/Annual Awards dinner was a huge hit. We’ve presented a number of topical, useful and informative CLEs and seminars. Our sections and divisions continue to be strong, putting on great programming. We have found ourselves in the best financial condition we’ve been in since my time with the MCBA. And, we end the year having finally found a permanent home.

It seems like just yesterday I was sitting at the computer writing my first president’s article. (I’ll admit; it’s probably the toughest part of this position). The thought of writing 12 articles was rather daunting, but here I am writing my last. (I hope I haven’t bored too many of you over the past year).

I’ve been part of the MCBA since 2001 and continue to be in awe at the quality and hard work of its members. From sections and divisions to the various committees, our volunteer leaders work hard to make the association better for all our members. I want to thank all our section and division presidents, as well as our committee chairs. There are some additional thank-you messages I would like to make.

First, I want to thank my fellow Executive Committee members: Past-President Norma Izzo; President-Elect Melissa Slioma; Treasurer Flynn Carey; and Secretary Tyler Carroll. All have gone beyond the call and consistently pitched in when necessary. I am lucky to have had such a great and supportive executive team.

Next, I would like to thank the members of the Board of Directors. The Board is tasked with oversight of the association and has the responsibility of directing the association. They are committed to ensure the association is set up for success. My year has been made that much easier with the participation of this year’s Board. I want to next thank the MCBA staff, Beth, Angela, Amanda, and Stephanie. Besides the building sale, the MCBA’s biggest change has been in the composition of our staff. To make things even more difficult, the staff have operated without a central office location. Despite this, they continue to work hard to ensure our members are taken care of and that events are successfully held.

I want to thank our member firms that have pitched in with donating office and conference room space to hold our meetings, CLEs, and events while we have looked for space of our own. I cannot express the gratitude of the MCBA enough.

I would also like to thank our sponsors and affinity partners, without whom many of our events would not be possible. Our affinity partners also provide material benefits to our members through their promotion.

I am excited to see what 2019 brings the MCBA. We should be operational in our new offices early in the year. The 2019 Barrister’s Ball has been set for Saturday, April 6. We will be bringing on a new Executive Director to help lead the association. Five new faces are coming onto the Board of Directors, including two non-attorney positions. Despite heavy competition, our Lawyer Referral Service continues to do well, which in turn rewards those members who are a part of the service.

We will continue to provide cutting edge seminars and the opportunity for lawyers, legal professionals, and the judiciary to interact with one another.

One of my favorite responsibilities of being president is the privilege I’ve had in giving the ceremonial gavel at each Maricopa County Superior Court

See Time Flies page 3
Paralegal Student Wins MCBF Scholarship

Danielle Abdelfattah

This year’s Maricopa County Bar Foundation Paralegal Scholarship was awarded to Danielle Abdelfattah at the Paralegal Conference on Friday, November 9. Danielle is currently a student at Rio Salado in their paralegal program after having assisted her husband with his janitorial company for 22 years. She has a bachelor’s degree in accounting and is maintaining a 4.0 GPA in her paralegal studies. She found her passion for the legal field when she assisted her brother with a family court matter, conducting legal research, gathering evidence, and reviewing court documents. She even got to work with his new counsel and saw the case through to the final judgment.

Danielle is currently working at the Law Library Resource Center of the Maricopa County Superior Court. Once she gets her paralegal certificate, she would like to be involved in “meaningful change in the law, processes, and procedures” and says that she wants “to become the best paralegal [she] can be to serve the legal field in a positive way.” The Foundation scholarship will help her achieve her goals by allowing her to take additional classes to further her education. She wants to expose herself to as many different areas of the law as possible to broaden her legal knowledge. We are proud to be able to continue this tradition and help those in need further their legal career.

The Paralegal Conference on Friday, November 9, was a big success. Shown here (from left) are Andrea Marshall, Paralegal Member of the Year and Conference Committee co-chair; Melinda Manchester, president of the Paralegal Division; and Norma Franco, Conference Committee co-chair.

SPEAKERS
Hon. Janet Barton
Ann Ching Esq.
Rich Robertson CLI
Lawrence D Hirsch Esq.
Eliot L. Kaplan Esq.
Scott L. Claus Esq.
William D. Furnish Esq.
Vince S. Goddard Esq.
Karen O. Lisko Ph.D.
Jennifer Albright
Stephen L. West Esq.
Maria DeLa Hoya
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Craig Logsdon Esq.
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That’s A WRAP

As we close out the year I want to thank the following: the MCBRA staff for their time and dedication this past year to the Paralegal Division. The MCBRA Paralegal Board, Past President Nilda Jimenez, President-Elect Kristi McLaughlin; Secretary Kate Holiland; Treasurer Cecilia Rodriguez; Directors Norma Franco, Andrea Marshall, and Christine Penick; and Membership Chair Tina Ziegler. Additionally, I need to thank our Conference Co-Chairs Andrea Marshall and Norma Franco and the conference committee members for a fabulous conference last month. It is no small feat to put on a conference with 30 vendors and 16 speakers.

Next year’s conference theme will be Innovative, Strategize, and Transform, which will take place on November 8, 2019. The planning has already begun, and we can use additional volunteers to make this a great event for the Division. Please reach out to Kristi McLaughlin (kmclaughlin@slomalawgroup.com) if you would like to be part of the team.

The MCBRA Paralegal Division will host the Annual Legal Mixer at the new location for the MCBRA. If you would like to be part of the planning committee for the Legal Mixer please contact Tina Ziegler (tina@hammerman-hughes.com) or Melinda Manchester (mmanchester@perkinsscowe.com).

That’s A WRAP

That’s A WRAP

That’s A WRAP

That’s A WRAP

That’s A WRAP

That’s A WRAP

That’s A WRAP
Many items were donated to the Necessities Drive for Chrysalis Shelter

The Young Lawyers’ Division (YLD) held its 14th Annual Race Judicata on Saturday, October 20, at Kiwanis Park in Tempe. The theme of this year’s race was family and included a bounce house for the younger race attendees. A total of 71 people signed up to participate in this year’s race. The YLD would like to thank everyone who came out to support this event, in addition to our generous sponsors: The Kenrich Group LLC; Lewis Roca Rothgerber Christie LLP; R.O.I. Properties; Sloma Law Group PLLC; Shawn Aiken; Mitchell Stein Carey Chapman, PC; Osborn Maledon, PA; Udall Shumway PLC; Law Offices of Larry H. Parker; and STI Physical Therapy and Rehab. This event would not have been possible without their support.

I would also like to personally thank the YLD’s Race Judicata Committee for all of the hard work it put into this year’s race to ensure that it was a success. This year’s committee was led by Ryan McBride and supported by committee members Travis Meyers, Kendall Cavalletto, Daniel Jenewein, and Afsanieh Rasati. I would also like to thank Joshua Spears for stepping up to get the Necessities Drive underway and to all of the other YLD board members who assisted with getting sponsors and participants for the race. Special thanks goes to Amanda Dodd and Kim Davis, who provided immeasurable support and enthusiasm for Race Judicata and the Necessities Drive.

As planned, YLD board members used the proceeds of Race Judicata to purchase additional items for the YLD’s Necessities Drive, including body wash, lotion, women’s deodorant, underwear, socks, toilet paper, paper towels, tissues, twin blankets, and pillows. The beneficiary of this year’s Necessities Drive was the Chrysalis Shelter. YLD board members met at Two Men and a Truck thereafter delivered the donations to Chrysalis. Michelle Erminston at Chrysalis sent the YLD the following message after receiving the items: “The incredible load of thoughtful donations from your association arrived at our office yesterday! Thank you for your efforts on our behalf and for all of the carefully selected items. Your support makes a difference for our clients and we appreciate what you do for us year after year. I was blown away by all that was delivered by Two Men and a Truck. Please know how much those items mean to us when it comes to taking care of the basic needs of our clients.”

Serving as the YLD’s president for the past year has been an honor and a privilege. I am grateful to the various board members who stepped up to volunteer their time, money, and energy to support the YLD’s events this year, including Barristers Ball, Race Judicata, and mock interviews at the ASU law school. Without you, none of these events would have been possible. Thank you.

We would all like to grow our practices, and there are several ways to accomplish that.

Certainly networking is one. The more people you meet the better chance you have of obtaining clients or getting referrals.

Another is advertising. That is expensive. You could consider sponsoring an event. That gives you exposure, especially if you do it for your CLE. But even without the CLE you have a chance to mix and mingle.

Certainly doing one or more of the preceding, bear this in mind. While you may be willing to handle any type of case that walks in the door, most clients start out with a specialist. So determine what area you do best. When you meet people you can then say, “I specialize in ‘X,' but I also handle my clients’ everyday problems.” If you are with a small firm you can say, “I specialize in ‘X,' but my firm handles a wide variety of matters such as ‘A,’ ‘B,’ ‘C,’ etc.

Also, doing pro bono work can lead to new clients. You want exposure and you’ll get that from the pro se client of today who may seek an attorney tomorrow. You’ll also get to meet other attorneys who may become sources of referrals.

Remember, what you are seeking is exposure and promoting your area of expertise. To begin with, clients do not tend to seek generalists to handle a specific problem. Once you’ve been successful for a client in one area, he or she is likely to turn to you for the next problem and ask if you can handle that as well.

Remember, you start with exposure and work from there.

The Arizona Supreme Court received a $38,830 grant from the Arizona Governor’s Office of Highway Safety that will be used to enhance training for judges on traffic laws, case management, and DUI. The grant also makes it possible to send judicial trainers to expand their skills and knowledge about traffic matters by attending a national judicial education conference.

The judicial training will reach justice courts and city court judges who collectively adjudicate 1.5 million traffic charges annually— including more than 62,000 DUI charges. More than 100 hearing officers and judges will receive instruction in areas of DUI trial flow, distracted driving, civil & criminal traffic issues, criminal disposition reporting, forensic evidence in DUI cases, time standards & calendar management, evidence & objections, and commercial driver licenses.

One of the goals of the Arizona judicial branch strategic agenda Advancing Justice Together: Courts & Communities is enhancing professionalism within Arizona’s Courts. This goal states “the judicial branch must continue the professional development of new and veteran judges to ensure they adhere to the highest standards of conduct, integrity, professionalism, and accountability.” Grant-funded educational sessions will yield additional ongoing benefits as staff and judges in Arizona courts process DUI and traffic cases more efficiently and effectively.

Arizona is the sixth largest state in the U.S., by geographical size and has more than 79,000 miles of roadways. Many of Arizona’s roads reach rural and distant areas of the state, which fall into the jurisdiction of Arizona’s local courts. Funding from the Governor’s Office of Highway Safety allows many judges from rural courts or those outside the Phoenix area to attend this valuable training.

For more information about Arizona’s judicial branch, visit www.azcourts.gov.
Chief Justice Scott Bales Receives the Justice Management Institute’s Ernest C. Friesen Award of Excellence

Arizona Supreme Court Chief Justice Scott Bales has been selected by the Justice Management Institute (JMI) Board of Directors as the recipient of its 2018 Ernest C. Friesen Award of Excellence to recognize his leadership and achievements in enhancing and improving the administration of justice.

Chief Justice Bales has demonstrated exemplary leadership throughout his career. While serving as Chief Justice, Scott Bales has taught at Arizona State University College of Law and the University of Arizona College of Law. Before his appointment to the Arizona Supreme Court in 2005, Justice Bales practiced law in Phoenix, served as Arizona’s Solicitor General, a Deputy Attorney General for the U.S. Department of Justice’s Office of Policy Development, a federal prosecutor in the United States Attorney’s Office in Phoenix, and a Special Investigative Counsel for the Justice Department’s Inspector General. Justice Bales also clerked for Justice Sandra Day O’Connor on the U.S. Supreme Court and Judge Joseph T. Sneed III on the Ninth Circuit Court of Appeals.

Chief Justice Bales graduated summa cum laude in 1978 from Michigan State University, earned a M.A. in economics from Harvard University in 1980, and received his J.D. from Harvard Law School in 1983. He is the vice chair of the Council of the American Bar Association’s Section of Legal Education and Admissions to the Bar and a member of the Council of the American Law Institute. He also served on the Board of Directors for the Conference of Chief Justices and chaired the American Bar Association’s Appellate Judicial Conference. He wrote in 2006 for the Stanford Law Review, “Justice Sandra Day O’Connor: No Insurmountable Hurdles,” to commemorate her service to the Supreme Court and the Arizona judiciary.

As the leader of the Arizona Courts, Chief Justice Bales has worked to advance the administration of justice statewide. His initiatives include using technology to promote access to justice, supporting a comprehensive revision of Arizona’s civil rules and civil justice reform measures, and promoting an array of “Fair Justice For All” reforms with respect to criminal fines and fees and pretrial detention. Superior Court Presiding Judge Kyle Bryson, for Pima County, Arizona, said, “Chief Justice Bales has focused on making the courts more accessible through his strategic agenda, Advancing Justice Together, and his Fair Justice For All initiative has placed Arizona among the leaders in the country in ensuring all have equal and ready access to the courts.

JMI is a non-profit organization that provides training, technical assistance, and applied research to courts and other justice agencies. In support of this mission, the JMI Board annually presents the Ernest C. Friesen Award of Excellence to an individual who has demonstrated vision, leadership, and sustained commitment to the achievement of excellence in the administration of justice. The award is named for Ernie Friesen because he has epitomized a passion for justice combined with keen observation and analytic ability, extraordinary skills as a teacher, and a sustained commitment to improving the leadership and management of courts. Ernie was, among other things, the first executive director of the Institute for Court Management, the first dean of The National Judicial College, and a director of the United States Administrative Office of the Courts. He also co-authored the first major text on court administration. Beginning with Ernie Friesen, there have been fourteen recipients of the Friesen Award. Past recipients include trial court administrators, judges, state court administrators, judicial educators, academics, and court consultants.

The Friesen Award was presented to Chief Justice Bales at the annual conference of the National Association for Presiding Judges and Court Executive Officers (NAPOCO) in St. Louis, Missouri on October 16 by JMI’s Vice President Tim Dibble.

Arizona Supreme Court Adds More Self-Service Resources

The Arizona Supreme Court website, azcourts.gov, features an array of new self-service resources in English and Spanish. The Self-Service Center has all new content (including topic pages and forms) and links to useful resources arranged in an easy-to-use format.

Finding the Self-Service Center is simplified as well. The azcourts.gov homepage features 10 tiles or buttons on the lower half of the page. The Self-Service Center tiles are in the middle of the page with one tile for the English version and a separate tile for the Spanish version. Users navigate both sites in the middle of the page with one tile for the English version and a separate tile for the Spanish version. Users navigate both sites in.

Improving access to justice is the first goal in the five-year strategic agenda, Advancing Justice Together: Courts and Communities. The Arizona Supreme Court and collaborating partners and organizations launched azcourtshelp.org in January 2017. That site now routinely sees 15,000 or more unique users per month. The azcourts.gov website update announced recently has many of the same or similar features designed to help the public access and learn about courts and court processes on either platform.

Special attention was taken to create a separate Spanish Self-Service Center that mirrors the English Self-Service Center and continues to grow. In collaboration with Maricopa County Superior Court, over 400 forms in English and 400 forms in Spanish have been developed that are generic in nature and may be accepted by courts statewide.

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American Judges Association Honors Arizona Chief Justice Award of Merit

The American Judges Association presented Arizona Chief Justice Scott Bales with its 2018 Chief Justice Richard W. Holmes Award of Merit at its recent annual conference.

The Award is named in honor of one of the Association’s founding members who also served as Chief Justice of Kansas and is given “to a judge for outstanding contributions to the judiciary.”

In a letter sent to Justice Bales, the award committee noted it was impressed and inspired by his accomplishments with promoting access to justice; protecting children, families, and communities; and improving court processes. Past winners from Arizona include U.S. Justice Sandra Day O’Connor, awarded in 1981, and former Arizona Chief Justice Thomas Zilak, awarded in 2000.

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Family Law Section Spotlight

Jared Sandler, Family Law Division President Fromm Smith & Gadow PC

It has been my pleasure to serve as a Maricopa County Bar Association Family Law Board Member for the past half-decade, and during that time I have had the opportunity to work alongside some of the best and brightest family law attorneys. As members of the legal community, and particularly in family law, we often have a front-row seat to the ugliest parts of humanity. This was no more evident than when the family law and mental health communities were forever changed by the senseless murders of Steven Pitt, Valeria Sharp, Laura Anderson, and Marshall Levine. The solidarity and empathy demonstrated by the legal community, and the community as a whole, was a warm reminder that even during the darkest times, people can find the best in each other. There are thousands of wonderful attorneys who practice family law in Maricopa County, and many of them are accustomed to the legal community and their neighbors through charitable works. I have not only been blessed with the opportunity to work alongside a small fraction of these amazing attorneys during my tenure on the Family Law Board, but I would like to use this opportunity to shine a light on a few of the many people that make me immensely proud to be a family law attorney.

It would be impossible to name all of the wonderful people that have volunteered their skill and effort to make our community better, but it is my pleasure to acquaint the Maricopa County Bar Association with those Family Law Board members who have shown me their positive impact on the MCBA and the average family law practitioner in Phoenix.

The MCBA’s invaluable Family Law Newsletter would not exist were not for the immense effort undertaken by Sylvina Cotto. Sylvina joined the MCBA board in 2012, and immediately broke the mold of the typical CLE attendee through her role as the primary editor of the MCBA Family Law Section. Although her commitment to all board activities is unwavering, Sylvina’s passion is, without doubt, the Family Law Newsletter. Every quarter you can expect to find up-to-date information regarding all aspects of practicing in family law in one publication, e.g. new judges, new rules, new cases. Sylvina is the managing attorney of Cotto Law Firm, PC and has assisted clients with family law matters in Scottsdale and across the valley for 25 years and provided her expertise on numerous other committees and bar sections.

While a more recent addition to the board, I cannot think of a member who has provided more active support to the Family Law Section’s success than Ashley Rahaman. Ashley has served on the Executive Board of the Family Law Section of the MCBA since 2015. As a board member, Ashley has served on the Mentorship Committee, the Family Law Newsletter Committee, and the Newsletter Committee. In 2017, Ashley served as Chair of the board, and was instrumental in coordinating the many efforts of the board to engage with the family law community and our brethren. Ashley has been active in planning and participating in the Family Law Section CLEs. In March 2018, she presented a CLE with the Hon. Theodore Campagnolo, “Writing to Win”, on effective legal writing, and planned an informative CLE on upcoming changes to Arizona Rules of Family Law Procedure, Rule 69 and joint CLE with Sage Counseling and TASC which was informative and well-received. In addition to her work on CLEs, Ashley is also a co-editor of the MCBA Family Law Section Newsletter. In addition to Ashley’s work on the board, she is also active Judge Pro Tem for the Superior Court, conducting settlement conferences and providing occasional bench coverage for Speciality Court and the Decree on Demand calendar. Ashley has also been named a Rising Star by Super Lawyers for the last five years in a row. Ashley is an associate at Stewart Law Group in Tempe, Arizona.

Nicole Siquieros-Stoutner joined the MCBA Family Law Board of Directors in 2009. She also served as the Chair of the Board in 2011 and 2012, as well as in other officer capacities. In 2017, she became an ex officio Board Director and continues to be involved with the MCBA. During her tenure on the Board of Directors, Nicole made significant and long-lasting contributions to the work of the Board and to Maricopa County’s family law community. Upon becoming the Chair of the Board and until 2013, Nicole authored the monthly “Ask an Associate” column in the MCBA Newsletter where she provided practical advice to law firm associates in all areas of the law.

Every year since 2010 (except for 2017), Nicole wrote, organized, and presented in the popular and well-attended Family Law Trial Advocacy CLE. This annual CLE allows attorneys to see and learn litigation skills from experienced members of the bench and the bar during a mock custody or divorce trial. In 2016 and 2017, Nicole also created and spearheaded the Family Law Trial College through the MCBA which provides family law attorneys the opportunity to receive feedback and practice pointers on their trial presentations. Approximately seven years ago, Nicole created the “speed dating” model that is used at the MCBA’s Family Law Bench Juries event every spring. This model allows every attorney that attends the chance to participate in a small group discussion with family law judges who attend that night.

2014, Nicole created the MCBA Family Law Section “Bridging the Gap” Award which is given each December to a judge on the family law assignment at the December judicial reception. The winner is selected by the MCBA Family Law Board. The award is intended to recognize the judge who has gone above and beyond to connect with the bar, both in and out of the courtroom. Nicole continues to dole out the award trophy each year to the MCBA. Finally, Nicole remains a contributing member of the MCBA Family Law Section as an ex officio director. Her family law practice at Rader, Sheldon & Stoutner, PLLC continues to grow, and she was recently selected for the second year in a row to be a “Rising Star” by Super Lawyers among other accolades.

According to Judge Presiding in Family Court downtown. She has been the judicial liaison on the MCBA Family Law Section Board of Directors since 2016. In 2016, Judge Korbin Steiner received the “Bridging the Gap” award from the MCBA Family Law Section. While on the board, she has presented at the Child Support Initiative’s “Help Me/Help You” CLE which allows paralegals and attorneys to better understand how to appropriately and efficiently work with judicial staff. Jennika has also worked annually with Nicole Siquieros-Stoutner to prepare materials and gather presenters for the MCBA’s well-known (and loved) Trial Advocacy CLE, as well as the MCBA’s Family Law Trial College offering—all of which required significant volunteer time to prepare. Jennika’s passion for the betterment of the practice of family law and her desire to better the relationships between the family law bench and the family law bar is always at the forefront of her efforts for this board. Jennika focuses her practice on family law at The Law Office of Jeffrey G. Pollitt PC.

The Family Law Board is at its best when it facilitates meaningful interaction between lawyers and judges in family law. This task is made much easier thanks to the work of the judicial liaison to the Board, Judge Ronce Korbin Steiner. Judge Korbin Steiner has been on the family law bench since being appointed by Governor Ducey in 2015 and is the Associate Presiding in Family Court downtown. She has been the judicial liaison on the MCBA Family Law Section Board of Directors since 2016. In 2016, Judge Korbin Steiner received the “Bridging the Gap” award from the MCBA Family Law Section. While on the board, she has presented at the Child Support Initiative’s “Help Me/Help You” CLE which allows paralegals and attorneys to better understand how to appropriately and efficiently work with judicial staff. Jennika has also worked annually with Nicole Siquieros-Stoutner to prepare materials and gather presenters for the MCBA’s well-known (and loved) Trial Advocacy CLE, as well as the MCBA’s Family Law Trial College offering—all of which required significant volunteer time to prepare. Jennika’s passion for the betterment of the practice of family law and her desire to better the relationships between the family law bench and the family law bar is always at the forefront of her efforts for this board. Jennika focuses her practice on family law at The Law Office of Jeffrey G. Pollitt PC.

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dent above knew I taught writing, then the use of the verb “presume” would be the better choice. Another way to think about the use of “presume” is to replace it with its synonym “expect.” If “expect” makes sense given the audience and its background, then choose “presume.”

For what it is worth, some writing style guides have noted that many writers and speakers use these terms interchangeably because the degree of difference between them is so small. Some guides even predict this distinction will eventually disappear. Simply infer.

Imply means to hint at something (like a giving of information). Infer means to make an educated guess (like receiving information). The hosts implied the party was over by handing out coats to the guests. The guests inferred the party was over because the hosts were handing out coats.

As for the high school students, they thought the differences between these words were stuffy and formal, although they eventually said they understood my explanation. Time will tell if the differences between these words remains meaningful. Until then, I presume that readers of this column care about these issues.
The Public Lawyers Division (PLD) had an eventful 2018. The year started out slow, but will end with a bang with events in September, October, and December. The September event was the Courtroom Advocacy program at the MCBA Bench Bar Conference. Judges Ronee Korbin Steiner and Daniel J. Kiley, both of whom are also PLD board members, worked with members of the Bench Bar Committee, Criminal Law Section, and Young Lawyers Division to organize and hold the inaugural half-day program during the morning of the Bench Bar Conference. The program included sessions devoted to opening statements, witness examinations, and closing arguments. The program was highly successful, and participants found the program extremely beneficial for their practices. Thank you to Judges Korbin Steiner and Kiley for representing PLD on the joint project, and thank you to all the speakers and participants for making the program a success. The PLD looks forward to a continued role with future Bench Bar Conferences.

In October, the Sandra Day O’Connor College of Law hosted a brown bag panel discussion with practicing public lawyers for interested law students. PLD recruited the panel of speakers. The panel members were Konnie Young and Stan Silas from Community Legal Services, Mikel Steinfeld from the Maricopa Public Defender’s Office, Appeals Unit, Kristin Wrobel from the Office of the Legal Advocate, Eric Rothblum, Senior Litigation Counsel, Arizona Attorney General’s Office, Criminal Division, Financial Remedies Section, and me. Panel members explained why they chose a career in public practice, why they have continued to stay in public practice, and then described their average day. The discussion was lively and entertaining, and offered students a diverse perspective of life in public practice. To our speakers, thank you for your time and willingness to participate.

Closing out the year in December, PLD members will be volunteering on December 1st to assist the Society of St. Vincent de Paul’s food warehouse. The food warehouse is located at the Watkins Campus in South Phoenix. Every day the warehouse receives truckloads of food items donated by grocery stores and at community food drives. The warehouse needs volunteers to sort and measure items to comply with strict quality control standards before the items can be sent to the kitchen or a community-based food pantry. At the time I wrote this column, the event had been planned and calendared, but not yet occurred. I suspect our community service project will help PLD end the year on a high note. Thank you in advance to all who volunteered to help out. PLD looks forward to future community service projects in years to come.

I have enjoyed serving as the PLD president this year, and look forward to the upcoming year. I wish everyone the best for the Holiday Season and a happy New Year.
POTENTIAL CLIENTS CAN BE YOURS WITH THE MCBA LAWYER REFERRAL SERVICE.

The LRS receives more than 10,000 calls per year from people seeking legal assistance as well as attorneys referring clients outside their practice area.

AMONG THE AREAS NEEDING COVERAGE ARE:
- administrative law
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- workers’ compensation
- immigration

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Join Us for Our
2018 MCBA Holiday Reception

Wednesday, December 12, 5:30 to 7:30 p.m.
2201 E. Camelback Road, Phoenix

Guild Mortgage is generously providing their reception space in the Conference Center Across the Courtyard

RSVP
maricopabar.org/holiday_reception

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Our Arizona Office is Growing...

We are pleased that Dave Long has joined our team.

Kathy Moriarity and Dave will be partnering to serve Arizona trust clients.

Thank you for the tremendous reception you have given to Zia Trust for the past 2 years.

Kathy Moriarity, CTFA®, CFP®, LF, NCG
Vice President & Senior Trust Officer
kmoriarity@ziatrust.com

Dave Long, JD
Vice President & Senior Trust Officer
dlong@ziatrust.com

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14220 N. Northsight Boulevard, Suite 135 • Scottsdale, AZ 85260
If you registered and paid, but could not attend, you may request that materials be sent to you, free of charge (allow 3-4 weeks). If audio media is available, registrations may be converted to a self-study package for an additional $15 charge.

CANCELLATIONS/REFUNDS
Rentals must be received by the MCBA in writing by mail, fax at (602) 257-4200, or email cle@maricopabar.org at least two business days prior to a program. MCBA cannot guarantee space or availability of materials.

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

ONLINE
To register, go to www.maricopabar.org/events and select your CLE from the calendar. Follow the link to the registration page.
If you need assistance, please email cle@maricopabar.org

WEDNESDAY
DEC. 5 • 5:30 – 7:30PM
2018 Family Law Judicial Holiday Reception

PRESENTED BY: MCBA Family Law Section
LOCATION: PHOENIX COUNTY CLUB
2901 N. 7th Street Phoenix, AZ 85014
RSVP: on the MCBA website before November 30th
Join us for the annual Family Law Judicial Holiday Reception! Appetizers and drinks will be served. Come and mingle with fellow family law attorneys and members of the judiciary.

THURSDAY
NOV. 29 • 12 – 1PM
Cyber Security

PRESENTED BY: MCBA Solo & Small Division
LOCATION: LITTLER, 2425 East Camelback Road, Suite 900, Phoenix, AZ 85016
SPEAKER(S): ISOutsource
Our presentation addresses Cyber security with a focus on email security (the #1 hole in most people's security defenses).

The presentation is about 45 minutes long. We make an attempt to be informative, entertaining and will directly engage the audience to elicit participation in the discussion.

We will discuss the evolution of attacks that now rely less and less on computer vulnerabilities and more on human weaknesses and vulnerabilities. We will also discuss defenses and protection strategies in plain and non-sales mode English.

FRIDAY
DEC. 7 • 9 – 10:30AM
Insanity: Historical, Legal and Psychiatric Concepts

PRESENTED BY: MCBA CLE Department
LOCATION: LEWIS ROCA ROTHGERBER CHRISTIE LLP
201 East Washington Street, Suite 1200, Phoenix, AZ 85004
SPEAKER: Stephen P. Herman, M.D., LFAPA, DFAACAP
For centuries philosophers, lawyers, and those dealing with the mentally ill have grappled with the concept of insanity. Should those who commit criminal acts be defended on the grounds that they were driven to such behaviors because of mental illness? If so, what should be the limits of such a defense? Our states have different standards and definitions, as do many countries. Are these laws helpful or do they obfuscate this controversial concept? How does a psychiatrist evaluate a person when the insanity defense is offered? What will the future hold? These and other issues will be discussed. Attendees will get a comprehensive overview of insanity, its various definitions, and its legitimacy in court.

THURSDAY
DEC. 6 • 3 – 5PM
(WITH HOLIDAY MIXER TO FOLLOW)
War Stories: Senior Litigators’ Tales from the Trenches and Lessons Learned

PRESENTED BY: MCBA Litigation and Real-Estate Sections
LOCATION: SANTAN BREWING COMPANY
SW corner of Bethany Home and 16th Street
SPEAKERS: Bill Klain, Partner with Lang & Klain, P.C.; Jennifer Hadley Catero, Partner with Snell & Wilmer
Richard Romley, former County Attorney for Maricopa County
Back by popular demand, the Litigation and Real Estate Sections are excited to host this 2-hour CLE featuring 3 prominent senior trial lawyers from the Phoenix legal community who will share some of their most interesting war stories, tales from the litigation trenches and, most importantly, the valuable practical and ethical lessons they took from these experiences. Plus, immediately following this CLE, there will be a holiday mixer at SanTan and each registration includes a free pint of SanTan’s acclaimed beer to enjoy during the mixer. Enjoy this fun, light-hearted CLE and opportunity to network from the one of the Valley’s best local brew pubs.

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FRIDAY
DEC. 7 • 12 – 3PM
Top 10 Ways a Family Lawyer Can End Up in Front of the Ethics Panel and How to Avoid Getting There

PRESENTED BY: MCBA Family Law Section
LOCATION: 3260 North Hayden Road, 104, Scottsdale, AZ, 85251
SPEAKER(S): Steve Little, Senior Bar Counsel

THURSDAY
DEC. 6 • 3 – 5PM
War Stories: Senior Litigators’ Tales from the Trenches and Lessons Learned

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This unique museum opened in 2012 and is centered around a restored cellblock on the sixth floor of Maricopa County’s Historic Courthouse – the Courthouse has been renovated to its 1929 grandeur. While visiting the museum you will get a sense of Maricopa County’s legal history, its court cases and important elements of the Rule of Law, including individual rights and liberties guaranteed in the United States and Arizona Constitutions. To our knowledge, it is the only such museum in an active courthouse in the country.

VISIT THE
STAFFED FROM NOON-1 P.M., MONDAY-THURSDAY
LOCATED ON THE 6TH FLOOR OF THE OLD COURTHOUSE
125 W. Washington, Phoenix

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MEMBER SPOTLIGHT
ALESHIA FESSEL
COMMUNITY LEGAL SERVICES, INC.
MCBA MEMBER SINCE 2014

How long have you been a member of the MCBA?
Since 2014.

Of the Public Lawyers Division?
I started getting involved in 2018.

How long have you been practicing law? Was it your first area of practice?
I have been an attorney for more than 15 years. I had my own law firm for several years, handling custody and criminal cases, but I also took appointments as a public defender.

What do you see as the focus for the PLD section this year?
Service to the community.

What issues do you see facing attorneys in Arizona?
Civility and professionalism are areas we need to address, and I’m happy to see a continued focus on them.

If you hadn’t been a lawyer, what else would you be?
I started my career in print journalism, but I’ve also worked in event planning, which is way more fun!

If you could be any fictional character, on TV/in books/in a movie, who would it be, and why?
Pam Grier’s titular character in the ‘70s film “Foxy Brown.” Pam herself has talked about the domestic violence, racism and sexism she’s combated in her own life, and her character in the movie overcomes similar issues, acting as a symbol of a strong black female.

What's the strangest job you've ever held?
It wasn’t paid, as I was a volunteer, but I once timed competitive eating champion Joey Chestnut in a coney-eating contest.

VISIT THE MARICOPA COUNTY LAW ASSOCIATION
MARICOPA COUNTY JUSTICE MUSEUM & LEARNING CENTER FOUNDATION
125 W. Washington, Phoenix
STAFFED FROM NOON-1 P.M., MONDAY-THURSDAY

SAVE THE DATE
Barristers’ Ball
APRIL 6, 2019
Chateau Luxe
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Register Online
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Questions
Go to events@maricopabar.org
The law firm of Gallagher & Kennedy is pleased to announce that Jennifer Cranston has become the firm's newest shareholder. Cranston has focused her practice in the areas of business formation, corporate governance, mergers and acquisitions, commercial transactions, and securities law. She has been involved in various aspects of commercial litigation, including settlement negotiations, rule-making proceedings, hearings, arbitrations, trials, and appeals.

Cranston is very active within Gallagher & Kennedy and in the community professionally and philanthropically. She chairs the firm’s Professional Women’s Group; is active with the Valley of the Sun United Way (Women’s Leadership Council Past Chair); is Past President of the Maricopa County Bar Association; is the President-Elect of AZCREW; is Vice President and one of the founding board members of the Maricopa County Justice Museum & Learning Center Foundation; and, was recently honored as a 2018 Most Influential Women in Commercial Real Estate and Top 100 Lawyers in Arizona in 2017 and 2018. The law firm of Gallagher & Kennedy is also pleased to announce that Matthew Engle and Peter Moolenaar have become the firm’s newest shareholders. Their new positions become effective January 1, 2019.

Since joining the firm in 2016, Cranston has continued to help entrepreneurs and established companies in the areas of business formation, corporate governance, mergers and acquisitions, commercial transactions, and securities law. She was a member of the Limited Liability Company Act Subcommittee of the Arizona State Bar, which drafted the 2018 revisions to the Arizona Limited Liability Company Act, and has served on the Executive Council of the Business Section of the State Bar since 2013. Engle is also a supporter of the arts, as a founder and past president of the Phoenix Symphony Young Professionals and serving as a commissioner on the City of Phoenix Arts and Culture Commission.

Peter Moolenaar’s focus is on protecting business clients and securing their future through risk management, litigation, and dispute resolution. Moolenaar also represents clients in aviation and product liability litigation. He joined the firm in 2016 and as an Arizona native, Moolenaar has a deep connection to the state and its entrepreneurial spirit.

The Harding Firm congratulates Kina Harding for being awarded “Kiwanian of the Year” for outstanding contribution to the Kiwanis Club of Downtown Mesa. Kiwanis is a nonprofit volunteer organization dedicated to making lasting differences in the lives of children. Attorney Harding has been instrumental in facilitating school supply drives and give away and volunteering at various child-focused events in Mesa and surrounding areas. Harding is a family law attorney dedicated to both her practice and her community.

POLISINELLI

Polisnelli attorney Tanner Warnick has been selected for inclusion in the Arizona Chamber Foundation’s business and political policy professional development program. As an Arizona Industry Fellow, Warnick will participate in a 1-year-long program of monthly full-day workshops led by top business leaders, elected official and policy experts. Through facilitated discussions the next generation of business leaders will gain a better understanding of the intersection between business and public policy and its impact on the Arizona economy. Warnick is a commercial litigation attorney with a vested interest in making Arizona an attractive place for business to relocate and thrive. He works with corporate clients across a wide range of industries and specializes in insurance recovery and risk management.

SPENCER FANE

Spencer Fane LLP is pleased to announce the addition of attorney Melissa Posner Jarrett as an associate in the firm’s Labor and Employment practice group in the Phoenix office.

Posner Jarrett specializes in defending employers in labor and employment issues. She has significant experience associated with the National Labor Relations Act, Title VII, Americans with Disabilities Act, Family Medical Leave Act, and Equal Pay Act matters in both state and federal courts and federal administrative agencies.

Additionally, Posner Jarrett regularly counsels employers on policies and procedures and helps with compliance issues related to applicable laws and regulations.

The Harding Firm congratulates Kina Harding (right) receives award

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THORPE SHWER

Thorpe Shwer is proud to announce the addition of Amanda Sheridan as a Senior Associate Attorney. Amanda practices in the areas of product liability, commercial litigation, premises liability, personal injury torts, and criminal defense. She has experience litigating disputes for a diverse group of national and local manufacturing and business clients of all sizes in a wide variety of industries. Sheridan has represented clients before various trial and appellate courts as well as in arbitration.

Prior to joining Thorpe Shwer, Sheridan was an attorney for eight years at Snell & Wilmer LLP, one of the oldest and largest law firms in Arizona.

Sheridan is also active in both the legal and non-legal Phoenix communities, including serving as a current board member of the Arizona Center for Law in the Public Interest, and as a past board member of the Maricopa County Bar Association.

BULLETIN BOARD POLICY

If you are an MCBA member and you’ve moved, been promoted, hired an associate, taken on a partner, or received a promotion or award, we’d like to hear from you. Talks, speeches (unless they are of national stature), CLE presentations and political announcements are not accepted. In addition, the Maricopa Lawyer will not print notices of honors determined by other publications (e.g., Super Lawyers, Best Lawyers, etc.). Notices are printed at no cost, must be submitted in writing and are subject to editing. Items are printed as space is available. News releases regarding lawyers who are not MCBA members in good standing will not be printed.

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Polisnelli attorney Tanner Warnick has been selected for inclusion in the Arizona Chamber Foundation’s business and political policy professional development program. As an Arizona Industry Fellow, Warnick will participate in a 1-year-long program of monthly full-day workshops led by top business leaders, elected official and policy experts. Through facilitated discussions the next generation of business leaders will gain a better understanding of the intersection between business and public policy and its impact on the Arizona economy. Warnick is a commercial litigation attorney with a vested interest in making Arizona an attractive place for business to relocate and thrive. He works with corporate clients across a wide range of industries and specializes in insurance recovery and risk management.

BULLETIN BOARD POLICY

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Volunteer Lawyers Program Thanks Attorneys

The Volunteer Lawyers Program thanks the following 12 attorneys and firms for agreeing to provide pro bono representation on cases referred by VLP to help people with low incomes. VLP supports pro bono service of attorneys by screening for financial need and legal merit and provides primary malpractice coverage, donated services from professionals, training, materials, mentors and consultants. Each attorney receives a certificate from MCRA for a CLE discount. For information about ways to help, please contact Pat Gerrich at VLP at 602-254-4714 or pgerrich@clsaz.org.

ADOPTION:
Kristy Blackwell
Stuart & Blackwell

Logan Boren
Solo Practitioner

Elizabeth Goodman
Christian Anderson

BANKRUPTCY:
Stan Buzzelle (2 cases)
Law Office of S.A. Buzzelle II

CONSUMER:
Rubi Bujanda
Snell & Wilmer

Robin Petrowski
Solo Practitioner

GUARDIANSHIP OF INCAPACITATED ADULTS:
Michael Andersen
Snell & Wilmer

Farris Gillman
Snell & Wilmer

Travis Wheeler
Bowman & Brooke

Sole Practitioner

COURT ADVISORS FOR CHILDREN IN FAMILY COURT:
Lori Bird

GUARDIANSHIP OF MINOR CHILDREN:
Nancy Tribbensee
Arizona Board of Regents

The Volunteer Lawyers Program provided $3,285,147 in economic benefit to families through cases completed during 2016.

Thanks to all who participated and supported VLP!

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

It's that time of year when we offer incentives for early Membership Renewal

Watch your email for reminders.

If you have any questions, email membership@maricopabar.org.

We even have a video we can send to help you navigate Member Central.

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

WRITE A REVIEW:
Write a CLE review and get the CLE on the house (up to 1.5 hours max)!
Contact Amanda Dodd at adodd@maricopabar.org for more information.

PRO BONO PROFILES

Thanks Given to Volunteers

The Volunteer Lawyers Program embraced the tradition of GIVING THANKS during November. VLP staff, volunteer leaders, courts, and community partners found many ways to thank those who donate their time and expertise year-round to provide pro bono legal help and those who encourage and support VLP.

Please join us in giving thanks to these and all who have helped…

The U.S. Bankruptcy Court District of Arizona provided thanks and recognition to outstanding volunteers by posting on the Court’s website names of lawyers and law students who volunteered during the past year to provide financial distress counseling, debt advice, pro bono bankruptcy representation, bankruptcy Friend of the Court assistance, and other legal help to members of the public. VLP appreciates this additional recognition provided for volunteers on the Court’s website at https://www.azb.uscourts.gov/pro-bono-honor-roll.

The U.S. District Court District of Arizona recently sent letters of thanks to 33 lawyers who provided advice to 120 unrepresented civil litigants during the first 17 months of the Federal Court Self-Serve Clinic in Phoenix.

Peggi (Margaret) Cornelius, senior programs coordinator for the Volunteer Lawyers Program, has worked with Community Legal Services since 1995 and is a frequent mentor at monthly Financial Distress Clinics at Community Legal Services, recently accepted THREE pro bono cases to assist families needing to file bankruptcy to stop loss of their limited wages.

Sandra Kane provided a CLE training on Fair Housing on November 9 for Community Legal Services advocates and VLP volunteer lawyers.

Hon. Margaret La Bianca, Kevin Parker, and Brian Thesar presented a CLE training on Adult Guardianship on October 30 to assist lawyers who provide pro bono help to families with low incomes who care for an adult member who is incapacitated.

Michelle Lau has been volunteering with VLP for 10 years. Michelle recently was thanked with a plaque for PLAP (Probate Law,

The Volunteer Lawyers Program is a joint venture of Community Legal Services and Community Legal Services and the Maricopa County Bar Foundation. VLP received all of the proceeds of the November 17 event. Paul would like to thank all of the members of the committee, sponsors, donors, and golfers.

Hon. Patricia Norris (retired from the Arizona Court of Appeals) did a presentation on November 2 on Legal Writing for Community Legal Services and Volunteer Lawyers Program staff and volunteers.

Janet Story, who has volunteered for 24 years with VLP’s Children’s Law Center, presented a training on Adoption on October 26 to prepare volunteer lawyers who provide pro bono help to grandparents and other relatives who care for at-risk children.

VLP Advisory Committee Members Krystal Ahart, Sarah Anchors, Kimberly Davis, Greg Garcia, Susan Lagerman, Commissioner Brian Rees, Michelle Roddy, and Richard Siever participated in National Celebrate Pro Bono Week by making personal calls to thank 35 of VLP’s outstanding volunteers.

VLP Staff Members often express their appreciation for the wonderful volunteers who participate and for the rewards of helping people get the legal assistance they need. Peggi Cornelius said, “I am thankful every day that I am able to facilitate the pairing of those in need with volunteers who have the knowledge and compassion to assist.” Roni Tropper, Children’s Law Center Coordinator, said, “I am grateful that for 20 years I have been able to use my skills to impact children and help make their lives a little better and a little easier.” Maria Fulgencio, Senior Para-Legal Tenants’ Rights, agreed by saying, “I am thankful for the wonderful volunteers and co-workers and for a job that allows me to serve.”

Danae Brownell added, “It’s the volunteers who make the difference! They say YES when we ask them to help, even though surely their lives are as busy as ours!”

The Volunteer Lawyers Program is co-sponsored by Community Legal Services and the Maricopa County Bar Association. For information about volunteer opportunities and other ways to help VLP, please contact VLP Director Pat Gerrich at 602-254-4714 or pgerrich@clsaz.org.

December Calendar

Check out maricopabar.org/events and watch your inbox for the latest updates on dates, times, and locations for events and meetings.
Midterm Elections Live Up to Hype

Before being inundated with television ads, Facebooks videos, and radio spots featuring marquee matchups between Republicans and Democrats, voters get to endure primary season.

There are a few big races coming up on the August primary ballot for the Legislature, statewide offices and Congress. In some legislative and congressional districts, the primary determines the winner on the November ballot.


In District 23, fired Department of Economic Security director Tim Jeffries seeks redemption and a spot in the Legislature.

Kristina Kelly, a newcomer to politics, plays outsider untouched by controversy.

But these primary battles are just the warm-up to heated battles on the November ballot. In every statewide office, a Democrat is challenging the Republican officeholder.

In District 23, fired Department of Economic Security director Tim Jeffries seeks redemption and a spot in the Legislature. The state Supreme Court sided with Shooter. The woman who precipitated Shooter’s downfall, Michelle Ugenti-Rita, faces a tough battle as she also tries to win a Senate seat.


But these primary battles are just the warm-up to heated battles on the November ballot. In every statewide office, a Democrat is challenging the Republican officeholder. A very competitive U.S. Senate race and several tight congressional races also will crowd your mailboxes and show up in the middle of your favorite cable and broadcast television shows. In addition to the candidate races, expect spirited debates on as many as four ballot initiatives. It’s unclear how many propositions will eventually qualify for the ballot—several will be challenged as backers of propositions will eventually qualify for the ballot.

A few months ago, the State Bar of Texas felt the need to issue an opinion prohibiting a lawyer from retaining an expert, or intentionally disclosing confidential information to a prospective expert, for the purpose of attempting to disqualify or otherwise prevent the expert from being used by an opposing party. I was reminded of the episode of The Sopranos where Tony contacts all of the top divorce lawyers in town so that none of them could represent Carmela when she asked for a divorce. That is perhaps ethical (relatively) for Tony Soprano, but not for lawyers.

Believe it or not, these things happen.

In Kenney v. Superior Court, 255 Cal. App. 2d 106, 113 (1967), the California Court of Appeals recognized that, particularly in smaller communities, defendants in medical malpractice actions may try to ‘corner’ the supply of ‘top-drawer’ medical experts by placing them on a committee to be consulted by the defense in every case against a doctor for malpractice. The court in Wang Laboratories, Inc. v. Toshiba Corp., 762 F. Supp. 1246 (E.D.Va. 1991) also expressed concern about such tactics. More recently, there have been several state bar opinions from other states addressing similar issues. It is unclear from the Texas opinion if the bar in that state was addressing a frustrating problem.

Q&A

Manufactured Disqualification of Experts and Counsel

Joseph Brophy

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If a lawyer shares confidential information with a prospective expert during preliminary discussions, in some cases the expert may be disqualified from providing testimony on behalf of or otherwise assisting the opposing party. The policy objectives favoring disqualification include preventing conflicts of interest, preserving the adversarial nature of litigation, and maintaining judicial integrity. This routine aspect of representation, however, can be turned into litigation skullduggery.

As an example, Lawyer A hires an expert for a client’s case and then discusses the case with other experts on the pretext that Lawyer A is considering whether to retain them. Lawyer A’s true purpose, however, is to ensure his client’s adversary cannot hire the expert. Is this ethical? No. Arizona’s Ethical Rule 8.4(a)(3) prohibits a lawyer from engaging in “dishonesty, fraud, deceit or misrepresentation.” In “neutralizing” the experts, Lawyer A has acted with the intent to deceive since the lawyer had no intent of actually retaining the experts. Importantly, misrepresentations under Rule 8.4(a)(3) do not have to be “material” to violate the rule. Additionally, Rule 4.4(a) provides: “In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.” The hypothetical above violates that rule as well.

The Rules of Professional Conduct have similar provisions to prevent similar tactics by litigants seeking to disqualify potential opposing lawyers, like in the Sopranos example above. Although Arizona has not addressed this specific issue with a written opinion, Comment 2 to Arizona’s Rule 1.18, provides that “a person who communicates with a lawyer for the purpose of disqualifying the lawyer is not a ‘prospective client.’” This strongly suggests that if a party shares confidential information with a lawyer solely to create a conflict of interest, then the lawyer may represent the party’s adversary in the same matter since the confidences were not disclosed in a good faith effort to obtain legal assistance. See also, Restate ment of Law Governing Lawyers §15, cmt. c. (In deciding whether to disqualify counsel, the court may consider whether the now-adverse party disclosed confidences in a good faith effort to determine whether to hire the lawyer or for the purpose of preventing the lawyer from representing an adversary).

Disqualification of an expert or lawyer is considered a very drastic remedy that is to be used sparingly. If that disqualification is sought or obtained based on a conflict manufactured for no other reason than to achieve a tactical advantage, then it can land the person seeking the disqualification in hot water. Act accordingly.

Joseph Brophy is a partner with Jennings Haug Cunningham in Phoenix. His practice focuses on professional responsibility, lawyer discipline and complex civil litigation. He can be reached at J-AB@JHClaw.

CONVENIENT ONLINE VOLUNTEERING

Arizona Free Legal Answers is a confidential question answering system that allows attorneys to give free legal advice online at a time and location convenient for you. Once you are registered as a volunteer, you can log on, decide whether you would like to answer any question and send your response via the website. As the volunteer attorney, you decide when to answer a question and when to end an exchange.

REGISTER AT:
https://onlineazjustice.org/Account/UseAgreement or contact Kim.Bernhart@azflse.org for info.
Supported Decision-Making Project: A New Alternative to Guardianship for Arizona Families

Natalie Luna Rose, Communications and Outreach Manager, ACDL

Turning 18 is a milestone for everyone in this country. You now have the right to vote, to serve your country and the right to oversee your life as you deem fit. It is a rite of passage. However, for individuals with intellectual and developmental disabilities (IDD), this transition can cause a dilemma for families on whether to file for legal guardianship.

At the Arizona Center for Disability Law (ACDL), we know that obtaining legal guardianship can be a tenuous process. It can be wrought with conflict and often, family members and caretakers are not given many choices, as full legal guardianship is presented as the only option. Legal guardianship strips away most, if not all, of the legal rights of an individual with IDD. However, legal guardianship is not the only option. There is an alternative. “Supported decision-making,” allows people with IDD to obtain the support they need from trusted advisors so they can make decisions about their lives without losing their rights in the process.

As partners with Southwest Institute for Families and Children, and The Arc of Arizona, ACDL will be establishing a supported decision-making information and training pilot project, funded through a grant from Arizona’s Developmental Disabilities Planning Council (ADDPCC). This pilot program aims to increase the number of legal, medical, legislative and other stakeholders who are aware of the viability of supported decision-making. This project will also work to increase the number of individuals with IDD who choose supported decision-making over legal guardianship and provide guidelines for continued education curriculum and evaluations for judges, lawyers and others in the legal profession.

ACDL has been a long-term advocate for supported decision-making. Through our trainings and collaborations, ACDL works to educate that full guardianship is not always the answer. And, the simple premise of supported decision-making is to allow people with disabilities the right to make their own decisions and stay in charge of their lives, with support from those they trust. With the goal of legally recognizing supported decision-making as an alternative to guardianship, this project will provide people with disabilities and their families with another option to consider as they transition into adulthood and beyond.

Arizona Supreme Court

The unsigned opinion summed up: “The court also concluded that the initiative description was misleading about the size of the proposed tax increase. The description stated that the initiative would raise “the income tax rate by 3.46% ... and by 4.46%” on certain high-income taxpayers; fairly modest increases. But the actual figures were much higher, with the court noting that “the measure would raise the applicable rates by seventy-six percent and ninety-eight percent, respectively” on those taxpayers.

Under the initiative, the affected tax rate, 4.54%, would rise to 8.00% for certain high incomes, and to 9.00% for higher incomes. The differences were indeed 3.46 and 4.46 in real numbers, but the percentage differences were 70% and 98% respectively. (The court noted that a 3.46% increase in the 4.54% rate would result in a rate of 4.59%, while a 4.46% increase would result in 4.74%)

Thus, the problem was basically one of nomenclature. Had the proponents simply written “that the rates applicable to the two high-income categories would be increased by 3.46 and 4.46 percentage points, the description would have been much clearer.”

The court added, “[I]f choosing to describe the increase in percentage terms, the initiative proponents made it appear more likely that the magnitude of the increase was slight rather than substantial.”

Thus, the description’s language was “at best” confusing, and “[m]isleading is the root of confusion.” The opinion continued: “Where the description lends itself to two sharply divergent interpretations with very different and significant ramifications, the danger of confusion is sufficiently great that it undermines any assurance that the voters received adequate notice of what they were signing.”

The unsigned opinion summed up: “The omission of the change in tax indexing paired with the confusing language about the magnitude of tax increases makes it clear that petition signers were not adequately informed about what they were signing ...” Voting to kick the initiative off the ballot were Vice Chief Justice Robert M. Brutinel and Justices John Pelander, Clint Bolick, Andrew Gould, and John R. Lopez, IV.

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–Welts, White & Fontaine, P.C., Nashua, NH

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