Candidates for MCBA Board of Directors invited to declare

Members interested in running for one of five available seats on the MCBA’s Board of Directors are invited to declare their candidacy.

Members with terms expiring at the end of this year are Hon. Keelan S. Bodow, Lyzzette Bullock, Julie LaFave, Amanda Sheridan and Sarah Smith. Each of the five positions consists of a two-year term beginning in 2015.

Board members attend monthly meetings, liaise with one or more MCBA sections, divisions, or committees, and support the work of the association. Candidates must be licensed Arizona attorneys or judges, active members of the MCBA, and in good standing with both MCBA and the State Bar of Arizona.

Candidates are invited to declare their candidacy. Members interested in running for one of the five available seats on the MCBA’s Board of Directors are invited to declare their candidacy.

Candidates are asked to:

1) Submit a letter of candidacy to MCBA

See Candidates for MCBA Board page 13

Summer Social highlights diversity

Interns and externs plus summer and first-year associates enjoyed the MCBA’s Annual Summer Social in June at the bar’s office. Sponsored by the MCBA Diversity and Inclusion Committee, the popular event gives young attorneys and attorneys-to-be a chance to meet, engage and network.

See Summer Social Highlights page 12

Voyeurism isn’t limited to private places, court rules

Striking a blow for common sense, Division Two of the Arizona Court of Appeals has held that a man who peeks up a woman’s skirt is guilty of voyeurism, even if he does so in a public place. State v. Gongora, No. 2 CA-CR 2013-00096 (Ariz. App. June 23, 2014).

In September 2011, a woman was shopping in a store when Agustin Gonzalez Gongora came up behind her, crouched down, and looked up her dress. A store detective witnessed the incident and asked Gongora to leave, taking down his license-plate number when he did. When police tracked Gongora down, he admitted the act and said “it was like a romantic thing.” With the help of the store’s video tape of the incident, Gongora was convicted of voyeurism, a violation of A.R.S. § 13-1424.

In the trial court and on appeal, Gongora contended that the prosecution failed because the state could not show that the victim reasonably expected not to be viewed while in public. The incident occurred while she was in a store, he noted, where she could be seen by others, including customers and employees.

The statute makes it illegal to “knowingly invade the privacy of another person without the knowledge of the other person for the purpose of sexual stimulation.” An invasion of a person’s privacy involves two things. First, the victim must have “a reasonable expectation that the public will not be [sic] viewed or recorded.” Second, the viewing must involve one of several situations, such as when the victim is fully or partially undressed, is engaging in sex, or is urinating or defecating. Another situation, the one applicable here, is “the viewing of the person’s genitalia, buttock or female breast, whether clothed or unclothed, is engaging in sex, or is otherwise visible to the public.”

Gongora argued that illegal voyeurism does not occur unless the victim reasonably expects not to be viewed at all, from any perspective. In other words, the victim has to be in a place where she expects complete privacy. He relied on a Washington Supreme Court decision holding that that state’s voyeurism statute did not apply to upskirt photographs taken in a public place.

On behalf of the Arizona court, Judge Michael O. Miller rejected Gongora’s argument, writing that “the statute’s language does not require that the person reasonably expect not to be viewed from any perspective, as Gongora argues.” Instead, he wrote, the statute “requires that the person has a reasonable expectation that she will not be viewed in a manner described” in the statute.

The Washington case was different, he explained, because the Washington statute was different. It applied to a person who “is in a place where he or she would have a reasonable expectation of privacy.” Arizona’s statute, he noted, is not tied to place. He also rejected Gongora’s argument that the legislative history showed that the legislature intended the statute to apply only to private places.

“A fully-clothed person in a public place has a reasonable expectation that the public will not be able to view parts of her body as if she were not clothed,” Miller wrote. “Thus, the plain language of Arizona’s voyeurism statute includes an offense committed while...
September 20, 2014 … Let’s do this!

Like most MCBA members, I celebrate the birthday of my loved ones, my wedding anniversary and most major holidays on an annual basis. Nothing too extravagant. After all, a similar event will recur only 12 short months later.

When my wife and I celebrated our 10-year anniversary, I marveled at the event’s significance. As you could imagine, putting up with me for a decade is no easy feat.

Upon my parents’ 50th wedding anniversary, the whole extended Kastin family gathered to celebrate what I considered an important milestone. At the time this article went to print they were still happily married!

And, like many of you, I have vivid memories of how in 1986, a tremendous amount of hoopla was made over the return or Halley’s Comet, and how no one on Earth would witness that occurrence for another 75 years. If you’re reading this article, then you’re on the cusp of participating in an event that will make those previously mentioned landmark occasions seem relatively insignificant. On September 20, 2014, the MCBA will be pulling out all the stops to celebrate its 100th year of being THE place where the individuals comprising the Maricopa County legal community connect, and how no one on Earth would witness that occurrence for another 75 years.

If you’re reading this article, then you’re on the cusp of participating in an event that will make those previously mentioned landmark occasions seem relatively insignificant. On September 20, 2014, the MCBA will be pulling out all the stops to celebrate its 100th year of being THE place where the individuals comprising the Maricopa County legal community connect, and how no one on Earth would witness that occurrence for another 75 years.

This is our opportunity to celebrate the accomplishments of the MCBA over the past 100 years, and to toast each of you for your contributions, however large or small, to our organization.

This dinner will be much more than just a champagne toast and a gathering of long-time friends. On display will be historical artifacts illustrating a decade-by-decade history of the Association. It will incorporate this year’s induction ceremony of new members into the Maricopa County Bar Hall of Fame as well as honor our 2014 Member of the Year. It will serve as a reunion of past leaders and current members. And, it will be the type of networking opportunity that lawyers, judges and other members of our legal community will be able to enjoy, well, only once in 100 years.

Of utmost significance to me, this event is NOT intended to toast only the MCBA’s past and present leaders. This year’s celebration is aimed at a far more important member of our organization—you! If you’ve ever attended an MCBA CLE program, whether in the audience or as a presenter, we want to celebrate your participation.

If you’ve ever contributed to the Maricopa County Bar Foundation, the MCBA’s charitable arm, however small, the donation, whether in the form of dollars or service, we want to thank you.

And, if you were or are a member of the MCBA, whether you served as president of a section or division, merely attended the Baristers Ball back in the day or networked at the Annual Meeting when “real MCBA business” was tended to, we want to celebrate your involvement and continuing support.

Please join us as we embark on our second century of ensuring that the members of the Maricopa County legal community have access to one of the most prized resources a bar organization can make available to ensure a long lasting and successful professional existence—each other.

Happy 100th Birthday MCBA!

As always, we want your input, welcome your insight and hope to hear from you. But this time, instead of an email, please join us on September 20 and share your thoughts, comments and ideas in person.

Until next month!
Knowing your statute of limitation

As attorneys we are frequently barred with deadlines. Some are critical and others are not. Knowing the applicable statute of limitation is extremely important for you as an attorney and for your clients. Failing to file a lawsuit before the time limit expires may forever preclude your client’s lawsuit and could constitute malpractice. As a defense, it could save your client thousands and lead to an early dismissal of a lawsuit.

What is the statute of limitation?

Statute of limitation is the time limit within which a lawsuit must be brought. A lawsuit must be filed before the time limit or else it will be forever barred. The purpose of the limitation is to protect defendants from stale claims where the plaintiffs have slept on their rights. The applicable statute of limitation depends on the type of litigation or the nature of the criminal offense. In Arizona, the statute of limitation for civil cases ranges from 180 days to six years. Below is a table of some common statute of limitation:

<table>
<thead>
<tr>
<th>Category</th>
<th>Two Years</th>
<th>Three Years</th>
<th>Six Years</th>
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<tr>
<td>Negligence</td>
<td>A.R.S. § 12-542</td>
<td>A.R.S. § 12-543</td>
<td>A.R.S. § 12-548</td>
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<tr>
<td>Fraud</td>
<td>A.R.S. § 12-542</td>
<td>A.R.S. § 12-543</td>
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<td>Action Against Public Entity</td>
<td>A.R.S. § 12-821.01</td>
<td>A.R.S. § 12-543</td>
<td>A.R.S. § 12-548</td>
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Additionally, there are more than a hundred other statutes of limitation that apply to specific civil and criminal causes of action. As such, it is imperative that we as attorneys understand the applicable statute of limitation for each potential claim.

Use the MCBA’s Statute of Limitation Guide

To assist attorneys, the MCBA has created a 170-page Guide to Arizona Statutes of Limitation, which compiles all of the relevant statutes of limitation with legal references. This tool is invaluable for helping you identify the statute of limitation. The cost of the Guide is $55 for MCBA members, which includes a downloadable PDF for greater accessibility and quick searches. You can order a copy of the Statute of Limitation Guide online (www.maricopabar.org) or by phone (602-682-8858).

The categories included in the Guide are Commercial Law, Criminal Law, Family Law, Insurance Law, Labor Law, Personal Actions/Injuries, Probate, Real Property, and Taxation. Within each category you will find summaries with more than 160 legal causes of action and their applicable statute of limitation. Do yourself a favor. Order the guide and save yourself the time and effort of researching dozens of limitation periods.

When does the statute of limitation period begin?

The general rule is the limitation period begins to accrue whenever one person may sue another. Centamore v. Scruton Collection Service, Inc., 118 Ariz. 452, 577 P2d 738 (App. 1978). Ordinarily that period is the date of the injury.

However, in certain circumstances, Arizona has adopted the “discovery rule,” which may provide for a different accrual date. Under the so-called discovery rule, a cause of action accrues when the plaintiff knew or should have known by reasonable diligence that the alleged injury occurred. Galati v. Rosenfeld & Henderson (Prudential Ins. Co. of America), 182 Ariz. 586, 591, 898 P2d 964, 969 (1995). “The important inquiry in applying the discovery rule is whether the plaintiff’s injury or the conduct causing the injury is difficult for plaintiff to detect, not whether the action sounds in contract or in tort.” Id.

Tolling and other considerations

In limited instances the statute of limitation can be “tolled,” meaning it stops running for a certain period of time. The typical reasons for tolling in Arizona might include: (i) the person is a minor; (ii) mental incompetence; (iii) bankruptcy and the automatic stay. While filing a lawsuit ordinarily tolls the statute of limitation, such is not the case if the lawsuit is dismissed without prejudice for failure to prosecute. Supp. v. Nils, 128 Ariz. 43, 46, 623 P2d 832, 835 (App. 1980).

Using the statute of limitation as a defense

The statute of limitation is an affirmative defense that must be pled or it is waived. Academy Life Ins. Co. v. Odorizzi, 165 Ariz. 188, 797 P2d 727 (App. 1990). Where the allegations of the complaint are conclusively barred by the statute of limitation, the defendant can file a motion to dismiss. However, if discovery is needed to prove the claims are barred, then a motion for summary judgment is proper since the application of the statute of limitation is determined as matter of law.

Although attorneys face many deadlines, it is extremely important to identify and comply with the applicable statute of limitation. While most of us are familiar with the more common limitation periods, there are hundreds of claims with differing limitation periods. I suggest using the MCBA’s Guide to Arizona Statute of Limitation to assist you in your practice.
Tips for sounding smooth

I received a thoughtful question from a reader recently: What are your top tips for polishing a client letter? Specifically, letters are the bread-and-butter of what lawyers do, and the reader wanted some tips on editing for improved tone and overall smoothness.

The reader noted that many letters are drafted quickly or are modeled on past letters and edited just for basic information (names, dates, information) but not for tone. Following are my tips for taking a letter from good to better.

1. Use short sentences. I repeat this advice in many columns, and I stick by it. Readers have short attention spans, and digesting legal information can be difficult. By chunking the information in smaller pieces, the reader is better able to follow. My tip is to search for the letter for the use of the word “and” and try to eliminate as many of them as possible. Focus on the “and” that joins two independent sentences. You can easily replace it with a period or semicolon.

2. Use one-word transitions when possible. Personally, I find letters pose difficulties for writers because it is hard to transition from one point to the next. Writers end up relying on clunky phrases to move from point to point. My tip is search for the words “we” or “I” and take out any transition phrases using these pronouns: “we note that,” “I have discovered that,” and “it is clear to us that.” These phrases can be eliminated or replaced with a simpler transition, such as “next” or “thus.”

3. Avoid stuffy legal-sounding phrasings. These phrases still lurk in many model letters and examples I find on the Internet. My tip is to search for these stuffy phrases and replace them with simpler words.

   Enclosed please find (Here is/If I have enclosed)
   At your earliest convenience (as soon as you can)
   Pursuant to your letter (accordling, under)
   With reference to (regarding, concerning)
   In the event that (if)

   For the purpose of (for)

4. Use second person and contractions in your letters. A lawyer should generally have a congenial tone. My tip is to search for the word “you” to see if contractions are used consistently in the letter. Compare the following two sentences:

   A business owner should not use that form.
   You shouldn’t use that form.

Avoid legal citations unless necessary. My tip is search for “Arizona law,” “Arizona statute,” or any transition phrases using these words “we” or “I” and take out any transition phrases using these pronouns: “we note that,” “I have discovered that,” and “it is clear to us that.” These phrases can be eliminated or replaced with a simpler transition, such as “next” or “thus.”

5. What does that mean? If your hourly rate increases on Jan. 1, 2015, notify your clients before that date, even if an invoice will not issue until February. If it is not enough to inform your client of increased hourly rates when the invoice is issued, the client needs to be aware of increased rates before you do the work at the higher rate.

Fee agreements are an oft-overlooked part of the practice of law. I strongly recommend that lawyers review their standard fee agreements on a regular basis and review each individual fee agreement to ensure its compliance with the Rules of Professional Conduct.

Russell Yurk is an AV-rated attorney with Jennings, Huang & Cunningham, LLP, in Phoenix. His practice focuses on professional liability, lawyer discipline and complex civil litigation. He serves as the chair of the Defense Research Institute’s Lawyers’ Professionalism and Ethics Committee and is a judge pro tem for the Maricopa County Superior Court. He can be reached at (602) 234-7819 or ryurk@jhclaw.com.
MCBA introduces “Wet Your Whistle Wednesdays”

Many of our members tell me fondly of the days when lawyers engaged in social opportunities at various establishments in the Valley on a regular basis. In the spirit of those days and in order to foster additional social interaction and camaraderie among the members of the Maricopa County Bar Association (and other members of the legal community), the MCBA leadership has put together a calendar of venues for such purposes for the remainder of 2014, which we call Wet Your Whistle Wednesdays.

These informal events will be “no host,” but by designating a particular spot at which to meet we hope that many will take advantage of the chance to gather with colleagues and friends to catch up and have some relaxation and fun. The first event will be held on August 13 at Hanny’s (see ad below for more information). Future events will be held at Gypsy Bar (September 10), the Vig on Fillmore (October 8), the Hotel Palomar’s Lustre Pool Bar (November 12) and Kincaid’s (December 10).

Please mark your calendars and join us for these great times. Feel free to contact us if you have any questions.

Allen W. Kimbrough
Executive Director

HANNY’S

40 North 1st Street (at Adams), Phoenix
August 13, 2014 • 5:00 p.m. til ?

PLEASE JOIN YOUR COLLEAGUES AND FRIENDS FOR SOME FUN AND FELLOWSHIP!

Making practice expansion a reality.

Imagine a bank that actually helps keep the cash flowing to buy the equipment, expand the staff and open the locations that keep Arizona attorneys working hard and growing. A bank that’s tossed out the canned formulas and red tape and in its place positioned a highly skilled team of decision makers. Empowered to be innovative. Vested in your success.

We did. And today we are the state’s largest locally-owned and headquartered business bank. Put us to the test. Call today and have one of our decision makers in your office this week.

Alliance Bank

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Kelly Conner
Senior Vice President
602-629-1701

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A division of Western Alliance Bank. Member FDIC.
MCBA Centennial Dinner and Hall of Fame Induction

SATURDAY SEPTEMBER 20, 2014
ARIZONA BILTMORE RESORT
Cocktails 6:00 p.m.  Dinner 7:30 p.m.

Reservations
Table of Ten $1,200 Individual $125

How to Register
Please register online at maricopabar.org or contact Laurie Williams at (602) 682-8585 or lwilliams@maricopabar.org.

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Please reserve seats for: ___________ # of Guests: ___________ Table host name*: ___________

Address: __________________________________________________________
City: _____________________________ State: ________ Zip: _____________ Email: ___________

*Table hosts are firms or individuals who sponsor a Table of Ten. Please provide guest list along with payment.

- [ ] Please place me/us at a no host table.
- [ ] Please seat me/us with: ___________________________________________________________________________

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PAYMENT INFORMATION
Please Charge my:  
- [ ] Visa  
- [ ] MasterCard  
- [ ] AMEX  
Total charge to my card $ ___________ or [ ] My check for $ ___________

Credit Card Number: ___________________________ CVV#: ___________ Exp. Date: ___________________________

Please return form to MCBA, Attn: Laurie Williams, 303 E. Palm Lane, Phoenix, AZ 85004  Fax: 602-682-8601
Medical marijuana in the workplace: Legal issues in Arizona

By Margaret Olek Esler

Numerous legal issues have arisen recently in connection with the legalization of medical marijuana in Arizona. On June 19, Lisa Coulter of Snell & Wilmer presented a CLE titled “Medical Marijuana in the Workplace,” in which she discussed what employers should take into account when dealing with employees and prospective employees who use marijuana for medical purposes.

Under federal law, marijuana remains a Class 1 controlled substance, meaning it is unlawful to use, possess, sell, or grow it. State law is another matter. While many states, particularly in the Midwest, continue to prohibit marijuana use, some, including Arizona, permit its use for medical purposes or have current pending legislation to legalize medical marijuana. Presently, only Colorado and Washington allow unrestricted “open use” of marijuana for recreational purposes.

Some states that permit the use of marijuana for medical purposes have no workplace restrictions in place, and among those that do, and along with Maine, Delaware and Connecticut, has laws in place that decriminalize possession of medical marijuana and prohibit discrimination against employees complying with state law.

Medical use of marijuana is defined under the Arizona Medical Marijuana Act (AMMA) as “[t]he acquisition, possession, cultivation, manufacture, use, administration, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered qualifying patient’s debilitating medical condition or symptoms associated with the patient’s debilitating medical condition.”

Coulter explained that a person can qualify for medical marijuana use under AMMA if he or she is a patient (or caregiver of a patient) who is diagnosed by a physician with a debilitating medical condition. Also, no medical prescription may be involved as physicians cannot prescribe controlled substances; a doctor only certifies that a patient has a debilitating medical condition.

Debilitating conditions currently include cancer, glaucoma, HIV, AIDS, ALS, Crohn’s Disease, Hepatitis C, Alzheimer’s or anything else as approved by the Arizona Department of Health Services (ADHS). Petitions have been submitted to ADHS to include post-traumatic stress disorder and migraines as qualifying debilitating conditions.

According to Coulter, Arizona has certain general restrictions on the use of medical marijuana, including prohibitions against use on public transportation or in a public place, prohibitions on use and possession on a school or school rule, and a prohibition on driving or operating under the influence.

In addition, state law includes express limitations that impact the workplace. For example, there is no requirement that employers allow employees to use or possess marijuana while at work, and employees are not protected if they are impaired at work. Furthermore, there is no requirement that a government medical assistance program or private health insurer reimburse a person for costs associated with the use of marijuana, and there is no worker’s compensation coverage available for the purchase of medical marijuana.

Coulter explained that employers may not discriminate against qualifying medical marijuana patients who submit a positive drug test in hiring, termination, imposing any term or condition of employment, or imposing any discipline or penalty. There are, however, exceptions: Employers do not have to comply with the above non-discrimination practices if they would, as a result, lose a monetary or licensing benefit under federal law, or when a positive drug test revealed that an employee used, possessed, or was impaired by marijuana and a registered patient under the AMMA.

Coulter described how Arizona’s drug testing statute, A.R.S. 23-493, has been updated to take into account medical marijuana patients under state law. The statute now provides a definition of “impairment” and limits employer liability for good faith compliance, as well as providing a safe harbor provision for compliant employers and recognizing certain safety-sensitive provisions in addressing access to justice problems by requiring certain legal service providers to be licensed, should Arizona paralegals be worried about what that could mean for them if our state fails to act.

The conference will include local vendors who assist the legal community by providing valuable services. They will have information about their respective companies available and will have several opportunities to speak with them. Some vendors will even give attendees the chance to win a prize for visiting their booth. The Division will also have a variety of raffle prizes that we will identify throughout the day. The grand prize, a Windows Surface Tablet, will be awarded at the end of the conference.

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Coulter described how Arizona’s drug testing statute, A.R.S. 23-493, has been updated to take into account medical marijuana patients under state law. The statute now provides a definition of “impairment” and limits employer liability for good faith compliance, as well as providing a safe harbor provision for compliant employers and recognizing certain safety-sensitive provisions in addressing access to justice problems by requiring certain legal service providers to be licensed, should Arizona paralegals be worried about what that could mean for them if our state fails to act.

The conference will include local vendors who assist the legal community by providing valuable services. They will have information about their respective companies available and will have several opportunities to speak with them. Some vendors will even give attendees the chance to win a prize for visiting their booth. The Division will also have a variety of raffle prizes that we will identify throughout the day. The grand prize, a Windows Surface Tablet, will be awarded at the end of the conference.

Coulter explained that employers may not discriminate against qualifying medical marijuana patients who submit a positive drug test in hiring, termination, imposing any term or condition of employment, or imposing any discipline or penalty. There are, however, exceptions: Employers do not have to comply with the above non-discrimination practices if they would, as a result, lose a monetary or licensing benefit under federal law, or when a positive drug test revealed that an employee used, possessed, or was impaired by marijuana and a registered patient under the AMMA.
Sanders & Parks, P.C. is pleased to announce that Edward Glady, Esq. has joined the firm as an owner. Mr. Glady has practiced in Arizona for more than 30 years. He has achieved the highest AV rating from Martindale Hubbell and has been selected as a Southwest Super Lawyer. Mr. Glady’s practice includes a wide variety of commercial and tort litigation matters, including insurance coverage, intellectual property, aviation, environmental and toxic tort, business disputes, personal injury, construction, product liability and employment. He practices throughout Arizona in all state and federal courts.

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<table>
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<th>Age</th>
<th>Monthly Benefit Amount</th>
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*Chart reflects a 90 day Elimination Period and 5 year benefit duration

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This letter was typed on U.S. Supreme Court Stationery, Chambers of the Chief Justice, and dated March 14, 1990. It was written by Chief Justice Rehnquist, a former MCBA president, to then-president Charles (Chas) W. Wirken, on the celebration of the MCBA’s 75th anniversary. The bar was then located at 333 West Roosevelt Street.

Dear Mr. Wirken,

Congratulations on the publication of The Bench and the Bar: 75 Years of Striving for Excellence. It is good to know that the rich and colorful history of the legal profession in Maricopa County has been set out in a volume that is thorough, readable, and beautifully produced.

I spent nearly sixteen years very happily practicing at the Maricopa County Bar. When I began practicing, I think there were about 400 lawyers admitted to practice in the county, and even though I had not grown up in Arizona nor been educated there, it was such a friendly bar that I quickly became acquainted with most of its members. It was also a small enough bar so that the lawyers knew other lawyers and judges by reputation, and vice versa.

Individual lawyers in those days tended to be less specialized than they are now, I think. One of the ways in which a newly admitted lawyer got trial experience was to volunteer as assigned counsel to practice in the federal court. In the federal court these services were totally pro bono, but one felt one was fulfilling a professional responsibility and also educating himself. Over a two-year period in the mid-fifties, I probably handled four or five criminal defenses, all but one of them I think unsuccessfully. I remember that after the fourth guilty verdict, I was walking down the steps of the old federal courthouse building with Dave Ling, the resident federal judge, and asked him when he was going to stop assigning me these cases. He turned and looked at me and said, with a twinkle in his eye, “When you finally get one of them off.”

I’m sure that every lawyer who practiced in the county in “the good old days” enjoys recalling similar stories. I hope that today’s far larger bar enjoys the practice of law in the county as much as my colleagues and I did years ago.

Sincerely,

William H. Rehnquist

Hattie Babbitt speaks at a MCBA Membership Luncheon on Sept. 19, 1990.
The MCBA Trial Skills Institute provides litigators with the chance to get real-world trial experience and feedback in an intensive, single-day CLE. Scheduled for Saturday, September 27, 2014, this year’s Trial Skills Institute will have participants try a civil tort case from a prepared case study. Participants will conduct and defend direct and cross examinations of the witnesses, as well as make opening statements and closing arguments.

The Trial Skills Institute will begin with a workshop guided by experienced Arizona trial attorneys, where participants will have the opportunity to prepare for or fine-tune their case. While participants are free to work on their trial preparation in advance, the Institute is designed to permit attorneys to prepare their entire trial during the morning sessions. After a lunch panel discussion on “Common Ethical Pitfalls During Trial,” participants will try their cases before the Institute’s faculty members, including current and former Arizona judges. Each trial will be followed by direct, one-on-one feedback from faculty to the participants.

The Institute is open to any active Arizona attorney, of any level of experience. The Institute is likely of most value to inexperienced trial attorneys, and practice group leaders looking to train associates in an affordable manner. In making the pairings for the trials, every effort will be made to try to match attorneys with similarly experienced attorneys. In order to ensure one-on-one feedback, the program is limited to twenty-four participants, so space is limited.

This activity may qualify for up to 7 hours toward your annual CLE requirement for the State Bar of Arizona, including the indicated hours of professional responsibility (ethics), if applicable.

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.

WALK-INS: 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, at (602) 682-8601, 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 4 weeks). If audio media is available, registrations may be converted to a self-study package for an additional $15 charge.

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SCHEDULED講座内容

SESSION I – PRACTICING ETHICALLY: WHAT WE CAN LEARN FROM THE JUDGES

PRESENTERS: Judge Douglas Gerlach (ret.)

SESSION II – PRACTICING ETHICALLY: CASE STUDIES

PRESENTERS: Judge David Gass

SESSION III – DO I NEED STAFF OR IS OUTSOURCING FOR ME?

PRESENTERS: Nicole DePue, PLLC

SESSION IV – STREAMLINING WORKFLOW

PRESENTERS: Matt Fendon, Fendon Law Firm; Brent Kleinman, The Kleinman Law Firm, PLLC; Nicole DePue, Tiny Advertising & Design; Alies Kimbrough, MCBA

SESSION V – HOW DO I GET CLIENTS: MARKETING & BEYOND

PRESENTERS: Flynn Carey, Mitchell, Stein, Carey, PC; Krystal Ahart, dba Bankruptcy Legal Center™

SESSION VI – CANDID ADVICE FOR LAWYERS: HOW DOES ONE ACHIEVE PROFESSIONAL SATISFACTION AND SUCCESS IN THE PRACTICE OF LAW?

PRESENTERS: Malinda Soma, Smola Law Group; Lee Davis, Lee Davis & Associates, Inc.; David Kresin, Robaina & Kresin, PLLC

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VLP ATTORNEY OF THE MONTH

Achieving goals and commitment to justice makes this lawyer exceptional

By Peggi Cornelius,
VLP Programs Coordinator

The daughter of parents who had immigrated to the United States from Iran and Peru, Christina Ortecho was born in New Jersey. At the age of eight, they told her she had two goals—to attend Notre Dame and to become an attorney. Her personal history includes both achievements, and her exceptional commitment to promoting justice and helping people in need has brought her recognition as the Volunteer Lawyers Program “Attorney of the Month.”

Ortecho’s formative years were spent in Colorado. After attending the University of Notre Dame Du Lac, where she majored in Government and International studies, she was accepted to law school at the University of Arizona. While there, she became an elected leader in “La Alianza,” the Latino student law organization, and began volunteering at the Florence and Eloy Immigrant Project the year prior to her graduation.

With an education that now includes an MBA from Thunderbird School of Global Management, Ortecho has developed extensive experience in cross-border legal issues with Mexico and the U.S. In her solo law practice, Ortecho Law PLLC, she focuses in family, juvenile and immigration law.

When she joined the Volunteer Lawyers Program in 2004, Ortecho began advising unrepresented parties in domestic relations cases by participating in VLP’s Family Lawyers Assistance Project at Maricopa County Superior Court. Soon after, she agreed to accept case referrals through VLP’s Children’s Law Center. Speaking of her pro bono representation of people seeking to adopt minor children, and her service as a court appointed advisor, Ortecho says, “I love making sure children are in a safe environment. Every child leaves a lasting impression on me, especially the smiles of gratitude I see on their faces.”

Being a wife and mother of two small girls, Ortecho understands the concerns of her family law clients. Among numerous activities she undertakes as a member of the State Bar of Arizona, Los Abogados, the American Immigration Lawyers Association, and the Maricopa County Bar Association, Ortecho includes work with domestic violence shelters in her volunteer endeavors.

Regularly accepting VLP pro bono cases for the past decade has compelled Ortecho to devote many hours to see them through to conclusion. She acknowledges the time consuming nature of the cases is a challenge, but counters it by commenting, “It’s simple. I keep coming back for more because the need is there. I know my father would be proud that I’m doing something that promotes equal justice. And if colleagues were to ask my advice, I’d say, ‘Don’t think twice. Just do it. You will thank me later.’”

Christina Ortecho

The law firm of Polsinelli was honored in Washington, D.C., recently as a recipient of the Beacon of Justice Award for its pro bono work in connection with the Volunteer Lawyers Program Children’s Law Center Minor Guardianship Project in Maricopa County and its commitment across the country to providing pro bono services to those who cannot afford legal counsel. From left is Troy Froderman, chair of Polsinelli’s Pro Bono Committee and a shareholder in the firm’s Phoenix office, accepting the award from Jo-Anne Wallace, the president and CEO of the National Legal Aid and Defender Association (NLADA).

ACHIEVEMENTS

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

Summer Social Highlights continued from page 1

Enjoying the great food.

Marshall Greggerson, Gabe Aragon and Lisa O’Connor.

Ester Villa, Monique Simpson, Rachael Corrigan and MCBA Treasurer Kyle Hirsch.

Andrew Orozco, Gina Kieley, and Bonnie Smith.

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Jennings, Strouss & Salmon, PLC, announces that Jeffrey D. Gardner has been elected chair of the Securities Regulation Section of the State Bar of Arizona. “I am following in the footsteps of many fine attorneys, including my fellow partner at Jennings Strouss, Brad Martorana, who is currently finishing his term as chair.” Gardner, vice-chair of the firm’s Commercial Litigation Department, focuses his practice in the area of securities litigation, class actions, employment, real estate and intellectual property. His experience also includes commercial and public finance law, as well as broker-dealer and registered investment advisor regulation and compliance. A litigator with extensive experience, Gardner has successfully represented businesses and individuals in investigations and enforcement actions brought by the United States Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA), the Arizona Corporation Commission Securities Division, the Arizona Department of Financial Institutions, and numerous other regulatory agencies throughout the United States.

Gardner is also the co-chair of the Class Actions and Derivative Suits Committee of the American Bar Association. He received his JD from Chicago-Kent College of Law.

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INSIDE THE COURTS
Two new commissioners appointed to Superior Court

Presiding Judge Norman Davis has appointed Nicole M. Brickner and Jane McLaughlin as Superior Court commissioners. Commissioner Brickner assumes Judge Patricia Star’s criminal-mental health calendar.

"Commissioner Brickner brings with her a wealth of legal knowledge and experience from her work in both the public and private sectors,” Judge Davis said. “She has a broad-based background with significant knowledge in family, juvenile and probate court.”

Commissioner McLaughlin, who is working in Initial Appearance Court, fills the vacancy created by the retirement of Commissioner Barbara Hamner.

Immediately before joining the court, she served as an assistant U.S. attorney in the United States Attorney’s Office.

“Commissioner McLaughlin has a deep knowledge in criminal and juvenile delinquency law from her prior experience as a deputy Maricopa County attorney and an assistant Arizona attorney general,” Judge Davis said.

“Also, she previously served as vice president and general counsel with the Phoenix Suns and Arizona Diamondbacks for two years, and brings private practice experience from practicing law with the Meyer Hendricks law firm in the areas of corporate law and civil litigation.”

 Candidates for MCBA Board continued from page 1

Executive Director, Allen W. Kimbrough, either by email or postal mail: MCBA, 303 E. Palm Lane, Phoenix, AZ 85004-1532 or akimbrough@maricopabar.org no later than 5 p.m., Sept. 15, 2014.

(2) Provide additional required election materials. A 200-word bio and a color jpeg photograph (see details in sidebar) must be submitted by email only to Mindy Haskins at mhaskins@maricopabar.org no later than 5 p.m., Sept. 15, 2014.

For complete election information, go to www.maricopabar.org or see below.

A. General policies
1. Required election material must be submitted electronically, as detailed in Section B (with the exception of the formal letter of candidacy, which may be mailed), and all materials must be received by Sept. 15.
2. Submitted biographies that exceed the 200-word limit may be edited by staff.
3. Position statements and any other campaign or election materials may not refer to other candidates or include defamatory or inappropriate language, as determined by an ad hoc Election Review Committee appointed by the President of the Association.

B. Candidate Election Materials

The following materials are required from candidates no later than Sept. 15:

1. A letter formally declaring candidacy for the Board of Directors, with the candidate’s signature and addressed to the Executive Director. This document may be submitted electronically as a pdf document, but a mailed paper version is also acceptable.
2. A 200-word biographical statement. This bio may include an optional position statement of the candidate’s vision and priorities for the MCBA. This information must be submitted electronically as an attachment to an email, preferably in MS Word. Regardless of what is included in the biography, the word limit total is 200 words as counted electronically in MS Word. MCBA staff may edit bios exceeding the limit. (Please note that a standard-form resume or curriculum vitae are not acceptable.)
3. A color photograph in jpeg format, sent as an attachment to an e-mail. The photo format must be jpeg, no other types of files or format can be accepted. Please note that photos taken directly off a website are of poor quality.

DICK SEGAL
A Remembrance

By Hon. Stanley Feldman, Chief Justice of the Arizona Supreme Court (Ret.)

I use the word “remembrance” partly because I hope this piece will help keep Dick’s memory with us. Also, I use the word because in writing this, I must remember what Dick would have wanted me to do and not do. So I’ll keep it brief, no maudlin comments, short sentences, and most of all, no footnotes.

There was once a Supreme Court justice who used a lot of footnotes, and Dick told him to stop in no uncertain terms. He didn’t, but he never forgot what Dick said. So what you might see in some of that justice’s opinions are fewer footnotes than there might otherwise have been.

Remembering Dick is not enough. We should take some lessons from his life. He never let adversity keep him from reaching his goal. I still remember sitting next to him for the bar exam back in 1956. We had gone through undergraduate and law school together, and Dick sometimes hung out at our house. The day of the bar exam, my wife fixed lunch for both of us to take because there was no lunch break. If you wanted to eat during the exam, you ate at your seat.

I’ll never forget looking over at Dick as he bit into the apple my wife put in his bag and stared as a worm crawl out. The worm didn’t bother him a bit—he simply put the apple back in the bag and kept typing. He ended up with the highest grade on the exam.

Dick faced everything with a marvelous sense of humor. In law school, Dick, Phil Robbins, and I had a study group to prepare for finals and later the bar exam. Hours of boredom with occasional tension were made more bearable by Dick’s comments and his humor, and much more understandable by the common sense, patience and good judgment that he showed in law school and that were his hallmarks throughout his personal and professional life.

Dick was really, really smart, but he knew that there were many smarter people on earth. He never had an inflated ego, was always ready to help and mentor others, and was always available to clients and family. Loyalty, honesty, and truthfulness were hallmarks of his life, both personal and professional.

Dick not only made friends, he kept them. There was a problem in 1982 when, at the first oral argument after I was appointed to the bench, I learned that the lawyer representing the insurer was Dick Segal. (Zuckerman v. Transamerica Insurance.) I gave some thought to recusing myself but realized that after years of practice I had a lot of close friends in the Arizona bar. If I recused myself when Dick was to argue, I would end up recusing myself all too often. I resolved to call them as I saw them, friends or no friends. So I sat on that argument and wrote the opinion.

Dick lost. He never said boo about it except maybe ten years later, when he made some joke. While he never expected his good friend to rule in his favor out of friendship, I have no doubt he thought he was right and would win on the merits. I am quite sure he realized in that case as in everything else he did in the law and in his private life, that you win some and you lose some, but you always go on.

And he always went forward—in his career and his personal life—a loving husband and father, a great lawyer and a great colleague, and a great friend.

I’m sorry, Dick, but I had to put in one footnote. As I told you several times, footnotes are important. We will miss you.
15TH ANNUAL ARIZONA PARALEGAL CONFERENCE

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REGISTRATION: 7:30A.M. - 8:00 A.M./PROGRAM: 8:00 A.M. - 5:00 P.M.

KEYNOTE JUDICIAL PANEL
“How to Make Your Attorney Look Good in Court”
Panelists: Hon. Thomas LeClaire (Civil)
Hon. Geoffrey Fish (Probate)
Hon. Jay Adleman (Family)
Hon. Pamela Gates (Criminal)

MORNING BREAKOUT SESSIONS
A. “The Rules of Civil Procedure: An Examination of the Discovery and Trial Rules in Justice, State and Federal Court” (Panel Discussion)
Panelists: Hon. Gerald Williams, North Valley Justice Court,
William G. Klein, Esq., Lang, Baker & Klein, PLLC
John W. Rogers, Supreme Court of Arizona
B. “Document Destruction: How to Stop the Spoiling of Evidence”
Presenter: Pat Fowler, Snell & Wilmer, LLP

AFTERNOON BREAKOUT SESSIONS
A. “Does the Constitution Protect Some or All? – A Closer Look at the Protection of Our Civil Liberties”
Presenter: Kelly J. Flood, ASU Alumni Law Group
B. “Are You Sure You Know Who You Are? - How to Protect Yourself From Identity Theft”
Presenters: Detective James Owens, Phoenix Police Department
Vincent M. Creta, Creta Law Firm, PLLC.

GENERAL SESSION
“Bridging the Gap on Legal Services: Is the Licensing of Paralegals Coming to Arizona?”
Panelists: Ward Parker, Unauthorized Practice of Law/Special Services Counsel, State Bar of Arizona
Scott A. Hauert, Director of Legal Studies, Phoenix College

GENERAL SESSION
Social Media and the Risks Involved (Ethics)
Presenter: Joshua R. Woodard, Snell & Wilmer, LLP

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Morning Breakout Session (select one)
A. ___ The Rules of Civil Procedure
B. ___ “Document Destruction: How to Stop the Spoiling of Evidence”

Afternoon Breakout Session (select one)
A. ___ “Does the Constitution Protect Some or All? – A Closer Look at the Protection of Our Civil Liberties”
B. ___ “Are You Sure You Know Who You Are? - How to Protect Yourself From Identity Theft”

Please mail your registration form with payment to:
Laurie Williams, MCBA, 303 E. Palm Lane, Phoenix, Arizona 85004. Credit Card Registrations can be faxed 602-682-8601 or online registrations can be completed at www.maricopabar.org

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FOR RENT

Can you guess who they are? continued from page 10

Photo #1 is Judge Samuel A. Thumma, a member of the Public Lawyers Division and Litigation Section. Photo #2 is James M. Torre. Photo #3 is David B. Rosenbaum, a member of the Litigation Section.

CourtWatch continued from page 1

the victim is in a public place.”

Joining Miller in affirming the conviction were Judges Gary L. Vasquez and Joseph W. Howard.

Sometimes winning feels more like losing

Having won in a breach-of-contract action, you set about collecting the judgment. With a contractual or statutory attorneys’ fees provision in your back pocket, you can be confident that the judgment debtor will have to pay all the fees you reasonably incur in your collection efforts, can’t you? Maybe. Not according to another recent Division Two opinion, statutory and contractual attorneys’ fees provisions do not apply to garnishment proceedings. Burt M. Blum M.D., Inc., v. Cowan, Nos. 2 CA-CV 2012-0166 and 2013-0090 (Ariz. App., July 3, 2014).

Attorney Rand Haddock represented Connie Cowan in a will contest. They hired Dr. Bert Blum as a medical expert on undue influence. Although Blum provided expert services at a settlement conference, Haddock and Cowan refused to pay his bill.

Blum sued Cowan and Haddock. He won a judgment for approximately $19,000 and quickly filed garnishment proceedings. Meanwhile Cowan and Haddock moved to stay execution of the judgment to allow them time to obtain a supersedeas bond. They also filed a notice of appeal. The trial court declined to stay execution of the judgment. It entered judgment for Blum in the garnishment action, awarding his attorneys’ fees. The court of appeals reversed.

Wringing for the court, Judge Vasquez first held that A.R.S. § 12-341.01(A) did not apply because garnishment is a purely statutory cause of action. “According to the underlying theory of garnishment, it is not to punish the judgment debtor, but instead to compel the judgment debtor to satisfy the judgment,” wrote Judge Vasquez. The judgment debtor is “treated in all respects as an original independent action,” separate from the underlying litigation. “And,” he wrote, “§ 12-341.01(A) does not apply to purely statutory causes of action.”

Vasquez cited cases in which the statute was held not to apply when the underlying cause of action did not arise out of contract. In Keystone Flir O’Mon, LLC v. Aztec Registrar of Contractors, 223 Ariz. 27, 219 P3d 237 (App. 2009), the Arizona Registrar of Contractors proceeded against a contractor for a violation of the statutes governing construction contractors. Hanley v. Pearson, 204 Ariz. 147, 61 P3d 2933 (App. 2003), involved a dispute over whether a statute required the proceeds of a deed-of-trust sale to be paid in satisfaction of a tax lien. And Kennedy v. Linda Bree Automotive Plaza, Inc, 175 Ariz. 323, 856 P2d 1201 (App. 1993), was an action for recovery under Arizona’s Lemon Law. Although Blum’s action did arise out of contract, Vasquez concluded that these cases barred an award of fees for garnishment proceedings.

Vasquez next ruled that the attorneys’ fees provision of the garnishment statutes, § 12-1580, did not apply. Although it allows the court to award fees to the judgment creditor, it provides an award unless that party “objected to the writ solely for the purpose of delay or to harass the judgment creditor.” Since the trial court had not found that Cowan and Haddock had acted improperly, its award of fees to Blum could not be affirmed under § 12-1580.

Vasquez finally turned to the parties’ contract, which provided for an award of fees if either party filed suit “to enforce the terms hereof,” or to declare rights hereunder, as the result of the breach of any covenants or condition of this Agreement. “The question was asked whether the provision constituted a waiver of § 12-1580’s limitations. He held that it did not: “Although it does not expressly say so,” he wrote, “we conclude § 12-1580(E) implicitly prohibits parties from waiving its requirements.” “Although either party as the ‘prevailing party’ in the garnishment proceeding may agree to waive the right to attorney fees,” he added, “appellants cannot waive the statutory mandate for fees simply by waiving its requirements.”

Joining Vasquez in reversing the award of fees were Judge Howard and retired Superior Court judge, Robert Carter Olson.
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