**Seven candidates run for seats on the MCBA board of directors**

Two incumbents and five newcomers have entered this year’s election to join the 2014 Maricopa County Bar Association board of directors. The incumbents are Michael Kieckshy and Norma Izzo Milner. The new candidates are Gail Barsky, Flynn Carey, Comt. Geoffrey Fish, Stanley Lutz and Matthew Meaker.

Voting begins Nov. 1 and ends Nov. 15. Winners will be announced shortly after. Eligible voters are all attorneys currently licensed to practice in Arizona who are members in good standing with both the MCBA and the State Bar of Arizona.

The board election will again be held electronically, with members receiving voting information by email.

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

Biographical information and photographs of the candidates can be found on page 7.

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**CourtWatch**

Daniel P. Schaack

**Appeals court broadens firefighter’s rule to cover police officers**

The Arizona Court of Appeals has extended the so-called “firefighter’s rule”—under which professional rescue personnel may not recover tort damages when injured in the course of rescuing a citizen—beyond firefighters to police officers. *Read v. Keyfauver*, No. 1 CA-CV 12-0007 (Ariz. App. Aug. 27, 2013).

The firefighter’s rule is actually an exception to another tenet, the “rescue doctrine,” under which an injured rescuer may recover damages from the tortfeasor whose negligence made rescue necessary. When a person negligently places another person into a perilous position, it is foreseeable that injury may befall a rescuer, who may therefore recover against the tortfeasor. The doctrine thus encourages people to come to the rescue of those in distress.

But the rescue doctrine is limited by the firefighter’s rule, under which firefighters who are injured in the course of performing their professional responsibilities are barred from tort recovery. The rule recognizes that firefighters already have the responsibility to undertake the very activity that the rescue doctrine hopes to encourage. The Arizona Supreme Court has stated, “the tort system is not the appropriate vehicle for compensating public safety employees for injuries sustained as a result of negligence that creates the very need for their employment.” Instead, “the public trains, equips, and compensates these public safety employees for injuries sustained in the course of their employment.”

The court has not previously extended the rule beyond firefighters, but it did note that the underlying rationale “would seem to apply equally well to police officers.” The case before the appeals court tested that conclusion.

Ross Read, a Department of Public Safety patrolman, had stopped a car on the interstate and was writing a traffic ticket when he heard the sound of squealing tires. He watched as Brittini Alexa Keyfauver’s vehicle rolled through the median and landed upside down in the opposing travel lanes.

Read radioed a report of the accident, grabbed a fire extinguisher and first-aid kit from his cruiser, and ran to Keyfauver’s vehicle, where he saw her scratching at the window. He told her to cover her face as he kicked in the window. Placing his foot on the doorframe, he pulled Keyfauver out, placed her on the ground and administered first aid until paramedics arrived.

Read’s heroes cost him: he injured his knee and was left permanently disabled. He sued Keyfauver, alleging that her negligent driving was the proximate and direct cause of his career-ending injury. Keyfauver responded that the firefighter’s rule barred Read from recovering.

Read argued that an exception in the rule applied to his case. According to the supreme court, an off-duty firefighter who happens upon an emergency scene and volunteers his services “is not paid to render aid, and may not be equipped to handle the situation, and may lack identification, safety equipment, or back-up support.” Thus, the rule applies only when a “firefighter ... is on the scene as the result of his on-duty obligations.”

Read asserted that he was essentially a vol-

See Appeals court broadens page 13
Get out and get involved!

For those of you who read my monthly column (and I humbly realize there may only be a few of you out there), you know that community service is an issue near and dear to my heart. I’d like to take a moment to tell you a bit more about two causes that I am passionate about.

When I am not at my day job of being an attorney (and/or presiding over the MCBA which, depending on the day, sometimes constitutes my day job), I am actively involved with Special Olympics of Arizona and the Phoenix Suns Charities.

For the Special Olympics, I am proud to be on the Leadership Council of a relatively new legal initiative known as the Special Olympics Advocacy Resource (SOAR) program.

As the name implies, SOAR provides legal and life skills advocacy to Arizona Special Olympic athletes. Essentially, we are a volunteer-lawyers program for these athletes and, in some cases, their families.

While this program has been around for almost three years, we have gained traction in the last 12 months and are looking to move forward with recruitment and fundraising efforts. I would be remiss not to note the involvement of other attorneys from around the Valley, including Mark Nerber and Randy Delgado at Kutak Rock, Josh Grabel at Snell & Wilmer, and several in-house attorneys at GE Capital Franchise Finance, including Todd Jones and Patti Dietz. We have also received much guidance and wisdom from Pat Gerrich at Community Legal Services.

And, as I finalize this article, I am just back from the Seventh Annual Special Olympics Breakfast with Champions. The keynote speaker was none other than Chairman and CEO of Special Olympics International, Tim Shriver. It was a great event and I was honored to hand out the award to the SOAR Champion of the Year, Tyler Ellsworth from Kutak Rock. If you would like to get involved with SOAR, please contact me directly and we will put you to work!

For the Phoenix Suns Charities, I am proud to be one of the founding members of Suns Charities 88, which is a network of business professionals and emerging community leaders devoted to raising much-needed funds for Arizona children.

Suns 88 Charities is named after the Phoenix Suns Charities inaugural year, 1988, and focuses on three main principles: professional development, collaborative partnerships and philanthropy. Young professionals from all over the Valley come together to raise money for worthwhile charities in Arizona. The membership rolls for Suns Charities 88 includes many MCBA members, who represent several of our 100% Club Firms.

And, I am excited to tell you about our first-ever Slam Dunk event on Friday, Oct. 18. The event begins at US Airways Center with a cocktail hour, and then moves to Central Avenue, which will be entirely blocked off for a community-style dinner on the street. We’ll migrate back to US Airways Center for dessert, drinks and music. This will be our biggest fundraiser of the year, and it is sure to be a great time. If you are interested in attending, please contact me directly or visit our website at www.nba.com/suns/slamdunk.

As my time at the helm of the MCBA starts to wind down, rest assured that I plan to stay active in our community. And, I would ask that each of you consider an annual “check-up” of your own community involvement. Of course, there are plenty of opportunities within the MCBA to get involved, but there are literally hundreds, if not thousands, of other charitable endeavors here in Maricopa County that are always in need of your time, insight and money. It’s time to get involved!
Attorneys who pick up grand jury transcripts will find them in a new location starting Nov. 1, 2013. Transcripts will now be available at the clerk’s Customer Service Center in downtown Phoenix.

Grand jury transcripts are only released pursuant to court order and only to the individual named in the court’s order. The court’s order will also include a date when the transcripts must be returned to the Customer Service Center. To obtain transcripts, the court order should be presented at the customer service counter.

The clerk’s Customer Service Center is located at 601 W. Jackson St. in downtown Phoenix, across from the sheriff’s new headquarters and next to the assessor’s administrative offices. Marriage licenses and passport applications are processed on the upper/entry level. Public Access Terminals, paper records, microfilm access and grand jury transcripts (effective Nov. 1) are available on the first floor of the attached parking garage facing Fourth Avenue at Jackson Street. Metered parking is available on the surrounding streets. For more information about clerk’s office locations and services, visit www.clerkofcourt.maricopa.gov.

Columbus Day reminder
The clerk’s office and the Maricopa County Superior Court in Maricopa County will be open for business Monday, Oct. 14 (Columbus Day) and closed for business Thursday, Nov. 28 (Thanksgiving Day) and Friday, Nov. 29.

As a reminder, when other holidays fall on a Saturday, the courts are closed the Friday before; when the holiday falls on a Sunday, the courts are closed the following Monday. The court’s mandated services, like Initial Appearance Court, are available 365 days per year.

During weekends and holiday closures, documents can be filed electronically where applicable and through external filing deposit boxes that are located around the Valley. Alternative filing information is available on the clerk’s website at www.clerkofcourt.maricopa.gov/alternative_filing.asp.

Maricopa Lawrence

Women lawyers must also ‘lean in’ to realize their career dreams

By Kimberly Alford Rice

After spending nearly two decades in law firms, I have witnessed and experienced enough discrimination to know from the front now the many challenges women lawyers face in law firms today.

Still a way to go
According to a 2012 National Association for Law Placement (NALP) survey on the demographics of equity, we should not be surprised to learn that among equity partners, about 85 percent are men, 15 percent are women, and fewer than 5 percent are racial/ethnic minorities. (The minority figures include both men and women, so the three figures add to more than 100 percent.)

In Sheryl Sandberg’s book, “Lean In: Women Work and the Will to Lead,” she states that women are hindered by internal barriers erected by ourselves, as well as society. “We hold ourselves back in ways big and small, by lacking self-confidence, by not raising our hands, and by pulling back when we should be leaning in,” she says, pointing out that women tend to internalize lifelong negative messages that say it is wrong to be outspoken, aggressive and more powerful than men. “We lower our expectations of what we can achieve,” she says. “We compromise our career goals. Compared to our male colleagues, fewer of us aspire to senior positions.”

Attitude is everything
Women lawyers must evaluate their mindset and check their “atty nads” before taking the first action.

Do you believe in what you are doing? Are you resentful that you are placed in “sell” situations? Do you begrudgingly attend networking events? You are not alone.

What we see very often is that women lawyers must “eat what they kill,” adapt a “give to get” mentality. As you attack the crucial elements of building a prosperous practice with fervor, do so by discovering an attitude of abundance by sharing your skills and expertise.

Make your network work for you
As much as you cannot develop a prosperous practice without cultivating solid relationships, it is imperative that you define your network and craft an actionable plan to:

- Get and stay connected with former classmates; co-workers (past and present); non-client referral sources; clients (past and present); qualified prospects; professional contacts, etc.
- Attend and become involved in targeted networking opportunities. Dependent upon your area of practice and the profile of your “perfect client,” you want to stay in front of those individuals who are in a position to retain you.
- Raise your profile in front of the aforementioned qualified target prospects.

New rules
A new rule of building a healthy practice is to accept that networking is not an event but a lifestyle. Clients may be right in front of you but if you are not looking (and, more importantly, not paying attention), a successful practice may become elusive.

You must develop a marketing mindset and pay close attention to your environment, to others around you and to always have your radar on high alert for opportunities. Not just client or retention opportunities but strategy alliance and partnership opportunities.

Design a business plan that works for you
Craft your business development blueprint by capturing specific actions in a written plan. There is no magic to this document but you will see a measurable difference in developing a strong practice by creating and effectively implementing a written business development plan.

This exercise requires some thoughtful consideration and gaining clarity of your career dreams and goals. You should define your target audience, find out where they go during and after work hours, and outline steps to get on their radar and achieve “top-of-mind” awareness.

One defining element that separates a business development plan that works from one that does not is your commitment to turn these interactions into transactions by:

- Having a written plan.
- Accessing your resources.
- Consciously communicating your needs.
- Do not be reticent in voicing what you need professionally.
- Executing your devised plan to help accomplish your career dreams and goals.
- Follow up with every person you encounter.

Summary
As women, we’ve always had to fight harder, be more resilient and push forward more than our male counterparts. While the professional landscape is creeping forward slowly, let us forge on to meet our professional goals.

Kimberly Alford Rice is principal of KLA Marketing & Associates, a business development advisory firm focusing on legal services.

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A five-point guide to number ranges

Sometimes a legal writing question catches me off-guard because it not a question I have seriously thought about before. How to show a range of numbers (without confusion) is one of those types of questions. Specifically, a colleague asked me whether the following constructions made sense:

Business X expects to clear just $12 – $23 thousand this year.

On first glance, this looked correct to me and made sense. My colleague was trying to say the range of results would from $12 thousand to $23 thousand dollars. On second glance, I could see that a reader could interpret that the range started at a very low number: $12. Because both interpretations are plausible readings, I dug into my files and prepared this list of helpful hints for stating numbers.

1. Use either punctuation (the en-dash or hyphen) or words (from/to, between/) to indicate a number range. Do not use both or mix them together.

2. If the number already includes an en-dash or hyphen, then use words to show the range.

Example: The information is on pages 65-1 to 65-13.

3. For ranges of money, state the denomination term on both sides of the range or write out each number in its full form.

Example: $2,000 – $23,000.

4. For page ranges in citations, use the en-dash to separate the first and last pages of the range. If the numbers consist of three or more numbers, drop any repetitive numbers and keep the last two numbers.

Example: Romer, 517 U.S. at 630–34.

5. To cite to multiple pages that are not located consecutively, separate the non-consecutive pages by commas.

Example: Meriter San. Bank, 477 U.S. at 64, 70–73.

Better: She ran the business from 1988 to 2001.

Not: She ran the business from 1988


Not: The log runs between pages 5 and 10.

Better: The log can be found on pages 5–10.

Due to the resignation of a current MCBA representative, there is an open seat on Glendale’s Judicial Selection Advisory Board. Interested candidates are invited to apply to fill the vacancy. The initial appointment would serve to complete the current three-year term, which ends April 23, 2015. The MCBA Board of Directors will select three candidates from among the applicants to forward to the city of Glendale, which will then select one to serve on the board. Candidates should be actively practicing lawyers residing in Glendale.

If you are interested in serving, please send a letter of interest and a resume to Executive Director Allen Kimbrough, MCBA, 303 E. Palm Lane, Phoenix, AZ 85004, or email to akimbrough@maricopabar.org. The deadline to apply is Thursday, Oct. 31, 2013.

Public Lawyers Division now open to private practitioners

As the result of a recent amendment to the bylaws of the Public Lawyers Division, membership in the division is now open to private practitioners who are MCBA members and have a practice involving, or interest in, governmental and public entities.

Dues for these associate memberships are $25 per year. To join, visit the MCBA website at www.maricopabar.org, or simply add the Public Lawyers Division on your MCBA dues statement.

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MCBA seeks candidates for Glendale Judicial Selection Advisory Board

The MCBA would like to honor the 2013 Hall of Fame inductees:

Pioneers
Louie Chalmers*
Edward Kent*
Calvin Udall*
Philip Von Ammon*

Modern Era
Don Bivens
The Hon. Robert A. Broomfield
Patricia Gerrich
The Hon. Andrew Hurwitz
Lillian Johnson
David Rosenbaum
The Hon. Michael Ryan*
The Hon. Roxanne Song Ong

*deceased

Join us as we celebrate their achievements at the MCBA Annual Meeting/Hall of Fame Luncheon on Oct. 30 at the Hyatt Regency Phoenix. For tickets, call Bree at 602-682-8588 or register online at maricopabar.org.

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Plus Two Judicial Panel Discussions:
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Join us after the program for a reception where
judges and attorneys can mingle informally

Judges Confirmed to Date:
Hon. Diane M. Johnsen, Chief Judge Arizona Court of Appeals, Division One
Hon. Peter B. Swann, Arizona Court of Appeals, Division One
Hon. Norman J. Davis, Presiding Judge, Maricopa County Superior Court
Hon. Janet Barton, Maricopa County Superior Court
Hon. Robert Oberbillig, Maricopa County Superior Court
Hon. Rosa Mroz, Maricopa County Superior Court
Hon. Christopher Whitten, Maricopa County Superior Court
Hon. Robert Miles, Maricopa County Superior Court
Hon. Douglas Rayes, Maricopa County Superior Court
Comr. Richard L. Nothwehr, Maricopa County Superior Court

For more information or to register contact Bree Boehlke
at bboehlke@maricopabar.org or 602-682-8588
or go to maricopabar.org

The State Bar of Arizona does approve or accredit MCLE. This activity may qualify for 3 CLE hours
Remembering Judge William P. French

By Hon. Ann A. Scott Timmer

I recently said goodbye to my longtime friend and mentor, William Patrick French. I met Bill in the mid-1960s when he joined my Phoenix law firm. Bill was a strapping man in his 20s, fresh off the Maricopa County Superior Court bench, and I was a newly minted attorney trying to learn the ropes. What followed was a decades-long friendship that influenced me professionally and blessed me personally.

By all appearances, Bill was an “All-American” boy — a fact I took great pleasure in teasing him about. He served as his high school senior class president, captain of the football and basketball teams, and homecoming king (he later married the queen, Peggy, and enjoyed a 50-plus year marriage until her death in 2009). He played football for Notre Dame and became a captain in the Marine Corps. As a young lawyer, he joined the Department of Justice and tossed the football around with the Kennedys. Bill participated in the trial and conviction of Jimmy Hoffa (enduring one uncomfortable moment when Hoffa spit in his face) and went to Mississippi to enforce what became the 1964 Civil Rights Act. After returning to his hometown of Phoenix in 1965, Bill practiced law for the next decade before being appointed to the Maricopa County Superior Court, where he eventually presided over the criminal division and was respected for his fairness.

Bill is probably best known for his role as special counsel, hired by the Speaker of the Arizona House of Representatives to investigate allegations involving former Arizona Governor Evan Mecham, draft Articles of Impeachment, and later serve as a lead prosecutor, along with Paul Eckstein, in the governor’s impeachment trial. This was one of the first cases I worked on with Bill, and it set the tone for our relationship.

For me, the Mecham impeachment trial meant trolling away in a windowless basement room of the House subsisting on bad food and trying to ward off the nausea that accompanied my first pregnancy while drafting motions, responses, witness questions and the like. I missed watching most of the action upstairs because I had my hands full behind the scenes.

As busy as he was, Bill noticed. In an effort to give me a higher-profile role in the proceedings, or perhaps to get me away from the junk food, Bill asked me to represent the House in a hearing on Mecham’s objections to a records subpoena. This meant arguing before television cameras on the Senate floor and answering questions posed by senators and the Chief Justice — a nerve-racking undertaking for a then-27-year-old lawyer with less than three years experience!

Immediately before the hearing, Bill took me aside and said he had asked me to take the reins because he had complete confidence I was the best person for the job, and I deserved the exposure. “But don’t make me look bad,” he finished, as I marched ostentatiously onto the Senate floor.

Bill’s words didn’t stop my knees from shaking that day, but his expressions of confidence rang in my ears for years to come, including today. (I prevailed, by the way, shaky knees and all.) What a generous man, thinking of my career and me when so many in that position might have taken every opportunity offered in the limelight. That, in a nutshell, was Bill — honorable, kind and generous.

In the ensuing years, Bill and I worked together on other exciting cases and trials. His confidence in me never wavered, and he always pushed me to take on new challenges. Although we stopped practicing together in the mid-1990s, we remained close friends, serving together on a nonprofit board to the end. When I was appointed to the Arizona Court of Appeals in 2000 and the Arizona Supreme Court in 2012, Bill spoke at each investiture. Both times, I reflected on how large a role Bill had played in my success by gently pushing me and instilling in me the importance of leading an honorable life within the profession and our community.

Bill is gone now. Although his imprint remains on the lives of friends and colleagues, his greatest legacy — and his most enduring one — remains his family. Bill has four daughters, one son, seven grandchildren and two great-grandchildren, each a wonderful, unique individual. Only one (so far) has followed Bill into the legal profession — the Honorable Colleen French, a commissioner with the Maricopa County Superior Court. Watching Colleen take the oath of office was one of Bill’s proudest moments.

How would Bill want to be remembered? I don’t think it would be as an All-American boy, a lawyer or a judge. I think he would want to be remembered as a man who tried his best every day to live a faithful life that bettered others. From my perspective, he succeeded.

Hon. Ann A. Scott Timmer is a Justice of the Arizona Supreme Court.

New law student orientation

MCBA was on hand at the new law student orientation at ASU’s Sandra Day O’Connor College of Law. We helped welcome in the new class and gave them information about the great services and programs that MCBA provides for student members.

New law students Zach Rosenberg, Ethan Bernardone, Daniel Bernardone and Peter Canova pose for a photo.

Chris Provera becomes the newest MCBA member.

New law students Ammon Orr and Ariel Davis.

Vivian Nava-Schellinger (Director of Admissions at ASU College of Law), Quiera Martinez and Latekva Memmezzwattay pose for a photo.

Ann A. Scott Timmer

William Patrick French

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FOR INFORMATION

Contact Laurie Williams 602-682-8585 or lwilliams@maricopabar.org

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2013 PRO BONO GOLF CLASSIC

Maricopa Lawyer
Candidate biographies for 2014 MCBA board of directors election

Guill Barsky is an attorney at Bestor & Louis who focuses on construction defect litigation and insurance defense in their main office in Phoenix. He has 20 years of experience and originally practiced in Pennsylvania, before he was admitted in Arizona in 2011. Barsky has devoted a significant amount of her career to serving the community. She began her interest in public service when former governor of Pennsylvania, Dick Thornburgh, appointed her to the Temple University Board of Trustees.

As a young lawyer, Barsky served on many bar committees. Her devotion to the legal community led her to be elected to the board of directors at the Delaware County Bar Association. She also was the No. 1 National Individual Fundraiser for City of Hope, raising over $30,000.

This year, she was elected to serve on the board of directors for the Scottsdale Bar Association. She also serves on the Phoenix Philanthropists board of directors. Her active volunteer experience includes Via Linda Senior Center, Duty, Free Arts of Arizona, U.S. VETS, St. Vincent de Paul and the St. Herman’s House.

Barsky obtained an L.L.M. in Trial Advocacy in 1994 from Temple University School of Law.

Flynn Carey is a founding member of Mitchell, Stein, Carey, PC, a boutique criminal defense and regulatory firm. In his practice, he defends clients throughout Arizona in violent crime and vehicular prosecutions. Advocates for professionals in licensing investigations and board proceedings, and assists companies and governmental entities in conducting internal investigations and litigating white collar and fraud cases.

Prior to founding MSC, Carey practiced in the criminal law and regulatory enforcement group at Gallagher & Kennedy, P.A., where his practice consisted of criminal, vehicular and administrative matters, along with complex civil litigation. He worked in information technology and library services for the city of Tucson for eight years before attending law school.

Carey is currently practicing as a partner in the Tempe office. His experience in conducting internal investigations and litigation is an asset to the MCBA.

Izzo Milner is on the board of directors for the Arizona State Bar and the board of directors for the Attorney Express. He is a founding member of the Arizona State Bar and a member of the Arizona State Bar Association. He is a member of the American Bar Association, serving as secretary of the Intellectual Property section.

Prior to joining Izzo Milner, he served as a judge on the Superior Court of Arizona in Maricopa County. He has been appointed as a judge pro tempore and IV-D Commissioner for the Superior Court of Arizona in Maricopa County. He has served as an assistant professor at the Phoenix School of Law, teaching Alternative Dispute Resolution. He is also a collaborative lawyer and a certified mediator. He is a member of the State Bar of Arizona's Family Law Section. He is currently serving on the Family Law Practice and Procedure and CLE committees.

Izzo Milner is on the board of directors for the Maricopa County Bar Association and is president of the Collaborative Divorce Professionals of Arizona. She is a member of the International Academy of Collaborative Professionals, the Association for Conflict Resolution and the American Bar Association. She is a member of the Arizona Bar Association. She is a member of the American Bar Association. She is a member of the State Bar of Arizona's Family Law and Alternative Dispute Resolution sections and currently serves on the Family Law Practice and Procedure and CLE committees.

Michael Kielksy is a partner in the Tempe law firm of Kielksy Rike, PLLC. He is a member of the State Bar of Arizona and California and is admitted to Arizona’s U.S. District Court. Kielksy's general practice areas include criminal defense and traffic ticket defense, as well as representing clients before professional and licensing boards at administrative hearings.

Additionally, he has training and experience as a mediator. Kielksy currently serves on the board of directors at MCBA and is the former president of the East Valley Bar Association. He has been a member of the Technology committee at the State Bar of Arizona and a member of the Lawyer Referral Service committee at MCBA.

Kielksy received his B.S. in computer science from Grand Canyon University and graduated summa cum laude with his J.D. from the Thomas Jefferson School of Law in 2001.

Matthew Meaker helped initiate last year’s reorganization of the MCBA Litigation section and, as the 2013-2014 chair, continues to work for its continued growth. He also serves as editor-in-chief of the MCBA’s “Arizonia Litigation Guide” (Fifth Edition).

In addition, Meaker is active with the State Bar of Arizona, serving as secretary of the Construction Law section. Meaker has been the beneficiary of having great mentors during his legal career, and his goals as a board member would include encouraging and assisting other lawyers in meaningful involvement with the MCBA.

In the broader community, he is a board member and legal counsel for the American Subcontractors Association of Arizona and, for several years, has been an active participant in the Arizona Town Hall.

Meaker, who graduated in 2003 from the James E. Rogers College of Law at the University of Arizona, is a shareholder at Sacks Tierney, P.A., where his practice focuses on construction law, civil litigation, development and corporate, and real estate law. While in law school, he served as the first-year term student member of the Arizona Board of Regents.

He and his wife Cara and their two children live in Tempe.
The Young Lawyers Division

This special section was prepared by MCBA’s Young Lawyers Division and highlights National Domestic Violence Awareness Month, which is designated for October of every year. In future special sections, the Maricopa Lawyer will feature articles on selected areas of substantive law or timely topics of importance to legal professionals.

Lucky 13: A dynamic year for the YLD

The YLD revamp

As lawyers, we are required to constantly look to the future for deadlines, mitigating client risk and, yes, even trying to predict the likely outcome of a case based on a variety of factors. Rarely, unless it is to buttress an argument or impeach a witness, do we have the opportunity to look back and analyze the past or assess the progress we have made.

However, doing so is a critical component to growth, calling the procedures or techniques that do not work and for ultimately measuring success. So often, we avoid going through the patterns of such an analysis because our day-to-day responsibilities keep our proverbial plates overflowing with tasks. Yet, to keep moving forward and to stay current in a dynamic environment, it is important to cease putting time and energy toward tasks that may be no longer necessary or relevant. It was with this philosophy in mind that I started my term in 2013.

My goal for the YLD for 2013 was to reassess the activities of each of the committees to ensure that valuable volunteer time was being spent in the most productive way possible. The YLD has seen, at any community outreach organization, the needs of the public change; therefore, the YLD has revised the committee activities. The YLD has made progress in this regard while simultaneously conducting its normal operations.

Committees

The YLD has five committees that are responsible for the planning and execution of annual events and activities. This year, the committees have done a great job of revamping their respective events.

Barrister’s Ball: In 2013 the YLD added casino games and a live band to the Barrister’s Ball entertainment repertoire. As a result, the ball was a smashing success raising over $12,000 for the beneficiary, the Maricopa County Bar Foundation.

Domestic Violence Committee (DVC): The DVC has two primary activities each year—the Legal Assistance to Women and Families (LAWS) Program and the Necessities Drive. After dwindling responses from area shelters, the LAWS program is exploring options for presenting legal seminars at the Phoenix Fresh Start Women’s Foundation and the courts. Additionally, LAWS will distribute its packets to other local organizations dedicated to helping victims of domestic violence. Please look for volunteer opportunities for LAWS in 2014.

Law Week: In addition to several other activities, the Law Week committee has had two successful years of presenting the Ask-A-Lawyer event at Valley farmers markets in the month of May. This year, the committee is working with the markets to schedule Ask-A-Lawyer events year round beginning this fall.

Race Judicata: The Race Judicata committee is responsible for organizing the annual race that takes place this year on Sunday, Oct. 6. With an eye toward efficiency, the committee has assessed local racing trends in an effort to increase funds paid to the beneficiary (the Domestic Violence Committee and YLD), i.e. analyzing whether such things as “swag” bags are necessary or contribute to the race experience.

Mentor/CLE Committee: The Mentor/CLE committee is essentially an initiatives committee with the specific goal of meeting the needs of young lawyers. This year, the committee hosted a CLE series directed at new lawyers starting their own practice.

Get involved

The YLD offers a plethora of opportunities for young lawyers, including CLE, volunteer activities, networking, and assisting in building a book of business through the maintaining of meaningful friendships and connections with colleagues. Rarely do you find so many activities in one place. If you are interested in becoming involved, you are welcome to attend a YLD board meeting, which takes place the first Wednesday of each month at 12 p.m. at the MCBA offices, or you may contact me at mskoma@alomaigroup.com.

Preparing for MCBA’s 2014 Law Week

By Casey Blais

My 4-year-old son, Adam, is quickly learning that not all days of the week are created equal. Saturdays to him mean no preschool and a good chance that we’ll find a place to devour some fresh donuts. Friday is a good day too, because naturally it’s close to Saturday. As he continues to grow, Adam will soon learn that not all national awareness days are created equal. Awareness days seem to be popping up everywhere, and for everything, including celebrating Teddy Bears, Couch Potatoes and even Making Your Bed. Although fun to celebrate, these days should not be confused with some of the more important national days, like Independence Day, Veterans Day and even the lesser known Law Day.

Law Day is sponsored by the American Bar Association and was officially created in 1961 by a joint resolution of Congress designating May 1st as the official date. The purpose of Law Day is to celebrate the rule of law in the United States. Each year, Law Day focuses on one of our country’s most important legal rights, thereby making it a national day truly worth celebrating.

In conjunction with Law Day, the Maricopa County Bar Association’s Young Lawyer’s Division (YLD) created “Law Week” to promote the rule of law within the greater Phoenix community. Believing one day is not enough, the YLD decided to dedicate a full week to the cause. The division has sponsored Law Week for more than a decade.

The main activities of Law Week include the Ask-A-Lawyer event for the general public, an essay contest for students and a CLE for practicing attorneys. Ask-A-Lawyer is an event that is held at local farmers markets (or similar locations), where citizens have the opportunity to meet lawyers and receive free advice on basic legal questions. This event will be held in spring 2014. Due to its increasing popularity, Ask-A-Lawyer will likely be held at other times of the year as well. This event gives YLD lawyers a great opportunity to serve their community while at the same time honing their client-intake skills.

Grade-school students across the Valley can participate in Law Week through our annual essay contest. In years past, the Arizona Supreme Court has allowed the grade-school essay winners to come to the courthouse for a tour and short presentation. In addition, see Preparing for MCBA’s 2014 page 14.
Race Judicata to benefit YLD public service projects

By Kiernan Curley

A fantastic way to celebrate the end of Arizona's hot summer and spend time outdoors is to join the Maricopa County Bar Association's Young Lawyers Division (YLD) on Oct. 6 for the Race Judicata at Kiwanis Park in Tempe. Race Judicata is a 5K run, walk or stroll for the legal community, family and friends who support the public service projects of the YLD, including assistance to victims of domestic violence.

Domestic violence is a problem that has devastating effects on families in every economic bracket in Arizona. According to the National Coalition Against Domestic Violence, one in four women will experience domestic violence in her lifetime. The legal system bears a unique responsibility in assisting domestic violence survivors.

Race Judicata provides another excellent opportunity for the legal community to provide help to victims of domestic violence, one of the primary public service projects of the YLD. Every participant of the race is encouraged to bring a new toothbrush or tube of toothpaste for donation to local domestic violence shelters. In addition, part of the race registration goes in part to help fund the YLD's Necessities Drive. In 2012, the drive provided three large cargo boxes full of toothbrush or tube of toothpaste to domestic violence shelters.

Every participant of the race is encouraged to bring a new toothbrush or tube of toothpaste for donation to local domestic violence shelters. In addition, part of the race registration goes in part to help fund the YLD's Necessities Drive. In 2012, the drive provided three large cargo boxes full of toothbrush or tube of toothpaste to domestic violence shelters.

Update from the YLD Domestic Violence committee

By Leslie A. Satterlee

October has been recognized as Domestic Violence Awareness Month. The recognition grew out of a single day, the “Day of Unity,” which started in October 1981 and was organized by the National Coalition Against Domestic Violence. The purpose of the “Day of Unity” was to connect groups that worked to end violence against women and children. The first observance of Domestic Violence Awareness Month took place in October 1987, and two years later in 1989, Congress passed a law designating October as National Domestic Violence Awareness Month.

This October, as has been the case for as long as I have been a part of the Young Lawyers Division (YLD), our group recognizes and supports the efforts to end domestic violence by organizing a Necessities Drive. The drive assembles a host of needed items, from soap to diapers to cleaning supplies to pillows, and donates them to local domestic violence shelters. Donations come from the MCBA membership, community members and part of the proceeds from the Race Judicata. The Necessities Drive needs volunteers to 1) provide and/or collect items and donations; 2) help organize the drive; 3) help to organize all the collected items to distribute to the shelters; or 4) sign up and support the Race Judicata.

Another component of the YLD Domestic Violence committee is our Legal Assistance to Women and Shelters (LAWs) Program. LAWs runs year round and offers one-hour seminars to men and women in shelters throughout Phoenix and the surrounding areas. The purpose of these seminars is to provide pro se information on how these individuals may represent themselves in court and to help to familiarize them with the legal system. The LAWs program has had success in the past with providing these seminars directly to domestic violence shelters in Phoenix. We are in the process, however, of exploring ways to expand the program to provide the seminars for a wider audience.

If you are interested in volunteering for the LAWs program, participating in a committee, or volunteering or donating to the Necessities Drive, please contact the Domestic Violence committee chair, Matt D. Lipczynski, at matt@myazlawn.com.

Leslie A. Satterlee practices family law at Gregg R. Woodnick, PLLC. She is the immediate past president and vice chair of the MCBA Young Lawyers Division.

Available Dates and Profiles now online for Arizona’s Premier ADR attorneys

Visit our free Arizona Chapter site at www.AZMediators.org

Need a top-tier mediator or arbitrator outside of Arizona? Please visit our free national database of 800 premier neutrals at www.NADN.org/directory
Self service center offers fillable forms online

The Maricopa County Superior Court initiated a pilot program offering online fillable PDF forms to court customers. The intent of the pilot program is to streamline the court’s online presence and improve navigation of its website.

The pilot, which began in early September, offers fillable PDF forms on the Self Service Center website. The program involves only a small selection of forms, such as name change packets, amendment of birth certification packets, property tax appeal packets and a packet that allows defendants to reduce a felony to a misdemeanor.

There are two main differences that users will encounter when accessing these forms. There will no longer be a text document version on the website and users will not be able to edit or customize the PDF forms. Currently, the text document version can be unlocked and edited.

The pilot program will run for approximately three months. At the end of the year, the entire forms library will transition to the fillable PDF format. The feedback gathered from this pilot will be used to ensure that the overhaul goes smoothly.

The fillable PDF forms will impact only online users. Hard copy packets will still be available for customers at the Self Service Center.

Law library fun facts: Did you know?

In the last fiscal year, the law library assisted 25,705 users via phone, email and in-person.
- We responded to 7,819 emails, which included 6,707 attachments.
- The law library answered 258 inmate letters.
- 2,626 books were checked out from the library.
- 4,716 books were used in the library.

Race Judicata

Come walk, run or stroll your way through the ninth annual Race Judicata 5K, 1-mile walk and Kids’ Dash. Proceeds benefit the Young Lawyers Division and survivors of domestic violence.

WHEN & WHERE
SUNDAY, OCT. 6 ■ KIWANIS PARK, 5500 S. MILL AVE., TEMPE.
Check-in and registration begins at 6 a.m.
5K race begins at 7 a.m.
The 1-mile walk starts at 7:10 a.m. and the Kids’ Dash begins immediately after the 5K race.

ENTRY FEES
EARLY BIRD REGISTRATION: $25 ■ SLEEP-IN (DONATION ONLY): $25
KIDS (UNDER 15): $12 (AFTER SEPT. 23): $17 ■ LATE REGISTRATION (AFTER SEPT. 23): $30

Every paid entrant receives a goodie bag, a Race Judicata T-shirt, and free food and drink after the race. Please also bring a new toothbrush or tube of toothpaste for donation to local domestic violence shelters.

Visit active.com for more info or to register.

Atorneys needed for Courthouse Experience Program

Whether it’s introducing kids to a legal career or teaching them about the law so they don’t end up on the wrong side of Arizona’s judicial system, volunteering to become a court guide in Maricopa County Superior Court’s Courthouse Experience program has many benefits.

To help children learn about accountability and expose them to the judicial system, the Maricopa County Superior Court is launching its 23rd year of the Courthouse Experience. The program provides students an opportunity to see and understand what really goes on behind courtroom doors.

But to reach these children and make a difference in their lives, the Superior Court needs the help of volunteer attorneys.

The program’s success is due greatly to volunteer attorneys who provide valuable time to lead student groups varying from sixth grade through college on a personal tour of the court. A Courthouse Experience often includes visits with judicial officers and staff, observations of court proceedings such as trials, visits to the jury assembly room and the law library, and informative question-and-answer sessions.

Your help is appreciated to make the Courthouse Experience continue its mission of introducing and educating students about Arizona’s judicial system. If you are interested in becoming a volunteer for this program, please email courtpio@mail.maricopa.gov.

OCTOBER 2013 CALENDAR

All events at MCBA Office, unless otherwise specified.

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>6</td>
<td>2013 Race Judicata 6 a.m., Kiwanis Park, Tempe</td>
</tr>
<tr>
<td>10</td>
<td>CLE: Powers of Appointment: The Good, The Bad and The Ugly 7:30 a.m. Executive Committee meeting 7:30 a.m.</td>
</tr>
<tr>
<td>11</td>
<td>Bench Bar Conference 1:30–5 p.m., Palmomar Hotel, Phoenix</td>
</tr>
<tr>
<td>17</td>
<td>Board of Directors meeting 4:30 p.m.</td>
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<tr>
<td>18</td>
<td>CLE: Social Security Benefits and Claiming Strategies for the Family Law Attorney 12 p.m.</td>
</tr>
<tr>
<td>25</td>
<td>CLE: Attorney Marketing on the Internet 12 p.m.</td>
</tr>
<tr>
<td>26</td>
<td>2013 MCBA Litigation Skills Institute: Expert Witness 7:15 a.m.–4 p.m.</td>
</tr>
<tr>
<td>30</td>
<td>2013 Maricopa County Bar Annual Meeting/Hall of Fame Luncheon 11:30 a.m., Hyatt Regency Phoenix</td>
</tr>
</tbody>
</table>

Please watch your MCBA E-News for updated information about meetings and events.
CLASSIFIEDS

To place a classified ad, please e-mail kdurazo@maricopabar.org or call (602) 257-4200.

SERVICES

EXPERT WITNESSES-Title Insurance and Escrow. More than 40 years professional experience. Founder or co-founder of a number of Title Agencies. Gregory A. Mihaelich, Sc. 602-618-6878 or gregmihaelich@earthlink.net.

PRIVATE INVESTIGATIONS & CERTIFIED PRIVATE PROCESS SERVICE-SOUTHWEST GROUP providing full service investigation and information support to attorneys. The SOUTHWEST GROUP has over thirty years of experience providing professional, ethical and reliable services. Serving all of Arizona and nationwide. Call today 480-947-4717. www.swgroupinvestigations.com AZ License #1610895 ACA 8319.

BACKLOGGED BOXES OF DOCUMENTS TO REVIEW? Discovery or non discovery Related? It doesn’t have to be that way. Rosemary Cook- $305 per hour 602-565-7511 or rosemarytcook@aol.com.

BUSINESS PARALEGAL AVAILABLE FOR CONTRACT WORK- corporate, business entity, transaction specialist. Experienced, knowledgeable, high quality. 602-334-9445.

OFFICE SPACE


NORTH CENTRAL LUXURY OFFICES with secrecy space, smaller offices available. Large and small conference rooms, kitchen, cable, quiet street, covered parking. North of Bethany at 714 East Rose Lane. Call Rick 602-202-2916.

MESA, 1310 E. SOUTHERN AVE, 6,352 SF of rentable office space available for single tenant lease. 10 private offices with class “A” upgrades featuring high-end finishes, custom iron doors and arched doorways, granite desks and countertops, fireplaces, floorings, chandeliers, kitchens, conference room with flat-screen TVs and mini- fridge. Lease beginning June 2014 with or without all furnishings, full-service copier and installed telephone system. Visit www.galleryPlazaAz.com for photos. Please call 602-356-7531 or e-mail rosemartindcook@aol.com.

LEGAL OFFICES FOR RENT- Up to 5 offices with 3 secretarial stations available. Near third street and Osborn. Conference room and kitchen facilities. Rent negotiable. Contact Elena at elna@bever- toone.com.

OFFICE SHARE (SCOTTSDALE AIRPORT AREA) A MUST SEE! Second story offices with beautiful artwork in reception area. Three attorneys’ offices with or without secretarial bay included. Rent includes use of conference room, internet access, law library and kitchen. Furniture and covered parking is available if needed. Easy access to 101 Freeway, full security system, affordable rates and immediate occupancy is available. Call Susan at 602-263-2020 or email mailva@talvez-gilbert.com.

SHARE SPACE WITH ESTABLISHED 30+ ATTORNEY AV-RATED law firm located in central Phoenix with direct freeway access. Completely remodelled with high-end finishes, conference rooms with smart board/full Av, library with librarian, kitchens, signage, on-site copier/office services. Call Patty 480-429-1099.

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NEWLY REMODELED LEGAL EXECUTIVE OFFICE SPACE- 7th St/Indian School location. Excellent location with easy access to 117, 110, 51, 202, 101, and Downtown courts. Included: conference room phones, copier, fax, kitchen, storage, conference rooms, admin bays. Benefits: free covered tenant and client parking, 24/7 card access, no building maintenance. State of the art security system, and shared use of conference room, file cabinets, work rooms/kitchen, and reception area.

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2003 CHAPARRAL SIGNATURE 320 BOAT. Twin Volvo 350 V8, Str Kohler Gen, Central Heat and A/C, Windless, Remote Stereo with iPod input, Steps, Twin Fridge/Freeze, Helm Wet Bar, 1 Axil Trailer, 240 Hours. (518) 229-0252 live in Phoenix, jdshaywords@aol.com.

VLP ATTORNEY OF THE MONTH

Family support, hard work and mentorship helped lay path for success

By Peggi Cornelius, VLP Programs Coordinator

Born and raised in Brooklyn, N.Y., attorney James W. Tuffin was introduced to Phoenix when his daughter graduated college and accepted an assignment with Teach for America in Arizona. “As soon as I looked around, I knew I wanted to be here,” he says.

Soon after Tuffin moved to the Valley of the Sun, he enrolled in the Volunteer Lawyers Program (VLP). In the past year, his outstanding commitment to pro bono work has earned him recognition as VLP’s Attorney of the Month. While engaged in establishing a solo law practice that encompasses appeals, insurance, health care, medical liability and general business litigation, Tuffin regularly makes time to conduct tenants’ rights advice clinics at VLP. In addition to providing legal counsel to tenants, he also accepts VLP case referrals for direct representation.

After obtaining a Bachelor of Science degree from Brooklyn College, Tuffin received his J.D. at Santa’s University and graduated magna cum laude. It was an accomplishment founded on an upbringing supported by his J.D. at Saint Johns University and graduated magna cum laude. It was an accomplishment founded on an upbringing supported by his family, faith, industriousness and grassroots experience in a law firm.

“My mother was a bookkeeper. As a single parent, she raised my older brother and me in a New York apartment,” he says. “Before attending law school, I held a job for several years at a local paint factory then later, employment as a process server and clerk at a small law firm provided the means for me to enter the profession I truly love. One of the partners became my mentor and I was able to work during the day and attend school at night.”

When talking about his pro bono commitment, Tuffin says he’s motivated by gratitude and occasions when “someone leaves the office with a better plan than he or she had coming in. Many tenants have intractable problems associated with lack of resources, and sometimes mental illness. It’s not like the movies, where the lawyer, by dint of personal brilliance, rights all wrongs and transforms the client’s life.”

Even though Tuffin would not credit himself with personal brilliance in the outcome of his client’s petition for guardianship of his adult child, his pro bono representation of one mother did positively impact her life and that of her autistic son. When she sought assistance through VLP, her teenaged son had narrowly escaped death and was in need of a guardian to ensure his continued progress in a therapeutic program that included health care, education and social skills.

In addition to his membership in the MCBA and Community Legal Services VLP, Tuffin has recently responded to the State Bar of Arizona’s campaign to enlist SBA members in providing pro bono assistance to veterans.

“I often interview and advise veterans in the VLP Tenants’ Rights Clinic,” he says. “I never realized how difficult life has become for so many of those who have done so much for the rest of us. I recently responded to the SBA’s recruitment campaign for volunteers to assist veterans. I hope the knowledge I’ve gained at VLP will be helpful there.”

Another enjoyable part of assisting pro bono clients is meeting volunteer lawyers,” he says. “If any of my colleagues are reticent to get involved, I’ll say, ‘Don’t be a chicken. You may learn something about an area of law beyond your practice area, and you will certainly learn something about yourself!’

Volunteer Lawyers Program Thanks Attorneys

The Volunteer Lawyers Program thanks the following attorneys and firms for agreeing to assist on 12 cases referred by VLP to help low-income families. VLP supports pro bono service of attorneys by screening for financial need and legal merit and provides primary malpractice coverage, donated services from professionals, training, materials, mentors and consultants. Each attorney receives a certificate from MCBA for a CLE discount. For information about ways to help, please contact Pat Gerrich at VLP at 620-254-4714 or pgerrich@clsaz.org.

ASSISTANCE TO NONPROFIT ORGANIZATIONS

Hadar Arannah
Snell & Wilmer
Adam Stegge
Snell & Wilmer
Adam Tate
Sanders & Parks

BANKRUPTCY

David Wm. Engelman
Engelman Berger
Margaret A. Gillespie
May Potenza Baraitz & Gillespie
Bradley Pack
Engelman Berger
Mallory D. Powers
Stone Law Group

Aranyak D. Schwartz
Schwartz Law Firm
Robert R. Teague
(2 cases)
Teague Law Group

CONSUMER

Amanda Sheridan
Snell & Wilmer

JUVENILE MATTER

Sarah J. Michael
Sole Practitioner

**PRO BONO SPOTLIGHT ON CURRENT NEED**

Lawyers, paralegals and law students who speak Spanish are needed to assist families with low incomes

OCTOBER 2013 • 11
THREE WAYS TO REGISTER

ONLINE
Register online at:
www.maricopabar.org. Click on "Calendar of CLE & Events" to access the CLE program listing on the right side.

DOWNLOAD PRINTED FORM
Follow directions for online registration. Then, from the program's online registration page, download a print registration form to email or fax.

PHONE
Call Bree at (602) 682-8588

PROGRAM LOCATION
Unless otherwise specified, all programs are held at the Maricopa County Bar Association office at 303 E. Palm Lane, Phoenix 85004.

ATTENDANCE POLICIES

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

LATE REGISTRATION: All registrations must be paid in full two business days prior to the program date or a late fee of $15 applies. For example, registrations for a September 17 program must be paid by September 15 in order to avoid the late fee.

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

CANCELLATIONS/REFUNDS: Refunds, less a $10 fee, will be issued only if the MCBA receives your cancellation, in writing by mail, fax at (602) 682-8589, or email bboehlke@maricopabar.org at least two business days prior to the program.

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

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, indicating the indicated hours of professional responsibility (ethics), if applicable.
Appeals court broadens firefighter’s rule
CourtWatch, continued from page 1

DPS regulations did not require his heroes and that he would not have been disciplined had he not extricated her from the car. Thus, he concluded, he was acting as a volunteer when he sustained his injury:

Judge Michael J. Brown rejected Read’s argument and held that the firefighter’s rule extended to him. The critical question was whether Read was on the scene as a result of his on-duty obligations, Brown held, and thus Read’s reliance on his DPS-mandated responsibilities was misplaced.

“Application of the rule ... does not ... turn on his responsibilities and obligations once he arrived on the scene,” Brown wrote. “Rather, the key to the analysis is whether Read’s on-duty obligations as a law enforcement officer compelled his presence at the scene in the first instance.” He noted that the supreme court had held that “application of the rule should not turn on a firefighter’s conduct at the scene,” as that could lead to arbitrary results based on the different policies of individual governmental units.

Read, Brown held, was at the scene because of his professional obligations: he was a highway patrolman writing a ticket on the side of the highway when Keyfauver had her wreck. “Read was not acting as a volunteer for purposes of the rule when he removed Keyfauver from her vehicle,” he concluded, and therefore “his negligence claim against it is barred.” Joining Brown were Judges Patricia A. Norris and John C. Gemmill.

When a conservator and its attorneys provide reasonable, cost-effective services for a protected person, may the probate court slash their compensation simply because the protected person’s assets are illiquid? A panel of Division One of the Arizona Court of Appeals faced that question in In re Conservatorship of Mallet (Sun Valley Group v. Mallet), No. 1 CA-CV 12-0538 (Ariz. App. Aug. 8, 2013), and held that while the probate court may take the fact of illiquidity into consideration, it may not slash the conservator’s and attorneys’ based on it alone.

Helga Mallet evidently could not manage her assets. For example, she had sold a valuable car to for less than a quarter of its value, and she had lost a million dollars in an investment scam. So, a conservatorship and guardianship were set up for her. Sun Valley Group served as her conservator and guardian for three years, with the law firm of Warner, Angle, Hallam, Jackson & Formanek providing legal services.

When Sun Valley resigned, it asked the probate court to approve fiduciary fees and costs of approximately $97,000 and Warner’s legal fees of $28,500. The court found Warner Angle’s legal services “reasonable, necessary, and in the best interests of Mallet,” and “for the most part” it found the same for Sun Valley’s services.

The court nevertheless cut the fees in half. It explained that although Mallet’s estate was worth over $800,000, it was mostly illiquid real estate holdings. The court concluded that “Mallet cannot afford the various fiduciary and attorney’s fees” and that it was therefore not in “her best interests to approve the total fees requested ... even though they were rightfully earned.”

Sun Valley and Warner Angle appealed, arguing that the probate court should not have halved fees that were both reasonably incurred and in Mallet’s best interests. The appeals court held that the probate court had performed an inadequate analysis.

Writing for the court, Judge Kent E. Cattani held that while the probate court could consider the illiquidity of Mallet’s assets, that factor should not have been decisive. He noted that under the applicable statutes and court rules, the fiduciary and its attorneys “have a duty to undertake a cost–benefit analysis at the outset and throughout their representation to ensure that they provide needed services that further the protected person’s best interests and do not waste funds or engage in excessive or unproductive activities.” In turn, Cattani noted, courts considering whether to grant fee requests must decide “whether probable benefits exceed costs.”

Cattani noted that the estate’s size and illiquidity are relevant factors in that analysis. But, he wrote, “the more significant inquiry is the degree to which the services will potentially benefit or have benefited the overall estate.”

Liquidity is relevant, Cattani held, because “the total cost of services for an illiquid estate must include the cost of liquidating assets to pay for those services.” The court should consider whether without the fiduciary’s or attorneys’ services, a substantial but illiquid estate “would be depleted in an amount greater than the total cost of services (including the cost of liquidating assets to provide funds for payment).” If so, then “the services are likely reasonable and the court should approve the payment of fees, illiquidity notwithstanding.”

The probate court, Cattani noted, had found that the services provided were reasonable, necessary, and in Mallet’s best interest, but that Mallet could not afford to pay the fees charged.

“That rationale,” he wrote, “without more, is insufficient.” Although the probate court has considerable discretion, Cattani held that it had abused that discretion here. He therefore remanded the case to the probate court to conduct a proper cost–benefit analysis. Joining him in that judgment were Judges Jon W. Thompson and Philip Hall.

Drafting Charitable Remainder Trusts

This year’s Annual Wine CLE will be a Regulatory Roundtable featuring Henry Darwin, director of the Arizona Department of Environmental Quality; Sandy Fabritz Whitney, director of the Arizona Department of Water Resources; and William (Bill) Wiley, director of the Maricopa County Air Quality Department.

Additional information on the event will be available soon.

LOCATION
Queen Creek Olive Mill
25062 S. Meridian Rd., Queen Creek, Arizona 85142

COST
MCBA members: $95
MCBA Environmental and Natural Resources Law Section members: $90
MCBA Student members: $35
Non-members: $145
Additional guests: $35

RESERVE YOUR SPOT TODAY!
Register online at maricopabar.org under “CLE/EVENTS” or call Bree Boehlke at 602-682-8588.

THURSDAY • NOVEMBER 14
7:30 - 9 AM (Breakfast included)

More than just copying the IRS sample form. This session will begin with illustrations of how CRTs work (and IRS requirements), then move to analysis of trust provisions and finish with a discussion of practical ways of dealing with some of the ethical issues involved.

PRESENTER:
Mark Mostiz, Attorney at Law

COST:
• MCBA members: $62.50
• MCBA Estate Planning, Probate and Trust members: $55
• MCBA Paralegal & Public Lawyer Division members: $40
• MCBA Student members: $10
• Non-members: $102.50

Most CLEs are available for simultaneous webcast or later viewing through West LegalEd at http://tiny.cc/kg4cjjw (Webcast icon indicates confirmed webcast)

Sponsored by
Environmental Law and Natural Resources Section
2 hours CLE; credit available

This year’s Annual Wine CLE will be a Regulatory Roundtable featuring Henry Darwin, director of the Arizona Department of Environmental Quality; Sandy Fabritz Whitney, director of the Arizona Department of Water Resources; and William (Bill) Wiley, director of the Maricopa County Air Quality Department.

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THURSDAY • NOVEMBER 14
7:30 - 9 AM (Breakfast included)

Drafting Charitable Remainder Trusts

Sponsored by: Estate Planning, Probate and Trust Section

1.5 hour CLE; credit available

Charitable Remainder Trusts are useful estate and tax planning tools; every estate-planning attorney should be familiar with them. However, writing a Charitable Remainder Trust that is appropriate for the client involves

MCBA members: $62.50
MCBA Estate Planning, Probate and Trust members: $55
MCBA Paralegal & Public Lawyer Division members: $40
MCBA Student members: $10
Non-members: $102.50

Most CLEs are available for simultaneous webcast or later viewing through West LegalEd at http://tiny.cc/kg4cjjw (Webcast icon indicates confirmed webcast)
Employers face first EEOC complaints for asking about family medical history

By Jessica Post

The Equal Employment Opportunity Commission (EEOC) is cracking down on employers when their contracted health care providers ask applicants or employees about their family medical history. In just the last month, the EEOC has filed two complaints under the Genetic Information Nondiscrimination Act (GINA).

Specifically, the complaints in EEOC v. Founders Parison, Inc. and EEOC v. Fabricant, Inc. allege that these employers improperly acquired family medical history as part of their pre-employment, return-to-work and/or annual medical exams. Although both complaints include claims brought under other federal discrimination statutes, it is clear that the EEOC is now including GINA claims if an employer’s health care provider asks for family medical information.

Congress passed GINA in 2008 to prevent employers from discriminating against an individual based on his/her genetic information and from acquiring genetic information (other than in a few limited situations). As a result of GINA’s prohibition against acquiring genetic information, the EEOC has taken the position that a doctor or health care provider may not, as part of a pre-employment or return-to-work physical, ask an applicant or employee about his/her family’s medical history.

Up until now, there has been a certain amount of mystery shrouding what an EEOC-initiated GINA claim would look like. In light of these two recent cases, employers should take two steps to avoid compliance or discrimination charge involving GINA. First, employers should include the following language on certain forms they provide to health care providers requesting medical information about applicants or employees and take advantage of the “safe harbor” provision in the GINA regulations:

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. “Genetic information,” as defined by GINA, includes an individual’s family medical history, the results of an individual’s or family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assisted reproductive services.

The EEOC has indicated that if employers include the customary language in their forms requesting medical information pursuant to the Americans with Disabilities Act, the Family and Medical Leave Act or other request for leave, then any family medical information the employer acquires will be deemed “inadvertent” and therefore will not be a violation of GINA.

Second, employers should instruct their health care providers in writing to not ask questions about the applicant’s or employee’s family medical history at any pre-employment, return-to-work or other employer-ordered medical exam. In this letter, the employer should cite GINA and explain that health care professionals who provide medical exams for employers are not permitted to ask for family medical information. The letter also should instruct health care providers that if they inadvertently receive family medical history during the exam, they should not provide this information to the employer.

If employers take these two steps, they will greatly reduce the risk of having a GINA claim brought against them or included in another complaint for additional leverage.

Preparing for MCBA’s 2014 Law Week

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tion, the YLD is considering other ways to involve students in Law Week activities, such as mock trials, classroom presentations and other events. Be on the lookout for upcoming events in 2014.

The CLE for attorneys will address the 2014 Law Week theme of “Why Every Vote Matters,” which underscores the importance of our constitutional right to vote. Voting is essential to creating a true democracy, which President Abraham Lincoln so eloquently described as “government of the people, by the people and for the people.” Regardless of your political leanings, the right to vote is of utmost relevance in today’s political cli-
Now and then: Technology, the attorney and you

By Becky Snyder

Technology has come a long way, and so have the ways that attorneys practice law.

In the legal field, we have research technology and software made specifically for the type of law practiced, software programs that correct themselves and suggest how technology and software made specifically for the type of law practiced, software programs that correct themselves and suggest how type of law practiced, software programs that correct themselves and suggest how type of law practiced, software programs that correct themselves and suggest how type of law practiced.

The list of ways that advancements in technology have changed the way law is practiced and law firms are run could go on forever, but this has led to one very big difference in the legal field: pre-technology personnel and post-technology personnel.

The differences between the two are not quite as apparent when comparing assistants. Most learned how to use the technology as it came out and/or was implemented, and they are the ones who run the show and keep the attorney’s practice running smoothly and efficiently. The difference this has made for pre- and post-technology attorneys, however, is much larger. It has led to two very distinct types of attorneys: the old-school attorney and the self-sufficient attorney. Both types are equal in every aspect of practice and ability; the only difference being whether or not they know and expect of practice and ability; the only difference being whether or not they know and expect.

In my experience, most old-school attorneys want their calendar and tasks to be given to them in paper format. They prefer legal research to be done with books and they want electronically exchanged information printed for their review. They also want dictated documents and paper files.

Self-sufficient attorneys, many of whom went to law school in the age of taking notes on their personal laptops instead of paper, are more often familiar with software and legal research programs, and they are able to create their own calendar appointments. Some type just as fast, if not faster, than their assistants.

These advancements in technology and the differences in the type of attorney you work with will eventually determine your job responsibilities. Do you research and write your own motions? Do you shell the motions and type in dictation? Do you control your attorney’s calendar and everything added to it? Do you use Bates labels on paper or put together exhibits via a scanning program? For attorneys, want their calendar and tasks to be given to them in paper format. They prefer legal research to be done with books and they want electronically exchanged information printed for their review. They also want dictated documents and paper files.

When training, I stress that learning your attorney’s style is paramount to being productive and happy. All attorneys want to work with a paralegal who learns their quirks, needs and working style and is able to assist them in the most efficient manner possible.

Becky Snyder is a managing paralegal at Hammer & Hultgren, P.C. She sits on the MCBA Paralegal Division board of directors.

Race Judicata to benefit domestic violence survivors

Race Judicata has become an event that has something for everyone. So, as we leave the blast furnace of summer and before we reach the chilly days of winter (well, maybe in Flagstaff at least), come join us for a fun time outdoors.

Kiernan Curley is the Race Judicata 2013 co-Chair and the 2012 chair. He is a probate litigation attorney with Carlyle & Allison, LLP, in Phoenix.
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