MCBA members are invited to a Holiday Party

**WHEN**
Tuesday, Dec. 9
5:30 to 7:30 p.m.

**WHERE**
MCBA office
303 E. Palm Lane, Phoenix

**RSVP**
Please respond by Dec. 4 at maricopabar.org

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Swearing-In Ceremony

On Nov. 4, Chief Justice W. Scott Bales led the oath of admission during a swearing-in ceremony for law students who have passed the bar exam.

 Newly elected members to the MCBA board of directors announced

Three new candidates and two incumbents have been elected to serve on the 2015 MCBA board of directors. The newly elected candidates are (in alphabetical order): Hon. Nicole Brickner, RichardSiever and Melinda Sloma. Incumbents Julie A. LaFave and Amanda Sheridan were re-elected to serve on the board for an additional two-year term.

Six candidates ran for five open seats on the board of directors. MCBA members licensed to practice in Arizona and in good standing with the State Bar of Arizona were eligible to vote in the election, which ran from Nov. 1-15, 2014.

Board members will assume their roles (or continue) on Jan. 1, 2015.

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CourtWatch

Daniel P. Schaack

High court gives legislature flexibility

In September, we discussed Gallardo v. State, No. 1 CA-CV 14-0272A (Ariz. App. July 23, 2014), where the Arizona Court of Appeals struck down a statute that added two at-large members to the governing board of the Maricopa County Community College District. The court held that the statute, A.R.S. § 15-1441(A) — which adds the at-large seats to any community college board whose county population exceeds 3 million — violates the Arizona constitutional prohibition against special laws. Because only Maricopa County currently qualifies and no other county will reach the threshold for another 85 years, the court held, the statute lacked the elasticity required by the constitutional provision. Its order cancelled the upcoming election of at-large members.

We wondered about the consequences of that holding. “If a problem genuinely affects a single entity and there is no reasonable likelihood that other entities will soon be afflicted,” we asked, “does our constitution prohibit the legislature from enacting a fix that does not extend to entities that do not currently need it?” “The opinion seems to bar the legislature from limiting its laws to the only entity that genuinely needs the help,” we added.

The appellate judges also seemed concerned about their holding. They felt that previous opinions compelled them to hold the elasticity requirement of the constitutional provision — Article 4, Part 2, § 19 — has a temporal component. In Republic Investment Fund I v. Town of Surprise, the Arizona Supreme Court had held that the possibility of change must be more than theoretical: “We will consider the actual probability that others will come under the act’s operation when the population changes.” It stated that class change must “be not only possible, but reasonably probable, of attainment,” meaning that others would join the favored group “within a reasonable time.” Feeling that Republic Investment tied their hands, the court of appeals judges asked the supreme court to clarify the temporal component of the elasticity requirement.

The supreme court quickly answered the appellate court’s opinion, and ordered the election to proceed as scheduled. It has now issued an opinion explaining its ruling, holding that there never really was a temporal component to the elasticity requirement. Gallardo v. State, No. CV-14-0288-PR/A (Ariz. Oct. 31, 2014).

Before turning to elasticity, Justice Rebecca White Berch addressed two other factors. She first held that the law has a rational relationship to a legitimate governmental purpose. “[F]acilitating community college district governance and increasing representation and perhaps diversity on governing boards [is] rationally related to legitimate governmental interests,” she wrote.

She also found the statute’s classification legitimate. Noting that the Maricopa County Community College district is one of the largest in the nation, she concluded that “the legislature could rationally have concluded that... its board should have additional members to better serve the students and public, and that only when the number of citizens represented per board member reaches a certain...
Immigration law implications in other areas of the law

By Cynthia Perez and Simona Dima

Attorneys who don’t practice immigration law may, nonetheless, find that an immigration form has an impact on their client’s case. This is becoming increasingly common in breach of contract claims or divorce litigation where one party is a U.S. citizen and the other is a foreign national. In order for a foreign national to obtain permanent residence (a Green Card) based upon marriage to a U.S. citizen or a lawful permanent resident, the U.S. citizen or lawful permanent resident spouse is required by law to complete and sign an Affidavit of Support. The affidavit commits the “spon- sor” to financially support the foreign national spouse to at least 125 percent of the poverty level at all times that the foreign national obtains any means-tested public benefits from the government. However, some foreign nations have tried to expand the applicability of the Affidavit of Support in court action, by using it as a contract between a U.S. spouse and a foreign national. Although there is no legal binding author- ity regarding this issue, the U.S. District Court for the District of Arizona just held that a signed Affidavit of Support is an enforceable contract between a U.S. spouse and a foreign national. In that case, a foreign national filed a breach of contract lawsuit against her ex-spouse, more than a year after the divorce, alleging that her ex-spouse had failed to provide support to maintain her income at the level required by the affidavit of support.

The intent is to allow the U.S. government to seek reimbursement from the sponsor if the foreign national obtains any means-tested public benefits from the government. However, some foreign nations have tried to expand the applicability of the Affidavit of Support in court action, by using it as a contract between a U.S. spouse and a foreign national. Although there is no legal binding authority regarding this issue, the U.S. District Court for the District of Arizona just held that a signed Affidavit of Support is an enforceable contract between a U.S. spouse and a foreign national. In that case, a foreign national filed a breach of contract lawsuit against her ex-spouse, more than a year after the divorce, alleging that her ex-spouse had failed to provide support to maintain her income at the level required by the affidavit of support.

The court ruled that the U.S. spouse had breached the contractual obligations by fail- ing to provide financial support to his former spouse. Subsequent to the trial, the court calculated the damages owed to the foreign national based on the difference between 125 percent of the federal poverty level and the foreign national’s admitted income. In addition, attorney’s fees were awarded to the former foreign national. Despite being divorced, the U.S. spouse was mandat- ed to reimburse his former foreign national spouse in the amount of $11,448.74.

Elsewhere across the country, the Affida- vit of Support has been used as part of di- vorce proceedings to establish the obligation of spousal support. Ainsworth v. Ainsworth, No. 1:04-CV-253-TS, 2004 WL 2924344, at *11 (N.D. Ind. Apr. 7, 2004). The court calculated the damages owed to the foreign national based on the difference between 125 percent of the federal poverty level and the foreign national’s admitted income. In addition, attorney’s fees were awarded to the former foreign national. Despite being divorced, the U.S. spouse was mandat- ed to reimburse his former foreign national spouse in the amount of $11,448.74.

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Happy holidays from the Paralegal Division

Happy holidays to you all from the Paralegal Division! It has been an exciting and challenging year with many changes, much fun and many new connections. I want to take a moment and thank the board for their service — this has been a year marked with much unanticipated change and they all rose to the challenge. I want to thank Laurie Williams, Bree Boebelke, Sarah Fluke, Tina Ziegler, Eda Barolli, Danielle Fratterelli, Pati Lesser, Janet Castron and Irene Gregory for all of their hard work and dedication. Without them, none of our wonderful events would have been possible, and I’m grateful for all they have done. It has been my pleasure to work and serve with each of them. I also want to thank the members of the division for attending events, giving of themselves to the outreach program, offering their ideas and for being the heart of the division. I am proud to be a part of such an amazing group of professionals, and I hope to see each of you in 2015.

The new year brings new thoughts and ideas. Please take a moment to send me an email at bsnyder@jshfirm.com and let me know what your “holiday wish” is for the division. We will discuss the new ideas at our January meeting and announce them in the February edition of the Maricopa Lawyer. Our first meeting of the year will be on Monday, January 12, 2015, at 5:30 p.m., at the MCBA office. Please join us as we finalize the plans for the year, prepare committees, and discuss your ideas, wants, and wishes. I hope to see you there!

Finally, I wish each and every one of you a wonderful holiday season full of family, friends, love, laughter and happiness.

A recap of the 2014 Bench Bar Conference

By: Phillip Londen

On Sept. 19, 2014, members of the Maricopa County Bar Association joined over 20 state court judges and commissioners for the annual Bench Bar Conference. The purpose of the Bench Bar Conference is to provide an open forum in which members of both the bench and bar can discuss issues affecting both groups. This year’s conference was an overwhelming success. David F. Funkhouser III, the co-chair of the conference, served as the master of ceremonies. He began the afternoon with a short welcome and introduction.

After Funkhouser’s opening remarks, Judge Norman Davis, the presiding judge of the Maricopa County Superior Court, delivered remarks on the state of the Maricopa County courts. Davis shared some of the lessons he has learned during his four-year tenure as presiding judge.

First, Davis stressed how important it is that the Maricopa County court system plans for growth. Second, he discussed the courts’ increasing reliance on technology. Finally, Davis acknowledged the importance of merit selection in attracting and retaining high-quality members of Maricopa County’s bench.

Next, Judge Joseph C. Welty, the presiding criminal judge of the Maricopa County Superior Court, spoke to the attendees about judges pro tem. Welty discussed the critical roles played by judges pro tem in handling Maricopa County’s civil, criminal, juvenile and family dockets. Welty discussed the application process and implored interested lawyers to consider applying — but only if they are willing to commit a few days per year to fulfilling their judges pro tem obligations.

After the remarks by Davis and Welty, the attendees broke out into roundtable discussions. Each roundtable discussion was facilitated by at least one member of the bench, who curated a discussion on one of four general topics: discovery, ethics, evidence and settlement conferences.

The roundtable discussions are the hallmark of the Bench Bar Conference. They provide an informal forum in which members of the bench and bar can openly discuss issues of mutual concern, including emerging issues. The discussions were candid and cathartic. Both sides provided honest feedback. Because of the informal nature of the discussions, both sides provided constructive criticism for the purpose of improving the function of the legal system in Maricopa County. This process is obviously beneficial to the legal system as a whole. The individual participants, however, also benefited by working to improve the system in which they have a considerable stake.

After three sets of roundtable discussions, the members of the bar submitted questions to the judges and commissioners. Specifically, the questions addressed issues outside of the scope of roundtable discussion topics. The questions covered a wide range of topics, ranging from practice specific issues to questions about Maricopa County’s electronic filing program. The final order of business for the day was to adjourn for a well-deserved social hour.

The Bench Bar Conference is an extremely valuable forum that brings together Maricopa County’s bench and bar. By facilitating candid discussion among the legal system’s stakeholders, the entire legal system is improved. It is incumbent upon all MCBA members to participate in such a valuable process.

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Mistake No. 3 – Conflict of interest: Current clients (Part 1)

Conflict of interest: Direct adversity

The first type of conflict involves current clients. There are two primary situations that create a concurrent conflict of interest: (1) representation of one client is directly adverse to another, and (2) the lawyer’s personal interest or duty to another current or former client create a significant risk of materially limiting the lawyer’s representation of the client. ER 1.7(a).

A direct adversity is fairly easy to recognize. Quite simply, “a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated.” ER 1.7 cmt. 6. For the sake of discussion, assume that Client A retains lawyer to file claims against Client B, who lawyer represents in a wholly unrelated matter. In this situation, the lawyer has divided loyalties, which will likely damage the attorney-client relationship with both clients. Client A will question whether lawyer is pursuing the claims with less diligence out of loyalty to Client B. At the same time, Client B will feel betrayed because his lawyer has filed claims against him. Direct adversity is not limited to litigation — it applies equally to transactional matters.

Conflict of interest: Material limitations

A similar analysis applies when analyzing the impact of duties a lawyer owes to former clients or third parties. It is important to remember that lawyers continue to owe certain duties of confidentiality even after the representation ends. See ER 1.9(c). Not surprisingly, sometimes information learned in representing one client will be useful in representing another client. That situation can raise a conflict between the duty of confidentiality to the former client and duties of loyalty, independence, diligence and communication to the current client. Conflicts can also arise when a lawyer owes fiduciary duties to third parties that may be inconsistent with duties owed to the client.

Personal interests can also create conflicts of interest. For example, a lawyer may be arguing to overturn a particular rule of law in one case when another client relies on that same rule of law as a defense in an unrelated action. Other personal interest conflicts may arise where a lawyer has a financial interest in a competitor of a client, or where the lawyer’s own conduct can be called into question. There are countless potential examples. Regardless of the exact situation, it is important to understand that a lawyer’s own interests cannot be allowed to adversely affect representation of the client.

Not all personal interests and duties owed to former clients or third persons raise a prohibited conflict of interest. A conflict exists in these situations only when there is a significant risk that they will materially limit the lawyer’s ability to represent the client. The key requirements here are “significant risk” and “materially limit.” So, what do those phrases mean?

A material limitation on the lawyer’s representation exists when the lawyer cannot fully comply with his ethical duties to the client. The lawyer should ask whether his personal interests or loyalties to others would affect his need to fully and diligently represent the client. There should be no adverse effect on the lawyer’s analysis of his client’s legal needs and his willingness to recommend or advocate all possible options to the client.

The requirement of a significant risk means that a mere possibility of a material limitation on the representation is not enough to create a conflict of interest. When considering whether a significant risk exists, the lawyer should undertake an objective analysis (and consult with outside counsel if necessary) to determine the likelihood that the issue will materially limit his representation of the client.

Next month, we will discuss what conflicts can be waived and, when appropriate, how to secure appropriate conflict of interest waivers.

Russell Yurk is an attorney with Jennings, Hang & 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 rry@jhc-law.com.

Donate arbitration fee and make a big difference

By Bradley J. Glass

Have you recently been appointed as an arbitrator by the Maricopa County Superior Court? If so, as part of your service as an arbitrator, you are entitled to receive a $75 arbitration fee if you conduct a hearing in the arbitration. In lieu of collecting this arbitration fee, you may donate the fee to a local nonprofit organization. Historically, Maricopa County attorneys have donated the arbitration fee to the Maricopa County Bar Foundation, the charitable arm of the Maricopa County Bar Association. The foundation supports justice-related public service and educational activities of the association, as well as supporting local pro bono legal service providers that serve low-income residents of Maricopa County. The foundation has donated over $30,000 to charities since its creation. Your donation of the $75 arbitration fee to the foundation can help continue its tradition of giving back to Maricopa County.

The Maricopa County Superior Court has made it easy and convenient to donate your arbitration fee. To do so, arbitrators must simply check-off the Pro Bono Option at the bottom of the Invoice in Support of Request for Warrant, which is provided in your arbitration packet. Arbitrators also may find the invoice on the MCBA website at www.maricopabar.org/arbitrationform. Through your donation, the foundation can continue to give and make a big difference in Maricopa County.

BMO Private Bank Pro Bono Golf Classic

The golf tournament benefiting the Volunteer Lawyers Program was held Nov. 8 at the Legacy Golf Resort
2014 has been a great year for the MCBA! It marks 100 years since the MCBA was organized. Just think for a moment about the tens of thousands of hours of service, CLE and social activities that the MCBA has accomplished during that period, each year building on the successes of the last. So it was with the YLD and my brief tenure as president. With the help of a talented and dedicated board and MCBA staff, we were able to see some successes of our own, including a very well-attended Barristers Ball, the largest Race Judicata in our history, a successful necessities drive to benefit victims of domestic violence and so many other YLD endeavors. Kudos to all those who participated and helped make 2014 a fabulous year.

With all the wonderful things the MCBA has accomplished, I am confident that 2015 will be even better. There are so many great things to come, including:

- A new mentoring program kicking off in January 2015
- Barristers Ball on February 28, 2015
- Tons of CLE opportunities
- Race Judicata in October 2015

As my term comes to an end, I bid you farewell as a contributing columnist. I must mention that the Maricopa Lawyer works very hard to provide legal information that is helpful to you in your practice, and they do a great job. Next year the YLD will be led by Tyler Carrell, who will no doubt continue to build on the successes of the past. And with that, I leave the YLD in his very capable hands.

Simple spelling strategies

A reader recently asked me about my writing weakness. The answer is simple: spelling. Fixing the problem, however, is not so simple. Spellcheck programs are not all that helpful because they do not catch homonyms or correctly spelled mistakes, such as United States or trail courts. Following are some strategies for improving your spelling. The second tip below is the one that works best for me.

1. Create a list of your most commonly misspelled words. Once you have created this list, you have two ways to use it. First, you can study it to learn the words. Second, you can use this list as a dictionary of sorts and use it to look up a problem word any time you use that word. The repetition of looking up the word each time will help you learn its correct spelling. I also suggest including a list of troublesome homonyms so that you are aware of them. Surprisingly, the most common homonyms cause the most errors in writing:

   - to, too, two
   - there, their, they’re
   - effect, affect
   - cite, sight, site

2. Use the computer’s find and replace function to correct misspelled words. To use this function well, I first create a list of misspellings that I regularly type. Then, I put each misspelled word in the “find” function and replace the misspelled word with the correctly spelled word. The process takes about five minutes and works best on a final draft of a document.

3. Find creative ways to remember a troublesome word, such as creating a mnemonic device, composing a jingle or using the word as a password until you learn it. Most of us probably remember this common mnemonic device from elementary school: the principal is our pal.

4. Learn the basic spelling rules. Although this strategy sounds like a lot of work, many of these rules are easy to learn, such as “i before e, except after c and except if it makes the ay sound.” Although this rule has other exceptions (neither, weft), the basic rule is helpful for spelling many troublesome words (neighbor, receive). The “Aspen Handbook for Legal Writers” by Deborah Bouchoux has a helpful list of spelling rules.
By Kevin Quigley

“We did it all over again.” — Yup Borna

Little did I know what was in store when I accepted the nomination to the MCBA executive committee. Just over three years into being on the executive committee, and one month into my term as president, the excrement hit the oscillator. On the morning of February 12, 2009, I was in Washington, D.C., meeting with clients. While on a break, my cellphone rang: it was Executive Director Allen Kimbrough.

Allen asked me if I was sitting down, and told me that he had some bad news. There was a fire at the MCBA office, and I told him that I had some bad news.

Walking through the burned-out offices Saturday morning revealed the stark reality of the situation. The stench of charred wood, metal and plastic was overwhelming (the clothes I was wearing were promptly deposited in the trash). The damage was far more extensive than I had feared.

In writing this article, I found that there are more quotes about rising in the face of adversity than I would have otherwise thought. A favorite purportedly comes from Winston Churchill: “If you are going through hell, keep going.” But the one that I found most applicable comes from English author and journalist John Churton Collins: “In prosperity, our friends know us; in adversity, we know our friends.” We were faced with a huge challenge, and significant work had to be done. It was going to take the collective efforts and dedication of the MCBA membership, board of directors, staff and supporters to persevere and prevail.

And that is what happened. Within hours of word spreading about the fire, offers of assistance poured in from the MCBA’s friends. Within days, temporary office space across the street from our fire-damaged building had been secured through the generous efforts and assistance of the MCBA’s business partners and supporters. Having learned from the prior fire, the MCBA had securely backed-up its membership and daily operations data at an offsite location.

The MCBA’s talented and resilient staff moved into a temporary space in an incredible short time period. With the business and operations data secure, the staff was able to get the MCBA back up and running.

Everyone associated with the MCBA came together to insure that what could have been a debilitating blow was addressed and minimized to every extent possible. At the very next meeting of the board of directors, the board and staff resolved to insure that the organization would continue to be the backbone of the Maricopa County legal community, and they put into action a plan to not only endure the storm, but to also use it as an opportunity to further improve upon the great work that had been done by the organization.

Member services continued, with a wide variety of CLE programs being presented in the temporary offices as well as at other venues. Sections and divisions thrived. The Young Lawyers Division’s 17th Annual Barristers Ball — an MCBA tradition — went off without a hitch (although a few silent auction items were a bit crispy), and gave everyone a chance to gather and celebrate. The MCBA continued to sponsor judicial investitures — among the few items that fortunately were spared from fire and smoke damage were the recently ordered gavels for presentation to our new superior court judges. The Hall of Fame Luncheon took place with the largest attendance to date, welcoming new inductees to the esteemed honor roll. And for the first time in the MCBA’s history, the board of directors’ election was held online.

Important initiatives continued. The Bench-Bar Committee was reconstituted and continued to meet and address issues impacting the legal profession and judiciary. The Justice Museum Task Force continued its efforts to restore and open the historic jail cells of the Old Courthouse as a museum and learning center based on the legal profession in Maricopa County — an effort that

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Reflections: 2009

Kevin Quigley

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Can you guess who they are?

Photo #1

Photo #2

Photo #3

Go to page 9 for the answers.

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(Current as of September 19)
We're not immortal. Someday, we'll have to stop practicing law. Why wait for death or disability to force you to do so? Why not instead retire on your own terms whenever you're ready, in relatively good health, and with sufficient financial resources for a satisfying retirement? Life's too short. No matter what your age, start your retirement planning now. Review your circumstances, plan your anticipated needs, set a definite retirement date and goals, and then work toward accomplishing them. You can't afford to wait.

Redefining your personal goals
Retiring from law practice doesn't require withdrawing from life generally. However, you'll need to develop satisfying personal interests and activities to make retirement most rewarding. You can then redirect 80 percent of your time and energy into the most rewarding 20 percent of them. Don't waste time on activities you don't enjoy or postpone retirement simply because you have no personal interests. Begin exploring those possibilities now, so they can be pursued more fully when time permits.

Developing a “portfolio of careers”
Work is being redefined to include all of our part-time activities or “careers.” Those portfolios can be managed, both at work and in retirement, depending on our professional and personal interests and skills, and our financial needs. We also can adjust our portfolio at any time by adding, changing or discontinuing any desired components. Income-producing work and non-income-producing retirement interests therefore need not be all-or-nothing alternatives.

Financial planning
Retirement financial goals have both income and expense sides. A sufficient asset/income “number” is required to maintain a reasonable retirement lifestyle. Achieving it requires savings and investment strategies beyond this article’s scope. However, until you do so, financially satisfying retirement without at least part-time employment may not be possible. After reaching that number, deciding whether to continue working becomes a trade-off between whatever satisfaction results from doing so, and finally having time to pursue personal interests and activities while you still can.

Doing the math
According to the Society of Actuaries, there's now a 45 percent chance that one spouse of a 65-year-old married couple will live until age 90 and a 20 percent chance that one will live to age 95. However, only 60 percent of such households have a 401(k), IRA or similar tax-advantaged retirement plan. In 2010, the typical balance in such accounts was only $120,000. If that amount were converted to a standard joint-and-survivor annuity, it would provide only $575 in guaranteed monthly income life income.

Even a $1 million investment portfolio might not be sufficient to meet your retirement income needs. For example, assuming an average 4.24 percent annual return, 2.4 percent aver-
When are minimizing taxes not in the corporation’s best interests?

By Scott DeWald

Walgreens’ board announced on August 6, 2014 that it would not change to an overseas domicile in an “inversion” transaction that would have reduced corporate taxes paid in the U.S. Why? “Patriotism?” If the board had asked you, as its corporate counsel, whether it was legally justified in considering such factors as patriotism, the interests of U.S. Walgreens’ employees, all U.S. taxpayers and the local and national economy, by remaining a U.S. taxpayer, would you have reasoned that directors can take actions based upon a good-faith belief that they are in the best interests of the corporation even though they do not clearly maximize shareholder wealth? Would you have considered similar actions such as:

- adopting safety standards exceeding minimum legal requirements;
- making contributions to charities lacking “public relations” value;
- paying employees a “living wage” exceeding local market labor rates;
- favoring local suppliers costing more than foreign suppliers;
- adopting “green” technology that reduces adverse environmental impacts even if less cost-effective in the short-term; or
- the interests served by the continued independence of the corporation in the context of a takeover transaction under A.R.S. § 10-2702?

Does the corporation have a legitimate interest in being “patriotic” or a “good citizen” of the community, nation or planet? Or must a decision, in order to be in the “best interests of the corporation,” require a reasonable belief in a unique benefit to the corporation?

Did non-economic factors justify the Walgreens’ board’s decision to forego tax savings estimated at $1 billion through 2018? (According to Forbes, Walgreens’ tax rate would have dropped from 36 percent to “the high 20 percent range,” and a Deutsche Bank report estimated annual tax savings of $1 billion by 2018 and an increase in earnings per share by 15 percent.) Did directors breach their fiduciary duty to shareholders by not pursuing the tax savings? (Shares of Walgreens dropped by 4 percent on the day the decision was announced and fell another 15 percent the next day, according to Forbes. The Huffington Post noted that shareholders who stood to benefit financially from Walgreens’ inversion were “no doubt disappointed” by the company’s decision to stay put. However, not all shareholders would have benefited; inversions actually trigger a taxable event for some shareholders.)

According to Forbes, Walgreens bowed to “political pressure” amid criticism that moving abroad to reduce taxes would cause U.S. job losses and be “unpatriotic.” The company’s official announcement said it was “mindful of the ongoing public reaction to a potential inversion and Walgreens’ unique role as an iconic American consumer retail company with a major portion of its revenues derived from government-funded reimbursement programs.” The board, however, justified its decision on grounds that the transaction might not qualify for the hoped-for tax savings on the basis of a benefit to society or “being patriotic.” However, other boards (at press time, Burger King’s board) will face decisions that involve values other than economic factors, some of which may be controversially labeled social and environmental. They may also face prospects (or threats) of a change in the law (such as the No Federal Contracts for Corporate Deserters Act of 2014) that reduces incentives benefitting the corporation by reducing negative effects on society. Can directors choose to avoid taking actions that benefit the corporation on the theory that the law likely will (or should) change to avoid negative effects on the rest of the world? Will directors be protected in making decisions that cause a corporation to stop depleting a common good, such as the infrastructure maintained by our free society? This author hopes that directors will be not forced to answer these questions only one way and will be given reasonable protection against shareholder claims that short-term wealth-maximization is the only legitimate factor for consideration.

Note: This article was written before new Treasury regulations applicable to tax inversions were enacted effective Sept. 22, 2014 and therefore does not reflect those regulations.

Scott DeWald is a partner at Lewis Roca Rothgerber, LLP. For over 30 years, DeWald has helped clients plan and execute strategies, solve problems and realize opportunities using business law, primarily in corporate formation, financing and acquisition transactions, and contract negotiations.

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Can you guess who they are?
continued from page 6

Photo #1 is Michael O’Connor. Photo #2 is Michael Ripp. Photo #3 is David Horowitz.
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Saturday, February 28, 2015

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

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Please return form to MCBA, Attn: Laurie Williams, 303 E. Palm Lane, Phoenix, AZ 85004 or Fax to: 602-682-8601.
Joseph Sciarrotta, Jr., has been appointed to the Maricopa County Superior Court bench, replacing Judge Douglas Rayes, who was confirmed by the United States Senate as a federal judge for the United States District Court for the District of Arizona.

Sciarrotta, who will start on a family court calendar in Mesa on Dec. 29, served as general counsel to Gov. Jan Brewer. Prior to joining the governor’s office, Sciarrotta served as general counsel for the Arizona Department of Administration and concurrently as chairman of the Governor’s Regulatory Review Council (2010-11). He also brings more than a decade of private sector experience, including serving as in-house counsel for several Fortune 500 and 1000 companies, and has practiced complex commercial litigation; franchise; antitrust; legal malpractice defense; administrative law; construction law; class actions; employment law; torts; appeals; insurance coverage and recovery; internal investigations and more.

Sciarrotta serves on the Childhelp Arizona Board of Directors, a nonprofit organization whose mission is to serve the physical, emotional, educational and spiritual needs of abused, neglected and at-risk children. He also is a member of the St. Patrick’s Men’s Club, a social and charitable works parish group.

Sciarrotta graduated from Vanderbilt University School of Law and received a B.A. degree in political science from the University of Michigan.

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If so, then this is the program for you!
The Maricopa County Bar Association is creating a groundbreaking Mentor/Mentee Program, and WE WANT YOU to be a part of it! Mentors must have a minimum of 5 years experience to participate in this program; mentees will be limited to those with 3 years experience or less. All participants must be members of the MCBA.

Mentors/Mentees will mutually select one another, and then experience the program together. Organized events will be scheduled once per month, for the months of January through May, and September through November 2015. Tours of the United States Bankruptcy Court and the Arizona Court of Appeals will be among the organized events.

We will be taking a break from formal programs in the summer months, but Mentors/Mentees will be encouraged to meet with their assigned Mentor/Mentee regularly, and will also be invited to attend other networking events not officially sponsored by the program throughout the year.

Space in this unique program is limited! Mentors/Mentees will be accepted on a first-come, first-served basis, so please do not delay. Email MCBAMentors@gmail.com if you are interested in participating.

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- Fostering the growth of young professionals
- Networking with individuals who are seeking to learn from your experience & practices (not just seeking employment opportunities!)
- Meeting new people in a relaxed environment

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THREE WAYS TO REGISTER

ONLINE
Register online at: www.maricopabar.org. Click on “CLE/Events” at the top menu and then “CLE Calendar.”

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

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Call Bree at (602) 682-8588

Where the Legal Community Connects

DEC. 2, 2014 • NOON-1:30 P.M. (Lunch provided)
Same Sex Marriage — How It Will Impact The Practice Of Law
SPONSORED BY: Family Law Section
1.5 CLE credit hours available
How same sex marriage will impact family law in Arizona and same sex issues that might arise in practice.
PRESENTER: Claudia Work, Campbell Law Group, Chartered
COST: • MCBA members: $62.50
       • MCBA Family Law Section members: $55 (use promo code IMPACT)
       • Bring your paralegal/legal assistant (Please provide their name and email): $25
       • MCBA Paralegal & Public Lawyer Division members: $40
       • MCBA student members: $10
       • Non-members: $102.50

DEC. 4, 2014 • NOON - 1 P.M. (Lunch provided)
Do You Know Which Ethics Rules Change on January 1st?
1 CLE credit hour available
Several of Arizona’s Rules of Professional Conduct will change on January 1, including:
What lawyers must know about technology
What information lawyers may (and can’t) disclose when switching firms
What procedures a lawyer must implement to protect client information
A lawyer’s ethical obligation to “acknowledge” client communications
A lawyer’s ethical obligations when “outsourcing” legal support services
Ethical duties owed to prospective clients who never become clients
Changes to the advertising rules
PRESENTER: Lynda Shely, The Shely Firm, PC
COST: • MCBA members: $50
       • Bring your paralegal/legal assistant (Please provide their name and email): $25
       • MCBA Paralegal & Public Lawyer Division members: $35
       • MCBA student members: $10
       • Non-members: $70

DEC. 3, 2014 • 8 - 9:30 A.M. (Breakfast provided)
Case Management for Paralegals
SPONSORED BY: Paralegal Division
1 CLE credit hour available
Are you looking for a better way to manage all of the files you are assigned? How do you determine your highest priorities? This CLE is designed to help you better manage the individual and multiple files you are handling, determine what your priorities are, provide you with ideas on how to better handle projects and manage various deadlines, and give you some tips and tools to assist with your file management. This CLE will benefit all who attend, from the new paralegal to the more seasoned one. Come join us for this informative session, learn new ways to manage your caseload and get a chance to network with other paralegals.
PRESENTER: Tina Ziegler, Hammerman & Hultgren, PC
COST: • MCBA Paralegal Division members (use promo code PARALEGAL): $15
       • MCBA student members: $10
       • Paralegal non-members: $30
       • MCBA members or non-paralegal: $45

JANUARY 2015
ESTATE PLANNING FUNDAMENTALS
LUNCH SERIES • JANUARY 9, 16, 23 and 30
Registration: 11:15 - 11:30 a.m.
Program: 11:30 a.m. - 1 p.m.
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Lunch included • Each session offers 1.5 hours CLE credit available

Sponsored by the Estate Planning, Probate & Trust Section

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 payments 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, fax at (602) 682-8601, or e-mail blee@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 charge.

The State Bar of Arizona does not approve or accredit CLE activities for the Mandatory Continuing Legal Education requirement. The activities offered by the MCBA may qualify for the indicated number of hours toward your annual CLE requirement for the State Bar of Arizona, including the indicated hours of professional responsibility (ethics), if applicable.

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MCBA Public Lawyers Division members/Paralegal Division members: .......................$45

SETTLEMENT

SESSION I
FRIDAY • JANUARY 9
Where There Isn’t a Will, There’s a Way
PRESENTED BY: Mark Moritz, Attorney at Law

SESSION II
FRIDAY • JANUARY 16
Basic Estate Planning
PRESENTED BY: Roberta Berger, Adjunct Professor, Arizona Summit Law School

SESSION III
FRIDAY • JANUARY 23
Basic Conservatorship/Guardianship for Adults
PRESENTED BY: Brian Theut, Theut, Theut & Theut PC; Kevin Parker, Swell & Wilmer

SESSION VI
FRIDAY • JANUARY 30
Introduction to Probate
PRESENTED BY: Judie M. Rettelle, Attorney at Law

TWO WAYS TO REGISTER:
ONLINE: www.maricopabar.org under CLE/EVENTS header, then click CLE Calendar.
PHONE: Call Bree Boehlke at 602-682-8588 M-F, 8:30 am to 5 pm.
Have your credit card information handy.

Most CLEs are available for simultaneous webcast or later viewing through West LegalEd at http://tiny.cc/kg4cjw (WEBCAST)
process often escalates their negative behavior. This master class will address the dynamics of five high-conflict personalities who frequently drive legal disputes: Narcissistic, Borderline, Paranoid, Antisocial and Histrionic. You will be provided with tips for containing their behavior while managing and/or resolving their disputes — both in court and with out-of-court settlements. Ways of managing their many negative advocates (family, friends and sometimes other professionals) will also be discussed.

PRESENTER: Megan Hunter, MBA, Unhooked Media, High Conflict Institute

COST: • MCBA members: $15
  Bring your paralegal/legal assistant (Please provide their name and email): $25
  • MCBA Family Law section members (use promo code FAMDEC): $10
  • MCBA Paralegal & Public Lawyer Division members: $70
  • MCBA student members: FREE
  • Non-members: $175

DECEMBER 12, 2014 • NOON - 1:30 P.M. (Lunch provided)
What Does the 2015 Economy Have in Store for Arizona Attorneys?

SPONSORED BY: Bankruptcy Section
1.5 CLE: credit hours available including 0.5 ethics

Please join Alec Smith, Senior Economist at Compass Lexicon and Visiting Assistant Professor in Economics at the University of Arizona, and Beth Jo Zeitzer, President and Designated Broker of R.O.L. Properties, for a discussion about what we can expect from the economy and local real estate market in 2015.

PRESENTERS: Beth Jo Zeitzer, Esq., President and Designated Broker of R.O.L. Properties; Alec Smith, Ph.D., St. Economist with Compass Lexicon

COST: • MCBA members: $62.50
  Bring your paralegal/legal assistant (Please provide their name and email): $25
  • MCBA Bankruptcy Law Section members (use promo code EPPTLIT): $55.00
  • MCBA Paralegal & Public Lawyer Division members: $40
  • MCBA student members: $10
  • Non-members: $105.00

JANUARY 8, 2015 • 7:30 - 9 A.M. (Breakfast provided)
Veterans Benefits — A Primer for Elder Law Attorneys

SPONSORED BY: Estate Planning, Probate and Trust Section
1.5 CLE: credit hours available including 0.5 ethics

An overview of VA compensation and pension benefits, especially those for elderly veterans and their survivors:

• Criteria for eligibility for VA benefits, and how they compare to criteria for ALTCS eligibility
• Planning techniques to achieve eligibility
• Requirements for applicants to represent applicants for veterans benefits
• How attorneys can get paid for representing claimants for VA benefits

PRESENTER: Marsha Goodman, Frazer, Ryan, Goldberg & Arnold, LLP

COST: • MCBA members: $62.50
  Bring your paralegal/legal assistant (Please provide their name and email): $25
  • MCBA Estate Planning, Probate and Trust Section members: $55
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  • Non-members: $105.00

Immigration law implications
Continued from page 2

Oct. 25, 2005). Depending on the state court where the divorce is finalized, a defendant may raise several defenses to challenge the financial obligation of an Affidavit of Support. Even if the defendant concedes that the affidavit is a contract between the two parties rather than a contract between the sponsor and the government, the sponsor may assert that the contract is unenforceable due to fraud by the foreign national. For example, if a sponsor can show the foreign national committed fraud (the foreign national never intended to enter into a lasting marriage, but simply used the sponsor to get a Green Card), that may be a complete defense to any liability.

The duration of the support can be limited based upon the natural end of the Affidavit of Support obligation. The financial obligation ends if one of the following events occur: (1) the foreign national completes 40 quarters of coverage under the Social Security Act; (2) the foreign national becomes a U.S. citizen; or (3) the foreign national loses permanent residence status.

It is important for both U.S. citizen and lawful permanent resident sponsors to be aware that the obligations of the affidavit of support may be broader than they appear. And it’s important for attorneys who represent either party to understand how the Affidavit of Support may be used in their case outside the scope of immigration law.

Cynthia Perez and Simona Dima are associate attorneys with Hammond Law Group, LLP.

New CLE self study website
Participating in CLE courses just got easier with our new self study website! Go to www.shop.maricopabarcelomc.org and course materials.

MCBA office closed at Noon
Dec. 26

Please watch your MCBA E-News for updated information about meetings and events.
Volunteer Lawyers Program Thanks Attorneys

The Volunteer Lawyers Program thanks the following attorneys and firms for agreeing to assist on 22 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 602-254-4714 or pgerrich@clsaz.org.

**PRO BONO SPOTLIGHT ON CURRENT NEED**

Volunteer lawyers are needed to assist working with families with debts.

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Alexander Thureen

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VLP ATTORNEY OF THE MONTH

Newly admitted lawyer continues his passion for pro bono work

By Peggi Cornelius,
VLP Programs Coordinator

Attorney Justin Hernandez affectionately describes his family of origin as “large, loving and crazy.” He also says his parents impressed upon him at an early age that he should “do good for those less fortunate.”

In the most positive meaning of the words, Hernandez has truly become a “do-gooder,” and his pro bono work through the Volunteer Lawyers Program (VLP) has brought him recognition as the Attorney of the Month.

Born in New York City, Hernandez was raised from the age of 5 near Tampa, Fla. His undergraduate education in sociology at the University of South Florida didn’t immediately set him on the path to law school. Before being accepted at the Arizona Summit Law School, he was employed by a Florida hospice organization.

When he arrived at the doorstep of the VLP in April 2013, Hernandez was a third-year law student. He was ready and willing to become involved in any way that would benefit the clients and the organization. Since most casework on behalf of VLP clients is done in the private offices of volunteer attorneys, Hernandez became involved in assisting volunteer attorneys who were interviewing prospective pro bono clients at the VLP office. He attended case review meetings with VLP staff to assist in the process of evaluating cases for legal merit and possible legal remedies.

In addition to helping VLP assess incoming applications, Hernandez spent hours helping with the record keeping that is so vital to the coordination of a large volunteer program. His skills in research, data entry and spreadsheet management facilitated updates to the VLP database of participating attorneys and enabled mass email communications with volunteers.

While waiting for admission to the Arizona Bar, Hernandez accepted employment as a legal assistant and continued his weekly volunteer commitment in the VLP office. Since obtaining his license to practice law in Arizona, Hernandez is conducting initial interviews and providing advice and brief assistance to pro bono clients at VLP. His aspirations for private practice will likely take him into corporate law, but pro bono work with low-income clients will always be a part of his professional endeavors.

“I enjoy meeting and speaking to new people from all walks of life, and it is humbling,” Hernandez says. “One of the first interviews I conducted at VLP was with a family who paid for roof repairs that were so poorly done, they had to literally duck under portions of sagging ceiling in their home. After VLP got involved, the issue was resolved.”

Even when prospective clients bring issues to the VLP that cannot be remedied, Hernandez says the time he spends with them is valuable and important.

“It’s gratifying to see the relief clients feel when I listen to their story and allow them to express their fears, frustration or sense of injustice,” he says. “Sometimes, they just need to know how to advocate for themselves in unfamiliar situations. I can provide clarity or education that gives them the ability to resolve their problem or let go of their anxiety.”

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

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HONORS & AWARDS

Rita Meiser has been elected president of the Arizona Adoption Coalition (AAC). The AAC is a statewide nonprofit organization of adoption agencies and professionals, dedicated to improving adoption services and promoting adoption. Meiser is a fellow and past president of the American Academy of Adoption Attorneys. She provides a full range of legal counseling and representation on behalf of prospective adoptive families, birth parents and adoption agencies, with special emphasis on private adoptions and interstate adoptions.

Beth Jo Zeitzer was elected vice chair to the Jewish Community Foundation of Greater Phoenix board of directors. The board is responsible for providing governance over the foundation’s operations and accomplishment of its mission.

Each board member serves a three-year term, with opportunities for term renewal.

PROGRAMS

Rita Meiser was a judge for the Arizona Adoption Coalition in 2002 by Gov. Jane Hull. She was chief justice of the Arizona Court of Appeals and served as the Arizona Attorney General’s Office, teaching at Arizona Summit Law School, and doing private arbitrations, mediations and consultations on civil litigation matters.

High court gives legislature continued from page 1

threshold do the problems of under-repre-

sentation, insufficient capacity, and need for increased governance arise.

Berch then turned to elasticity. She noted the statute’s facially elasticity, applying to any community-college district whose county reaches the population threshold, although this would not happen until decades hence. She acknowledged that previous opinions, like Repealable Investments, had stated that the elasticity factor requires it to be reasonably likely that other members will join the group within a reasonable time.

But a close examination of those cases revealed those statements to be dicta. No previous case had overturned a statute on the ground that no new members would join the class within a certain amount of time. The statements had been made concerning statutes where the class was already closed. Thus future entry into the class was not only unlikely, it was impossible.

“We ... now disavow any suggestion that entry into the class within a particular time is a requirement of the elasticity prong of the special-laws analysis,” Berch wrote. “This requirement,” she continued, “should focus on the probability that a potential class member will ‘come under the act’s operation when the population changes,’ not on the likelihood that the population will change.”

She added, “the elasticity requirement is met when the statute looks to broader application in the future, no matter how imminent the application might be.”

Berch held that in this case, “rather than focusing on the imminence or likelihood that the class would change, the courts should instead ‘focus on whether, once a county attains the population threshold, it will share the characteristics of the classification and fall within the class.’” Joining her in vacating the court of appeals’ opinion and upholding the statute were Chief Justice Scott Bales, Vice Chief Justice John Pelander, and Justice Robert M. Brutinel and Ann A. Scott Timmer.

Judge petitions California lawmakers

Courts sometimes invite legislatures to chime in on issues. In connection with its abolition of governmental immunity, the Arizona Supreme Court in Ryan v. State, invited the legislature to step in: “We do not recoil from the thought that the legislature may, in its wisdom, wish to intervene in some aspects of this development.” The court maintained neutrality and did not tell the legislature what kind of legislation it wanted.

A Ninth Circuit judge recently suggested that California lawmakers enact legislation concerning the responsibilities that big-box stores owe to their customers. He did not, however, refrain from suggesting what the suggested legislation should look like.

The Verdugo sued Target Corporation in federal court after Mary Ann Verdugo suffered a heart attack and died in a California Target store. They claimed that Target had a common-law duty to have AEDs — automatic external defibrillators — in their stores.

After the district court dismissed the suit, the Verdugos appealed. The Ninth Circuit certified a question to the California Supreme Court, asking “whether, under California law, the common law duty of reasonable care that ... Target ... owes to its business customers includes an obligation to obtain and make available on its business premises an AED for use in a medical emergency.”

The California court held that Target had no such common-law obligation. With the state-law question having been answered, the Ninth Circuit panel issued a short per curiam opinion simply affirming the dismissal.

Judge Harry Pregerson concurred but wrote separately “because that decision troubles me.” He first urged “big box stores like Target” to, “at the very least, recognize their moral obligation to make AEDs available for use in a medical emergency.”

Pregerson then turned to the state lawmakers: “I hope that our California Legislation takes a hard look at this issue and considers a statutory standard of care that will protect consumers by requiring big box stores to make lifesaving AEDs available.” He argued that stores like Target have a special relationship with their customers that “requires a business to provide first aid to invitees who become ill or injured on the premises.”

“I believe that AEDs should be considered first aid,” Pregerson continued. “They are crucial to the survival of sudden cardiac arrest victims. They are inexpensive, nearly foolproof, and are necessary when, as happened here, paramedics cannot reach a victim in time to save the person’s life. I believe that AEDs should be as common as first aid kits, and that big box stores like Target should be required to make them available to their customers who suffer sudden cardiac arrest.”

Pregerson noted that Oregon had enacted such a statute: “If Oregon can require businesses such as big box stores to provide this minimally burdensome, yet life-saving equipment, so too can California, a leader in consumer protection,” he wrote.

Reflections: 2009 continued from page 6

came to fruition a couple years later. And by year’s end, the MCBA was preparing to move into its reconstructed and further improved offices at 303 East Palm Lane.

There is a reason that this organization just celebrated its centennial, and did so as a thriving organization: Its membership, staff and friends are all committed to each other and to making Maricopa County’s legal community the best it can be. 2009 was a testament to that. I was proud and honored to serve as MCBA president that year. I was honored to have worked with highly motivated and dedicated individuals on the MCBA board and staff. I was privileged to have made so many good friends throughout the MCBA. Here’s to the next 100 years.”

Kevin Quigley was the 2009 MCBA president.

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