Comerica Bank Pro Bono Golf Classic on Nov. 3

When a Working Sabbatical

YLD’s Race Judicata Brings Out a Crowd

Welcome Back to the Bar!

When “Identity Fraud” is NOT Identity Fraud After All

Comerica Bank Pro Bono Golf Classic will be held November 3 at The Legacy Golf Resort, beginning at 6:30 p.m. with breakfast and registration. The shotgun start is at 7:15 a.m. and lunch is available after you complete your round. Prizes will be awarded for longest drive, closest to pin, and of course, a hole in one.

This event benefits the Volunteer Lawyers Program and the Maricopa County Bar Foundation. Find the registration form on page 7. For more information call Pat Gerrich at (602) 258-3434 ext. 2630.

The 2007 Comerica Bank Pro Bono Golf Classic was a huge success, drawing nearly 300 registrants. At the crack of dawn on September 16 the MCBA Young Lawyers Division and other dedicated volunteers began preparing the race course area for the third annual Race Judicata at Kiwanis Park in Tempe.

Runners, walkers, strollers, and canines started out of the Sister Cities Gardens area of Kiwanis Park and covered either the 1 Mile or 5K course that wrapped through Kiwanis Park. The event raised money for YLD’s core community service projects that it hard to find an apartment. So he resumed job, but his record hurt his credit and made it hard to find an apartment. So he resumed

Among other things, Sharma was charged with and convicted of identity theft. The technical charge was possession of “access devices,” a statutory term for things like credit and debit cards. Under A.R.S. § 13-2316.01(A), the crime occurs when a person “knowingly possess[es], traffic[es] in, publish[es] or control[s] an access device without the consent of the issuer, owner or authorized user and with the intent to use or distribute that access device.”

Sharma argued that he could not be guilty because he owned and was the authorized user of the cards. The state responded that the statute applies when the device is possessed without the consent of either the issuer, the owner, or the authorized user.

Judge Sheldon Weisberg sided with Sharma, relying on the statutory history of the bill that established the offense. He took particular note of a legislative fact sheet, which described the bill as prohibiting “the knowing possession, trafficking, publication or controlling of another’s access device.”

Weisberg acknowledged that the statute itself does not bar possession of another person. As Peter Reynolds, Sharma generally paid his bills. Conducting a fraud investigation, police searched his apartment and found a driver’s license, credit and debit cards, and checks in the name Peter Reynolds.

The start of the 5K at Race Judicata sends off over a hundred runners and walkers under the balloon arch at Kiwanis Park in Tempe. Sponsored by MCBA’s Young Lawyers Division, the September 16 race was a big draw for serious runners, joggers, and walkers alike. See more photos and race results on page 11.

See Race Judicata page 11

Welcome Back to the Bar!

A Very Special Event Marks the MCBA Grand Re-Opening

Home at last! Members, staff, special guests, and all the legal professionals in Maricopa County are invited to help celebrate the Grand Re-Opening of the MCBA headquarters building on Thursday, October 11.

Arizona Supreme Court Chief Justice Ruth B. Ginsburg will open the Open House with remarks and by cutting the ribbon at 5:15 p.m. The building, located at 303 E. Palm Lane, will be sporting a white and blue balloon arch at its front entrance on Third Street.

From 5:30-7:30 p.m. MCBA will welcome visitors with hors d’oeuvres and an open bar, displays with MCBA historical highlights, association information, and building tours.

The bar building, now updated and remodeled with size-flexible meeting rooms for CLE programs and meetings, also features convenient adjacent parking.

MCBA members are invited to bring their non-member peers, partners and associates. For the month of October, new members receive 14 months of membership for the price of 12 and a discount on CLE. A sign-up table and membership information will be available at the Open House.

Free parking is available in lots in the immediate area as well as adjacent to the building. Security personnel will be on hand to assist as needed.

The MCBA building was damaged by fire in 2006 and headquarters were moved for several months to rented quarters on Central Avenue. MCBA staff moved back into the remodeled Palm Lane building in July while interior finishing work continued.

Be sure to look for your official invitation in the mail, but in case you miss that one, see page 4.
Newly Appointed Superior Court Judges and Commissioners Bring Varied Experiences to the Bench

By J.W. Brown

Eight of the newest judges appointed by Governor Janet Napolitano through the merit selection process are settling in to their chambers and courtrooms. They are joined by two new commissioners appointed by Presiding Judge Barbara Rodriguez Mundell to fill vacancies created by the two commissioners who became judges. And a ninth judge will be appointed for the newly created 95th Division.

The new members of the bench and their assignments are:

**Judge Dawn M. Bergin** is assigned to Juvenile Court at the Durango Juvenile Court Center in south Phoenix. She begins handling cases on Oct. 9. She is a former partner in the commercial litigation section of Lewis and Roca, and was chair of the firm’s Litigation Department. She formerly served as the chair of the firm’s Associates Committee. Judge Bergin assumed the Juvenile Court calendar that had been assigned to Judge Dennis Dairman, who retired in June. She is a former board member of the Maricopa County Bar Association.

**Judge Roger E. Brodman** is the co-founder of Holden Brodman PLC, which specializes in general construction law. Prior to his appointment, he practiced law for 24 years in California and Arizona. Since 1992, he served on the American Arbitration Association’s construction law panel. He assumes a Juvenile Court calendar on Oct. 1, which had been previously assigned to Judge Jonathan Schwartz, who retired on June 30. His courtroom is also at the Durango Juvenile Court Center.

**Judge Dean M. Fink** served as a Superior Court commissioner since 2004. He handled a mixed calendar of probate and mental health cases and then moved to the criminal department just before his appointment as a judge. He is assigned to Family Court, and started handling his new calendar as a judge on Aug. 28. Before becoming a commissioner, Judge Fink worked as an attorney at Lewis and Roca law firm from 2000 to 2004. Before that he spent over four years at Kirkland & Ellis and two years at Fenneworth Craig.

**Judge Hugh E. Hegyi** was also a Superior Court commissioner, serving since 2003. He was a Family Court commissioner, until an assignment in June put him on a Civil/Probate calendar. He took over his new responsibilities as a judge on Aug. 28 and is handling a Family Court calendar, which had been previously assigned to Judge Jeffrey Hohtam, who retired on June 30. Prior to becoming a commissioner, Judge Hegyi served in the Attorney General’s Office from 1990 until 2003 and drafted Arizona’s “Used Car Lemon Law,” enacted in 1998.

**Judge Daniel G. Martin** was an administrative law judge since 1999 and served most recently as assistant presiding judge in the

See New Judges page 18

was managing the New York Mets in July, 1993 and his team was nine games out of first place. His Mets went on to win the division.

Whether it is a Yogi-ism, a good joke or a funny anecdote, I hope that you keep finding some humor. It is still good medicine.

If you happen to have a good joke or anecdote, please feel free to send it to me by October 31. You can send it to laraneta@superiorcourt.maricopa.gov. I cannot promise that I will use it for my last column, but I will try to share any good humor that I can. We cannot all be a Barry Silverman, but we do have our moments.

Finally, I invite you to attend the MCBA’s Grand Re-Opening and take a quick tour of our remodeled building at 303 East Palm Lane, Phoenix, (Palm Lane and Third Street) on Thursday, October 11, 2007 from 5:15 p.m. to 7:30 p.m. There will be good company including Chief Justice Ruth McGregor and other members of the legal community, as well as free appetizers, beverages and maybe a funny joke or two.
Calling All Lawyers! Can You Spare Some Time?

By J.W. Brown

The Superior Court recruiting season has begun for court-savvy lawyers willing to volunteer a few hours and their expertise to the Courthouse Experience educational program for Valley students. This year’s recruitment effort is critical because of declining attorney participation.

“Last year, the volunteer attorney pool was merely 60 strong compared to past years,” said Program Coordinator Karin Philips. “Although there were not as many volunteers as in the past, the program still continues to be a success, although on a bit more limited basis.”

Since its inception in 1990, more than 89,000 students have participated in the program which gives them the opportunity to interact with lawyers, judges and court staff, while learning about judicial branch of government.

The students, teachers and chaperones are transported in school buses to the Central Courthouse, 201 W. Jefferson, where they are greeted by their “host” attorney. During the visit, the students sit in court proceedings which may include oral arguments, jury trials and other “real time” court activities. Students who participate are in the sixth grade through college age.

Lawyers who are experienced with the program agree that any attorneys who are hesitant about volunteering will find the payback is worth the few hours they will spend teaching and learning from the students.

“Go for it! Carve out a three-hour block to visit the courthouse and share your enthusiasm with young students,” said Assistant Attorney General Aaron J. Moskowitz, who has volunteered for the past five years. “Guiding the class through the courthouse can revive your passion for your professional career.

“The best thing about my participation in the program is the opportunity to share my passion for courts and democracy with a couple dozen young students in an informal and fun way,” explains Moskowitz. “I enjoy fielding questions on the role of courts in resolving disputes and take genuine pride in helping the students appreciate the value of the rule of law in our society.”

Deputy County Attorney Michael A. Flynn has two words for lawyers who may be interested in participating in the program: Sign Up!

“Young people need your time and your attention,” Flynn said. “This is a painless, easy way to combine a small bit of community service with your lawyering duties. And maybe change a young person’s life.”

“I participate because I love kids and the law and teaching. This allows me to combine these three major themes in my life,” Flynn added. “The best thing is when kids ask articulate questions that show an understanding of the law process, or, when you see the ‘ah-ha’ experience light up their faces when they ‘get it.’

“If you don’t have middle-school or high-school aged kids you can forget how smart they really are, and how much they’ve been exposed to via all the media to which they have access. The students that come to court are bright, inquisitive and a bit intimidated.”

Flynn was surprised to find that most of the students in one group last year had not been in an elevator, so he took them on a ride on a “persnickety elevator” to the 13th floor of the Central Court Building.

“I’m sure the students will remember that,” he said. “They’ll also remember that several lawyers and judicial officers made them feel welcome in the Superior Court buildings.”

Each participating attorney customizes each of their tours.

“I always call ahead and make sure that they know I’m bringing a group to their court room,” Flynn said. “All of the judicial officers that I’ve dealt with welcome the students to their court. They all take time to speak to the students about what it’s like to be a judge and a lawyer, and take the time to answer questions from the students.”

To volunteer and learn more about the program, contact Karin Philips at (602) 506-3206. You may also e-mail her at philipsk@superiorcourt.maricopa.gov.

Beyond Conventional Wisdom, Border Crimes Have Wide Ranging Negative Impact


“While the conventional wisdom among immigration hardliners is that unauthorized immigrants are disproportionately violent and a net drain on the U.S. economy, the conventional wisdom on the left is that illegal immigration is harmless, a kind of victimless crime,” Kittrie said in his remarks. “Neither is correct.”

Kittrie said the evidence tends to show that unauthorized immigrants do not commit a higher proportion of crimes (other than immigration violations) than the rest of the U.S. population.

Unauthorized immigrants likely represent a net gain to the economy of the United States, said Kittrie. He referred to a recent University of Arizona study that estimated costs to the state of all unauthorized immigrants are about $1 billion per year, but if all unauthorized immigrants were removed from Arizona’s workforce, economic output
Welcome Back to the Bar!

MCBA is celebrating its return to the updated and renovated Palm Lane building. MCBA members and non-member legal professionals welcome.

When

Thursday, October 11, 2007
Maricopa County Bar Association, 303 East Palm Lane, Phoenix

Agenda

5:15 p.m.
Ribbon-cutting, featuring remarks by
Arizona Supreme Court Chief Justice Ruth V. McGregor

5:30 - 7:30 p.m.
Open house

Network

Open bar and hors d’oeuvres  ■  MCBA historical highlights.
Membership information and special membership offer.
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Laurie Williams, lwilliams@maricopabar.org or 602-257-4200 x102 by October 5.

Free parking available at MCBA and in adjacent marked lots.
The Time is Now

Monica Rapps, CP
Paralegal Div. President

Membership
How often do people say they will buy a house when they have enough money, they will have children when they have a house, they will go back to school when the children are grown, or when they have money and time?

We never have enough money, or time, and let’s face it—we are not getting any younger. We must make time for the things that matter most: family, friends, vacations, hobbies, and yes, our careers.

Do you know the latest trends affecting paralegals and the legal industry? Do you keep up with local rule changes? Do you strive to learn more, even in areas that do not affect you on a daily basis? Do you want to network with other paralegal professionals?

Knowledge is power; competition in the workplace is fierce. Empower yourself by joining the Paralegal Division. Now is the time to add to your knowledge base, enhance your professionalism, network with other paralegals, increase your marketability, receive CLE credit, give back to the profession and to the community, and further your paralegal career.

Okay, when is it the right time to do something about your career? How about Now?

Division Voting – Coming Soon!
Don’t forget to vote! New officers and directors were recently nominated, and ballots will be mailed on October 15, 2007. We ask that all eligible members carefully consider the nominations, and any other business on the ballot, cast your vote, and return the ballot as soon as possible.

This is your organization; we are here to serve you, and its future is in your hands. Please make sure that your voice is heard.

Upcoming CLE
Want to learn more about the Maricopa County Superior Court electronic courtrooms? Join us for an electronic courtroom presentation on October 25 for a one-hour, lunch time CLE, with a sponsored light lunch afterward. Members receive complimentary admittance; non-members pay a nominal fee.

Please visit the website for information about membership, the October CLE, officer and director nominations, and other Division activities: www.maricopaparalegals.org.

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COURTWATCH continued from page 1

son’s access device. Nevertheless, he found that the Legislature intended the more limited meaning. He noted that at the same time that the Legislature enacted the statute, it also enacted another, which barred the knowing use of the personal identifying information of another person intentionally to “obtain or use the other person’s identity for any unlawful purpose or to cause loss to a person.”

He concluded that “[a] fair interpretation of the legislature’s purpose is that it intended to punish those who use another person’s access device or personal information for an unlawful purpose,” that is, “to cause harm or loss to the person to whom the access device has been issued or provided.”

Sharma’s actions did not qualify because he was the person to whom the access devices had been issued and “he had only used the checks and bank cards to access his own money in bank accounts he had opened using the alias.” Although Sharma had opened the bank accounts under the alias, “he had not stolen any of the cards or checks or any of the cards or checks belonged to a separate person named Peter Reynolds.”

“Thus,” Weisberg concluded, Sharma did not possess “devices belonging to another person with the intent to use the devices to access accounts belonging to that other person and to cause any harm or loss.” He noted that Sharma had paid for everything that he had purchased with them.

It did not matter to Weisberg that the banks would not have provided the access devices had they known Sharma’s true identity. “The banks that issued the access devices to defendant did so in order for him to use the devices and to gain access to the very accounts he had opened or owned.”

Joining Weisberg were Judges Maurice Portley and Patrick Irvine.

Writer’s Obsession Validated by Arizona Supreme Court


Belton was the focal point of the brief and oral argument in my first-year writing and advocacy class in law school. As “attorney” for the mock defendant in my case, I argued that the Court had gone too far in Belton and urged that it be overruled. Professor Yale Kamisar—the Yale Kamisar—fairly screamed at me for my audacity in suggesting that the Court overturn a case that was only a few months old at the time.

Chagrined, I murmured that the Court should at least limit Belton to its facts. Well, now, it seems that the Arizona Supreme Court—in a split decision—has taken that very tack and limited Belton to its facts. (Not that I get any credit.)

The case at hand involved Rodney Joseph Gant. Officers were waiting for Gant when he drove up to a house and parked in the driveway. As Gant was getting out of the car, an officer summoned him. He walked over to the officer, who arrested him.

Gant was handcuffed and locked in a squad car. Others arrested at the scene were also secured in squad cars. There were several officers present, one of whom acknowledged that they had the scene under control. Officers searched Gant’s car and found incriminating evidence.

Gant moved to suppress the evidence. The trial court concluded that Gant had been a recent occupant of the car when he was arrested, so the search was proper under Belton. Division Two of the Court of Appeals reversed, concluding both that Gant was not a recent car occupant and that the search did not comport with the rationales behind Belton and Belton.

The supreme court granted review and, in a 3–2 decision, held that the search violated the Fourth Amendment. Writing for the majority, Vice Chief Justice Rebecca White Berch agreed with the trial court that Gant qualified as a recent occupant when he was arrested. She nevertheless held that Belton did not apply. Unlike Belton,... this case deals not with the permissible scope of the search of an automobile, but with the threshold question whether the
Avoiding a “Tense” Situation

There is one sure way to catch a legal reader’s attention: change the verb tense in the middle of a paragraph. Of course, changing verb tense draws negative attention, as the resulting prose is grating and causes a legal reader to stop reading. The following example typifies a grating verb tense change in legal prose:

In Doe, the court held that the youth maliciously set fire to the structure. The youth stacked boxes against the structure and states, “I hope it burns.” His companion says the same thing.

In order to avoid this “tense” situation, a legal writer should remember that the verb tense in the first sentence of a paragraph generally provides the verb tense for the sentences in the rest of the paragraph. Specifically, two rules relevant to verb tense apply to legal prose:

- When stating the general legal rule from a statute, regulation, case, or other authority, use the present tense. Example: “A confession is not voluntary if police engage in unfair questioning.”
- When writing about a precedent case, put the facts/background of the case, the court’s discussion, and the court’s holding in past tense. Simply put, these events all happened in the past, so they require past tense verbs. This same rule also applies when writing about a client’s facts. If the events have already occurred, a legal writer must use the past tense. Example: “Our client paid the invoice yet did not receive the shipment.”

Following these rules ensures that the legal reader pays positive attention to the text and avoids a “tense” situation.

COURTWATCH continued from page 5

Justice W. Scott Bales dissented, joined by Chief Justice Ruth V. McGregor. “Although there may be good reasons to reconsider Belton,” Bales wrote, “doing so is the sole prerogative of the Supreme Court, even if later developments have called into question the rationale for its decision.”

Belton’s bright-line rule persuaded Bales that the majority had strayed. “The search authorized by Belton does not depend on a case-specific determination that there may be weapons or evidence in the automobile,” he wrote. Rather, it was the lawful arrest of the recent occupant of the vehicle that itself authorized the search of the vehicle. “The validity of a Belton search . . . clearly does not depend on the presence of the Chimel rationales in a particular case.”

“We can add our voice to the others that have urged the Supreme Court to revisit Belton,” Bales added. “We cannot, however, take it upon ourselves to re-examine Belton’s interpretation of the Fourth Amendment.”

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would drop annually by at least $29 billion, or 8.2 percent. However, Kittrie said, these statistics do not mean that there is no need to fix the currently broken immigration system.

“Although the vast majority of unauthorized immigrants to the United States are likely good people who do not commit crimes other than immigration violations and are a net benefit to the U.S. economy, the process by which they are currently entering the United States is causing great harm,” Kittrie said.

That damage, he said, includes rising levels of corruption among federal, state and local border officials; frequent theft of autos for use in transporting unauthorized immigrants (giving Arizona the highest auto theft rate among the 50 states); hundreds of deaths per year of unauthorized immigrants; increased infiltration into the United States of dangerous Mexican drug cartels; growth in violent street gangs such as MS-13; and environmental damage.

Another cost is the rampant abuse and exploitation of the estimated 12 million unauthorized immigrants currently in the United States, Kittrie said. Fear of deportation makes unauthorized immigrants reluctant to call police, he said, and that fact is regularly exploited by unscrupulous employers, common criminals, battering spouses, corrupt government officials, and border vigilantes.

When so many persons within the United States feel they have no choice but to suffer crimes in silence, the unpunished crimes do not only harm the unauthorized immigrants, Kittrie said.

Unaddressed crimes in the labor area, such as the rampant nonpayment or underpayment of wages to unauthorized immigrants, can drive down wages and working conditions for legal workers who are forced to compete with employer preferences for exploitable unauthorized immigrants, Kittrie said. In addition, street criminals emboldened by their success in committing crimes unreported by unauthorized immigrant victims or eyewitnesses or both, may go on to commit crimes against citizens.

Kittrie concluded that the need for immigration reform is urgent, although not for the reasons focused on by the conventional wisdom.

Kittrie has been an associate professor of law at Arizona State University since 2004.

Prior to entering academia, Kittrie served for 11 years at the U.S. Department of State. He most recently served as the State Department’s director of International Anti-Crime Programs, overseeing U.S. policy and technical assistance programs for promoting the rule of law and combating transnational crime worldwide, including corruption, money laundering, cybercrime, and alien smuggling.

A Mexican-American, Kittrie served during 2006 as President of Hispanic National Bar Association Region XIV, representing Arizona and Nevada on the association’s Board of Governors and overseeing association activities in those states. He has also served as a member of the board of directors of Los Abogados, the Hispanic Bar Association of Arizona, and was honored in 2006 by the Chicano Faculty and Staff Association of Arizona State University with the Dr. Manuel Servin award for mentorship, scholarship and service to the Hispanic community.

Kittrie is the author of several scholarly articles, including Federalism, Deportation and Crime Victims Afraid to Call the Police.
THE BULLETIN BOARD
News from the legal community

The Maricopa Lawyer invites members to send news of moves, promotions, honors and special events to post in this space. Photos welcome.

Send your news via e-mail to holde Davidson at idavidson@maricopabar.org

Moves & New Hires…

Jay Zweig has joined the international law firm Bryan Cave LLP as a partner in its Phoenix office. Zweig will head the office’s Labor and Employment group, a practice which consists of more than 80 lawyers firmwide.

Zweig has two decades of experience representing employers in matters related to human resources training, preventing and defending lawsuits and administrative actions regarding contracts, sexual harassment, discrimination, wage and hour law and OSHA and ADA issues.

Former president of the Maricopa County Bar Association, Zweig regularly lectures both locally and nationally on employment law before professional and trade organizations.

A young attorney with an impressive Ivy League resume and extensive experience as a researcher, writer and lecturer in sentencing law and policy joined the faculty of the Sandra Day O’Connor College of Law.

Associate Professor Carissa Byrne Hessick is teaching Criminal Procedure and Criminal Law this year and will lead a sentencing seminar in April. Also accepting a post at the College of Law, as a visiting professor, is Andy Hessick, Carissa’s husband, who teaches Civil Procedure and Administrative Law.

Gust Rosenfeld P.L.C., is pleased to announce that Kelly J. Shira has joined the firm as an associate. She practices education law, employment law, environmental law, general insurance defense and complex litigation. She has worked with more than 30 public school districts on issues such as employment matters, teacher and student rights, special education, procurement, open meeting law, administrative hearing and contracts.

Kevin Gover, a professor at the Sandra Day O’Connor College of Law at Arizona State University and former Assistant Secretary of the Interior for Indian Affairs, has been chosen to be director of the Smithsonian’s National Museum of the American Indian. The museum made the announcement this week, saying Gover’s appointment will be effective Dec. 2.

Gover joined the Sandra Day O’Connor College of Law in 2003 and teaches federal Indian law, administrative law and statutory interpretation. He is also an affiliate professor in ASU’s American Indian Studies Program and co-executive director of the university’s American Indian Policy Institute.

Three visiting professors, a web-savvy librarian and an experienced prosecutor have joined the Sandra Day O’Connor College of Law at Arizona State University.

Andy Hessick, a visiting professor, served as a law clerk for Judge Raymond Randolph of the U.S. Court of Appeals for the D.C. Circuit and for Judge Renza Raggi of the U.S. Court of Appeals for the Second Circuit. Hessick also spent a year as a Bristow Fellow in the Office of the Solicitor General for the United States, working on a number of cases before the U.S. Supreme Court.

Cindy Kelley is the director of External Affairs and Alumni Relations. Kelley received her B.S. in accounting in 1984 and earned her J.D. from the College of Law in 1988. Mostly recently, Kelley served as a prosecutor in the Major Crimes, Drug Enforcement Bureau of the Maricopa County Attorney’s Office.

Jay Koehler is a visiting professor from the University of Texas at Austin where he is a University Distinguished Teaching Professor in the McCombs School of Business. He teaches Probability and Science in the Courtroom at the University of Texas at Austin where he is a University Distinguished Teaching Professor in the McCombs School of Business.

Diane Murley is the Web Services Coordinator and a Reference Librarian in the Ross-Blakley Law Library. Prior to coming to ASU she was the Reference/Web services Librarian at Southern Illinois University Law Library; Head of Reader Services and Electronic Services Reference Librarian at Northeastern University in Boston; and Reference Librarian at Boston University. Before going to library school, she practiced law in Denver for 13 years.

Carrie Sperling joins the College as visiting associate clinical professor. Sperling graduated cum laude from the University of Houston Law Center where she served as an editor and member of the Houston Law Review’s Executive Committee. In 1994, Sperling became director of the ACLU in the North Texas Region, where she made numerous media appearances and speaking engagements regarding civil liberties. For the last five years, Sperling served as an assistant professor at the University of Oklahoma College of Law, teaching legal research and writing.

Awards

The Sandra Day O’Connor College of Law at Arizona State University is one of the top law schools in the country for Hispanic students, according to the September issue of Hispanic Business magazine.

The College of Law is ranked seventh among the Top 10 in the publications annual “2007 Best Law Schools for Hispanic Students.”

“From its inception, the Sandra Day O’Connor College of Law has served a diverse student population of Hispanics, Native Americans, African Americans, Asian Americans and women,” said Patricia D. White, Dean of the College of Law. “From the first incoming class in 1967 and in the 40 years since, the college has produced a large number of minority attorneys who now lead the community.”

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Technology Marches On—and It’s All Good for the Profession

The Clerk’s Office is pleased to report that technology continues to improve the service and interactions the public receives with the Superior Court in Maricopa County. The Clerk’s Office recently received international recognition for its website; eFiling is coming to family court; and limited access to the electronic court record online will soon be available to the bar.

Top 10 Web site

The Clerk’s Office was recently recognized by Justice Served for having one of the top 10 court websites in the world. Justice Served is an alliance of court management and justice experts who reviewed nearly 4,000 court websites throughout the world and selected the Clerk’s website as one of the 10 finest.


According to Justice Served, the current winners are “the ultimate models of court online services in the world.” Specific to the Clerk’s Web site, the judges recognized “top notch features and electronic access that is truly best of class.” This is the second time in the nine-year history of the awards that the Clerk’s Office received a “Top 10” Website award. Other American jurisdictions recognized for their Web sites were in Pennsylvania, Nevada, Florida and North Carolina. International award winners were the Subordinate Courts of Singapore (#1), two courts in Australia and one court in Ireland.

The Clerk’s Web site has a customer survey and a “contact us” feature, both of which allow the office to continually evaluate suggestions for improvement.

eFiling in Family Court

Electronic filing (eFiling) in the Superior Court in Maricopa County continues its march forward. eFiling in Family Court is anticipated for implementation this fall. The pilot project will debut in three judicial divisions and poses unique challenges.

As distinguished from other case types, Family Court involves a greater likelihood of pro se participation, content designated sensitive by court rule and statute, and filing fees that continue well beyond the initiation of the case.

“eFiling was implemented in Maricopa County in 2003. At that time the project was limited to complex civil litigation cases and was processed by a third-party vendor. Since 2003, the Clerk’s Office developed an eFiling system to directly process filings in criminal and general civil cases.

Although eFiling is not available in all criminal and civil judicial divisions or juvenile case types, the pilot program continues to expand. Third-party vendors will offer services and functions unavailable through the Clerk’s system and will begin accepting eFiling in general civil cases this month, giving the filing public a choice in the way they interact with the Superior Court in Maricopa County.

ECR Online

Access to the electronic court record (ECR Online) will be available this fall. The Clerk’s Office will allow attorneys direct access to the court records on cases in which they are the attorney of record. This will reduce the need to send runners for copies of paper records and improve the speed and efficiency of case management.

Access to the ECR is not a substitute for serving documents, but rather a customer service initiative. The Clerk’s Office will continue to work with third-party vendors who can also provide access to the court record, as well as offer additional functions, support and service features. For more information, visit the Clerk’s Web site at www.clerkof-court.maricopa.gov.

Legal Briefs

U.S. Supreme Court Rules revisions effective October 1

Revisions to the United States Supreme Court Rules of Court take effect October 1, 2007. Revised Rule 14.1(c) provides that the table of contents of submitted briefs must include the items contained in the appendix. Changes to Rule 25 revise the briefing schedule and require the submission of an electronic version of merits briefs in addition to the requirement that booklet-formatted briefs be filed. Revisions to Rule 37 change the page limitation requirement for submitted briefs to a word count limitation instead. While the font size of a submitted brief’s text must be in 12-point type, the typeface of footnotes must be in 10-point type and must be included in the word count.

Finally, Rule 37 revisions require counsel for amici curiae to notify counsel of record of the intent to file an amicus curiae brief at the petition stage, and to electronically file every amicus brief in a case scheduled for oral argument.

New law intended to preserve independence of U.S. attorneys

A United States Senate bill introduced by Senator Diane Feinstein (D-CA) and aimed at preserving the independence of United States attorneys was signed into law as Public Law 110-34 on June 14, 2007.

The new law returns the authority of the judiciary to appoint interim U.S. attorneys if a permanent replacement is not confirmed by the United States Senate within 120 days. Provisions of the Patriot Act passed last year took away the judiciary’s authority and vested it in the U.S. Attorney General.

Historic panel sits in Ninth Circuit

A Ninth Circuit Court of Appeals panel made history in July when three judges of Hispanic descent sat for oral argument in Seattle, Washington. Judge Kim McLane Wardlaw, Judge Arthur Alarcon, and Judge Ferdinand Fernandez, three of six Hispanic judges on the Ninth Circuit Court of Appeals, made up the panel. While there has been the possibility of an all-Hispanic panel in the Ninth Circuit since 1998, it was the first time an all-Hispanic panel sat for oral argument in any of the nation’s federal courts of appeals since they were established in 1891.

Federal courts identify drafting problems in legislation

A federal judiciary project intended to improve communication with the U.S. Congress on drafting issues such as punctuation, ambiguity and other technical problems in the legislation they pass is being reinvigorated at the urging of ranking Congressional Senators and Representatives. Courts of Appeals will identify opinions that point out technical problems in statutes and send them to Congress for their information or for whatever action it wishes to take.
Law Professor “Having Fun” on Sabbatical at Attorney General’s Office

By Judy Nichols

In a unique collaboration between academic and practicing legal communities, Catherine O’Grady, a professor at the Sandra Day O’Connor College of Law at ASU, is spending six months of a research sabbatical at the Arizona Attorney General’s Office, working with the Solicitor General’s Office.

She will concentrate primarily on brief writing for cases in the Arizona and U.S. Supreme Courts and will design supervisor training and CLE programs.

“I wanted to work on the front lines of the profession, which I haven’t done since I started teaching 16 years ago, and I wanted to do something very different, something I’d never experienced before,” O’Grady said.

With the help of a couple of mentors, she came up with the plan to work at the Attorney General’s Office, then write about her experience.

Attorney General Terry Goddard said the arrangement provides benefits for both sides. “Part of Professor O’Grady’s sabbatical is researching how to better prepare law students for the practice of law,” Goddard said. “The Attorney General’s Office has the widest variety of practice of any legal organization in the state.

“For our part, it allows our practitioners to learn from those who are used to working with a commerce clause issue that came up in an important case. She knows more than anybody else in the office about that and gave us good guidance.”

The workload was one of the attractions for O’Grady. “It’s the largest law firm in the state,” O’Grady said. “There’s an amazing amount of work and unique challenges. I want to make a connection between those challenges and what we do in law school.”

Goddard said O’Grady’s professional competence and positive personality makes a difference wherever she goes, and that her arrival at the Attorney General’s Office has sparked great enthusiasm.

“We have a lot of lawyers who are ASU grads and have had Professor O’Grady,” Goddard said. “They know her and respect her and are excited to work with her.

“She came to the new attorney orientation last week, because technically she’s just starting as an employee. You could just feel the buzz. It was palpable.

“Five of the 25 new lawyers at that session had taken classes with her and the idea that Professor O’Grady would be part of their peer group was exciting for them.”

Goddard said he and Patricia White, Dean of the College of Law, have discussed ways for the two entities to collaborate, but that it has been decades since a professor actually worked in the Attorney General’s Office.

“Getting a leading professor? It’s been 30 years,” said Goddard, referring to the time ASU law professor Jonathan Rose worked for then-Attorney General Bruce Babbitt.

“That was in 1974-75,” Goddard said. “Professor Rose reformed the offices’ antitrust function and wrote what became the state procurement code.”

O’Grady will work closely with Solicitor General Mary O’Grady, a classmate, not related, whose similar name has caused confusion over the years.

“She used to get my e-mails,” Mary O’Grady said. “People would tell my husband, ‘I saw your wife on Horizon.’ Someone would say, ‘I hear you gave a student an extension on a paper.’

“I’ve been getting credit for Cathy’s good work for years.”

Mary said she is thrilled to have Cathy in her office, and that she will help with many efforts they haven’t had the resources to deal with.

“In the Solicitor General’s office, we review filings to help improve the writing and the legal arguments,” Mary said. “It’s an arm’s-length review, from a bit more distance.

“She will review everything we file at the state Supreme Court, work with the criminal appeals section looking at briefs we previously haven’t had the resources to review, and review our U.S. Supreme Court filings.”

Mary said the lawyers in the office are excited about having a law professor look at their work.

“It’s a wonderful opportunity to write a better brief, to improve the quality.”

Cathy said she loves the work.

“This is great work,” Cathy said. “I have six giant case files scattered all over my desk right now. I’m doing more front-line legal research now than in a long time, and I’m doing it myself instead of reviewing a student’s research. I’m doing more persuasive advocacy writing. And I’m reading a lot of case files to get up to speed on issues. I am also enjoying meeting new people — the attorneys here are smart, hard working, and really happy with their choice to be at the AG’s office. When they talk about their cases, they just smile.

“I’m having fun.”

McBACalendaR

All events are held at the MCBA headquarters at 303 East Palm Lane, Phoenix, unless otherwise noted. Also check www.maricopabar.org or call (602) 257-4200.

OCTOBER 2007

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<td>1 Maricopa Lawyer Editorial Board</td>
<td>5:15 p.m.</td>
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<tr>
<td>3 Family Law Section Board</td>
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<tr>
<td>4 Construction Law Section Board</td>
<td>12 noon</td>
<td>Grand Re-Opening Planning Committee 5:30 p.m.</td>
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<tr>
<td>5 Estate Planning, Probate &amp; Trust Section Board</td>
<td>7:00 a.m.</td>
<td>MBCA Offices close at 12 noon</td>
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<td>8 Columbus Day—MBCA Offices closed</td>
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<td>9 YLD Board</td>
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<tr>
<td>10 Environmental &amp; Natural Resources Section Board</td>
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<td>11 MBCA Grand Re-Opening Celebration</td>
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<tr>
<td>17 CLE: Section 1031 Exchanges—Advisor Issues</td>
<td>12 noon - 1:30 p.m.</td>
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<tr>
<td>18 CLE: Basic Estate Planning</td>
<td>7:30 - 9:30 a.m. (with breakfast)</td>
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<tr>
<td>19 Maricopa County Bar Foundation</td>
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<td>26 CLE Luncheon: Impact of the 2005 BAPCPA Bankruptcy Amendments on Corporate Counsel</td>
<td>11:45 a.m. - 1:00 p.m.</td>
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*Please watch your MBCA E-News for updated information about meetings and events.
provide necessities to domestic violence shelters in the Valley, free legal advice to the community at large, and a low-cost CLE for attorneys.

Planned as a family event, the race included a Kids’ Dash and bounce house. After both races, participants enjoyed food and drink sponsored by Sweet Tomatoes, SoyJoy, Circle K, Watermill Express, and Naked Juice. Each participant also received a t-shirt and a goodie bag.

The YLD extends special thanks to Race Judicata Diamond sponsors LexisNexis and Road Runner Sports, and to Gold sponsors Westlaw, Snell & Wilmer LLP, IKON, and Robert Half.

The YLD also thanks the event photographer, Monica Rapps, for her great pics, which will soon appear for your viewing pleasure. (Because of time constraints, photos appearing in this issue are by MCBA staffer Isolde Davidson.) Thanks also to leaders for organizing teams, and all the volunteers for their great attitudes and helping hands.

We look forward to your support for the fourth annual Race Judicata 5K/1 Mile slated for September 21, 2008, again in the Sister Cities Gardens area of Kiwanis Park.
Involved with a Limited Liability Company?

Make Sure You Know Your Fiduciary Duties

By Robert A. Royal and Tracy S. Morehouse

With the growing popularity of limited liability companies ("LLCs") as the entity of choice, the question arises as to what fiduciary duties exist within the LLC. An examination of the statutory, common law, rationale and public policy will assist the practitioner in understanding these issues.

Essentially the fiduciary duties arise from the relationships of members and managers in the LLC. Of particular interest is whether managers owe fiduciary duties to the corporation and its members and whether members owe fiduciary duties to each other.

Arizona: No statutory guidance or persuasive authority available

The Arizona Limited Liability Company Act ("Arizona Act") permits flexibility in structuring an LLC. The Arizona Act does not state whether any fiduciary duties exist in an LLC, instead bestowing the utmost flexibi-

ity on the LLC in defining the duties.

The Arizona Act did not adopt the fiduciary duty language of either the Uniform Partnership Act ("UPA") or Uniform Limited Liability Company Act ("ULLCA"). Statutes governing other forms of business organization set forth a member's fiduciary duties prior to modification by the organization's operating agreement. However, the Arizona statute is silent and imposes no express fiduciary duties on LLC members or managers. Consequently, LLCs may possibly be allowed to fully insulated members from liability by the freedom bestowed by the Arizona legislature.

Even if the Arizona Act permits LLCs to define fiduciary duties of members and managers, it is doubtful parties to an LLC agreement may agree to eliminate all fiduciary duties. Public policy dictates that some fiduciary duty exists in an LLC despite the Arizona Act's silence on the matter. However, these public policy arguments may not be persuasive in the context of whether members owe fiduciary duties exist. The extent to which duties may be restricted has largely been left to courts to decide and due to the relatively recent passage of most LLC acts, this question remains unre-

solved in case law.

A fiduciary relationship was intended

Although Arizona does not have an express statute that fiduciary duties are the same in an LLC as a corporation, the legislative intent demonstrates that both the Arizona House and Senate passed the LLC statutes with the intent that LLCs have the same liability as a corporation. This provides strong support that a limited liability company manager or member could be liable for failure to fulfill the fiduciary obligations when acting on behalf of the company, as an officer or director may be liable for failure to act as a fiduciary for the corporation. 

Other states' LLC acts

Only five states do not specifically address fiduciary duties in LLCs. Those states are Arizona, Arkansas, Nebraska, Nevada, and Wyoming. Interestingly, only approximately 14 states follow the ULLCA to either their partnership or corporate statutes to define the duties that exist between LLC members/managers. Other states model their statutes after the proposed Revision of Uniform Limited Liability Company Act, which was discussed in 2003. Still others look

See LLC Fiduciary page 14

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Mamoon YKOC
Volunteer Lawyer Makes a Difference

By Peggi Cornelius

After nearly a decade of providing free legal counsel to pro per litigants in family law matters, attorney Daniel J. Siegel says, “Pro bono work is not an obligation, it is just a reflection of the desire most attorneys have to contribute to society by helping people.”

In recognition of Siegel’s ability and willingness to put his conviction into practice, the Volunteer Lawyers Program has named him “Attorney of the Month.”

After obtaining an undergraduate degree in finance from Indiana University, Siegel knew he wanted to be a sole practitioner. He and his wife also wanted to live in a warmer climate; she suggested Phoenix. “I’ve never regretted it,” he said. “Living and raising our children here is a good life.”

He credits attorneys Thomas Novak and Merrill Robbins for sharing office space, knowledge and referrals with him, when he opened his practice in 1995.

He doesn’t recall exactly how he became aware of the Family Lawyers Assistance Project (F.L.A.P.) at the Superior Court of Maricopa County, but Siegel’s volunteer work enables him to utilize expertise developed in his private practice to assist hundreds of pro per litigants in family court.

He explains, “I could participate in pro bono matters involving other areas of law with which I’m also familiar, but I’m a Certified Specialist in Family Law, and the need for pro bono counsel to those who cannot afford representation in this area is tremendous and never ending.”

“People I advise at F.L.A.P. are very appreciative of the opportunity to see a lawyer and have their questions answered,” he says. “Of course, they’ll always want more than the brief consultation I can provide, and it’s sometimes frustrating to know how difficult it is for people to present their case without legal representation, but I see favorable outcomes as well as disappointing ones.”

The ways Siegel has surely made a positive difference in the outcome of matters on which he’s advised is immeasurable. Nevertheless, there is no doubt that his contribution is significant.

If you would like more information about pro bono opportunities available through the Volunteer Lawyers Program, contact director Pat Gerrich at 602-258-3434, ext. 2630.
LLC FIDUCIARY

continued from page 12

solely to the operating agreement for the LLC to define what duties exist, if any.

Arizona has not adopted a standard of care for members and managers in limited liability companies. However, some states do have such standards of conduct. Tennessee, North Dakota, North Carolina and Virginia have similar statutes, each requiring that the governor or manager act in good faith and in the best interests of the company.

National trend: LLC members owe other members fiduciary duties

A sparse number of courts have had the opportunity to interpret the relatively recent LLC acts and, in contrast to the ULLCA, most of these courts have recognized that fiduciary duties flow between members of an LLC.

By comparing LLCs to partnerships and corporations, an Indian court imposed common law fiduciary duties on LLC officers and members in the absence of contrary provisions in the LLC operating agreement. In Robinson v. Geo Licensing Company, the court stated the LLC member holding a majority interest owed fiduciary duties to the LLC's members holding a minority interest. Another court acknowledged the “strong” argument members owe each other fiduciary duties but failed to discuss the strength behind the statement.

LLCs generally bound by operating agreements

In general, the Uniform Limited Liability Company Act § 103 requires that a limited liability company will be governed by its operating agreement. If the operating agreement does not otherwise provide, then ULLCA § 103(a) determines that the state’s statute determines the relationships between the managers, members and the company.

Despite the apparent desire for LLCs to be bound by contractual provisions, the ULLCA sets a minimum standard for the fiduciary relationship that cannot be restricted or negated in the operating agreement. ULLCA § 103(b) prohibits eliminating the duty of loyalty, the obligation of good faith and fair dealing, or unreasonably reducing the duty of care.

Conclusion

The Act does not provide express guidance concerning the fiduciary duties in member managed or manager managed LLCs. Nor does the Arizona Act establish fiduciary duties between members themselves.

The issue is puzzling considering the legislative intent demonstrates that such fiduciary duties should have been established by referencing the Arizona Business Corporation’s Act. That Act does establish standards of care which reiterate the fiduciary obligations.

It could be argued that it was the legislative intent to specifically exclude any statutory duties or other fiduciary duties and that therefore none exist. However, that would be in contravention to the Arizona Business Corporation’s Act and Arizona common law.

The more likely scenario is that Arizona courts would examine the fiduciary duty concept based on the legislative intent, Arizona statutory and common law, and by examining trends in other jurisdictions. However, some of those jurisdictions have left the creation of fiduciary duties in the Operating Agreement, have created fiduciary duties, or at least provided certain types of duties may not be eliminated by contract.

Robert A. Royal is chair of Tiffany & Bosco’s Intra-Corporate Dispute Department and Business Insurance Department. He is currently co-chair for the committee rewriting Arizona statutes concerning limited liability companies. Education: Arizona State University, B.S., Business Administration, with honors, 1979; Drake University, J.D., 1981; Member, Drake Law Review.

Tracy S. Morehouse is a shareholder with Tiffany & Bosco, PA, practicing a wide variety of commercial and civil litigation. She obtained her J.D. from ASU Law School in May 1997. Prior to joining Tiffany & Bosco, she served as a law clerk to the Honorable Cecil B. Patterson, Jr., of the Arizona Court of Appeals (1997-1999).
Family Lawyers: Advice for Protecting Your Client’s Credit During Divorce

By Joseph Velez

When a marriage ends in divorce, the lives of those involved are changed forever. During this time of upheaval, one thing that shouldn’t have to change is the credit status of your client.

Unfortunately for many, the experience is the exact opposite. Unfulfilled promises to pay bills, the maxing out of credit cards, and a total breakdown in communication frequently lead to the negative impact of at least one spouse’s credit – adversely affecting their future ability to buy a house or car on credit, raising the cost of insurance, and potentially even ruining the prospects of getting good employment.

The good news is it doesn’t have to be this way. By taking a pre-emptive approach and creating a specific plan to maintain one’s credit status, anyone can ensure that “starting over” doesn’t have to mean a wholesale rebuilding of credit.

Q: Where do I need to get started?

The first step for anyone going through a divorce is to obtain copies of his or her credit report from the three major credit reporting agencies: Equifax, Experian®, and TransUnion®. It is impossible to formulate a plan without having a complete understanding of the situation. (Once a year, you may obtain a free credit report by visiting www.AnnualCreditReport.com.) Once your client has gathered the facts, you can begin to address what’s most important. Create a spreadsheet, and list all of the accounts that are currently open. For each entry, fill in columns with the following information: creditor name, contact number, the account number, type of account (e.g. credit card, car loan, etc.), account status (e.g. current, past due), account balance, minimum monthly payment amount, and who is vested in the account (joint/individual/authorized signer).

Q: Is there anything I should know about credit accounts?

There are two types of credit accounts; each is handled differently during a divorce. The first type is a secured account, meaning it’s attached to an asset. The most common secured accounts are car loans and home mortgages. The second type is an unsecured account. These accounts are typically credit cards and charge cards, and they have no assets attached.

Q: What advice should I give about secured assets?

When it comes to secured assets, your client’s best option is to sell the asset. This way the loan is paid off and the name is no longer attached. This advice is more applicable prior to the filing for divorce; however, after filing, both spouses should be in agreement regarding selling the asset.

Q: Are there any other options besides selling the asset?

The next best option is to refinance the loan. In other words, one spouse buys out the other. This only works, however, if the purchasing spouse can qualify for a loan by themselves and can assume payments on their own. Your client’s last option is to keep their name on the loan. This is the most risky option because if your client is not the one making the payment, his or her credit is truly vulnerable. If you decide to keep the name on the loan, make sure it is also kept on the title. The worst case scenario is your client stuck paying for something that they do not legally own.

Q: What advice should I give about unsecured assets?

When it comes to unsecured accounts, your client will need to act quickly. It’s important to know which spouse (if not both) is vested. If your client is merely a signer on the account, advise to have his/her name removed immediately. If your client is vested party and the spouse is a signer, have your client remove their name.

A word of caution here—credit card issuers have their own rules and policies with regard to removing an “authorized signer” from the account. Advise your client that merely because they remove the spouse as an authorized user does not necessarily mean he or she cannot use the card. If possible, it is advisable to secure the authorized user’s card.

If this proves impractical or dangerous, contact the issuing credit card company for assistance.

See Ask the Expert page 19
If you are looking for the best CLE, you have come to the right place. Check out the list of seminars below. To register, use the registration form on this page, go to www.maricopabar.org, or call Kimberly Balogh at 602-257-4200. Unless otherwise specified, all CLE programs will be held at the MCBA Headquarters, 303 East Palm Lane Phoenix, AZ 85004.

**OCTOBER**

**WEDNESDAY • OCTOBER 17 • 12:00-1:30 PM.**

**Section 1031 Exchanges – Advisor Issues**

This program is designed for tax and legal advisors of individuals and entities conducting tax-deferred exchanges under IRC Section 1031. Topics will include statutory requirements, exchange structures, and how your clients’ exchange funds can be safeguarded. In addition, discussion will focus on ways to resolve common problems faced in exchanges, such as vesting of title and partnership dissolution issues.

**Presenter:** James I. Miller, Vice President and Southwest Regional Manager, Investment Property Exchange Services, Inc., Phoenix.

**Cost:**
- $45 MCBA members
- $75 non-members

**THURSDAY • OCTOBER 18 • 7:30-9:30 A.M.**

**Basic Estate Planning**

The basic program is designed for any attorney that wants to begin practice in this area or anyone wanting to have a deeper understanding of estate planning. Topics will include estate planning documents, family considerations, Arizona law, and tax concepts. Form letters and questioners will be included.

**Sponsored by:** MCBA Estate Planning, Probate & Trust Section

**Presenter:** Roberta Berger, Wells Fargo Bank, Phoenix

**Cost:**
- $60 MCBA members
- $100 non-members

**THURSDAY • OCTOBER 23 • 4:00-6:00 P.M.**

**New Immigration Rules for Arizona Employers**

This major CLE program will address the impact of Legal Arizona Workers Act (House Bill 2779), signed into law by Governor Napolitano on July 2. Learn how you can help your clients—regardless of the size of their business—operate within the rules of this law, which governs the hiring and employment of undocumented workers.

**Sponsor:** Former MCBA President, Jay Zweig

**Presenter:** Paul Charlton, Nancy Jo Merritt, Lori Higuera

**Cost:**
- $60 MCBA members
- $100 non-members

**TUESDAY • NOVEMBER 8 • 3:00-9:30 P.M.**

**Law and Disorder!**

Come cheer on the Phoenix Coyotes and 1 hour of CLE credit. Coyote’s CEO Jeff Shumway will be speaking at the seminar. The former attorney will cover Sports Law 101, dealing with a superstar like Wayne Gretzky, how Shumway moved the franchise from law to sports management, and his “interesting” experiences on the job. For more information see the registration flyer on page 17.

**Presenter:** Jeff Shumway, CEO Phoenix Coyotes

**Cost:**
- $75 section members
- $60 MCBA members
- $85 non-members

**NOVEMBER**

**THURSDAY • NOVEMBER 15 • 7:30-10:30 A.M.**

**Nuts and Bolts of Estate Administration**

**Sponsored by:** MCBA Estate Planning Probate & Trust Section

**Presenter:** Jay Polk, Esq., Barron & Polk, Phoenix

Cost:
- $75 section members
- $90 MCBA members
- $150 non-members

**COMING SOON**

**Alternative Dispute Resolution**

**Presenter:** Mark Zukowski, Jones, Shelton & Hochuli, Phoenix

**Importance of IP Due Diligence in Licensing and Other Business Transactions**

**Presenter:** Paul Kulisky, Susan Rosenfeld, Fennemore Craig
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Hockey and CLE? You won’t want to miss it! On Thursday, November 8, the Phoenix Coyotes and the Maricopa County Bar Association partner to give you what each does best. So plan to join us right now for an exciting evening of hockey, AND earn 1 credit hour of CLE prior to the game, as the Phoenix Coyotes take on the Dallas Stars. This exclusive offer saves you money on great seats, allows time for fun and socializing, and lets you earn MCLE credit for the upcoming year.

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➢ 3:00 – 3:30 CLE Registration
➢ 3:30 – 4:00 On Ice Slapshot
➢ 4:00 – 5:00 CLE Seminar
➢ 5:00 – 6:15 Food and Drinks
➢ 6:15 – 9:30 Game

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Each lawyer attending the CLE for credit must fill out a separate order form. (Please make copies of the order form as needed.)
NEW JUDGES
continued from page 2

Arizona Office of Administrative Hearings. He served as a Superior Court judge pro tem during the past year. Shortly after graduating from law school, he clerked for Arizona Supreme Court Justice James Moeller. Judge Martin assumes the Family Court calendar that had been handled by Judge Kenneth Fields on Oct. 9. Judge Fields retired in June.

Judge Samuel J. Myers is a former prosecutor for the Maricopa County Attorney’s Office, specializing in homicide and other major felony cases. As a prosecutor, he was a volunteer speaker for the organization Parents of Murdered Children and also helped educate law enforcement officials about domestic violence. After receiving his law degree in 1993, he worked as a law-trained bailiff for Superior Court Judge I. Sylvan Brown. He then joined the county attorney’s office. Judge Myers’ first day on the bench will be Oct. 9 with an assignment to newly created Civil Department calendar. His courtroom is in downtown Phoenix.

Judge Susanna C. Pineda served a lengthy career of more than 20 years as an assistant attorney general with criminal and civil law experience. Judge Pineda served 12 years in the Criminal Appeals Section of the Attorney General’s Office and nearly two years in the Drug and Violent Crime Section. Since 2001, she worked in the Liability Management Division. Her first assignment as a Superior Court judge starts Oct. 1 in the Family Court Department in downtown Phoenix.

Judge Randall H. Warner was a partner in the firm of Jones, Skelton & Hochuli immediately before his assignment to the bench. He began his legal career clerking for one year with Justice Thomas A. Zlaket of the Arizona Supreme Court. From there he went into private practice specializing in commercial litigation and appellate work. Judge Warner dedicated much of his time and expertise working with the State Bar of Arizona and other organizations to train legal professionals in a variety of educational programs and forums. He assumes a Family Court calendar on Oct. 9 in downtown Phoenix.

The new two commissioners joined the bench from their assignments with the Arizona Attorney General’s Office. Richard Albrecht had worked with the Liability Defense Litigation Division and started his position with a court commissioner on Sept. 17. Patricia Arnold joined the court on Sept. 10. She worked in the Protective Service Section of the Attorney General’s Office. Both new commissioners are assigned to the Initial Appearance Court held in the Fourth Avenue Jail in downtown Phoenix. They were appointed to fill the vacancies created when former commissioners Fink and Hegyi became judges.

Governor Napolitano has set a record for the most judges appointed to Maricopa County Superior Court by a governor since merit selection began. Her first appointment to our bench was in 2003, selecting Judge Harriet Chavez. Since then, she has filled an additional 36 vacancies.

During the months between the retirements of eight Superior Court judges and the appointment of their replacements, a number of retired judges returned as pro tem judges to handle calendars in criminal, civil, family and juvenile assignments.

“These judges provided a level of expertise, professionalism and efficiency that proved invaluable to the court,” Presiding Judge Mundell said. “They also served our community well by keeping the court’s critical calendars running effectively without interruption.”

She also explained that the impact of the large number of retirements "could have been debilitating if they hadn’t filled the void between their departures and the arrival of the newly appointed judges.”

Judge Mundell thanked retired judges Rebecca Albrecht, Kenneth Fields, Robert Gottsfield, Sarah Grant, Norman Hall, Jeffrey Hotham, Barbara Jarrett, Jonathan Schwartz, Dennis Dairman and Penny Willrich for “their selflessness in serving court customers and the bench.”

Anyone interested in learning more about the new judges and their assignments can find a listing on Superior Court’s Web site of all judges and commissioners and their assignments, locations and telephone numbers. The address is: www.superiorcourt.maricopa.gov/judicialBios/index.asp.

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In today’s tumultuous corporate environment the demand for independent directors is greater than ever. Corporations are looking for directors with sound judgment and an understanding of business, financial, and management issues.

Over the next decade, 1,000 of America’s largest corporations will look to fill an estimated 10,000 and 12,000 director positions. Many senior women attorneys will be able to obtain the active practice of law to fill these positions of corporate governance. Seasoned women attorneys make the perfect fit with decades of experience and the credentials required for such positions.

DirectWomen is an organization dedicated solely to the selection, development and support of women attorneys seeking to become qualified independent directors sufficient for the boards of U.S. corporations. This initiative created by the American Bar Association (ABA) Section of Business Law, in partnership with Catalyst, Inc., is promoting independence and diversity that is needed for good corporate governance.

The organization holds an annual event, the DirectWomen Board Institute. The next meeting will be held February 20-22, 2008 in New York.

For more information on joining DirectWomen please visit www.DirectWomen.org or please contact Sue Daly at 312-988-6244 or by e-mail at suedaly@staff.abanet.org.

Q. When should I advise my client to pay on a debt?

Advise your client that ensuring payment on a debt which carries their name is paramount when it comes to preserving credit. Keep in mind that one 30-day late payment on any account that is reported on a credit report can drop a credit score as much as 75 points.

It is also important to know that a divorce decree does not override any agreement you have with a creditor. So, regardless of which spouse is ordered to pay by the judge, not doing so will affect the credit score of both parties. The message here is to not only eliminate all joint accounts, but to do it quickly.

Joseph Velez is a real estate attorney and a commercial real estate banker in Scottsdale, Arizona. He is a frequent lecturer on credit issues, and can be reached at (480) 946-2200 x116.

HAVE SOMETHING NEWSWORTHY TO SHARE?

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National Meeting at Sandra Day O’Connor College of Law at ASU Spotlights Legal History

The development of the United States’ legal system, from its English roots in the 12th century to its development today, will be examined this fall during the 2007 annual meeting of the American Society for Legal History, hosted by the Sandra Day O’Connor College of Law at Arizona State University.

The conference, October 25-27 in Tempe, Arizona, will include 54 panels and more than 100 papers on U.S., English, European, Asian and Latin American legal history from top scholars around the world. The panels will be presented Fri., Oct. 26, and Sat., Oct. 27, at the Tempe Mission Palms Hotel, 60 E. Fifth St., in Tempe.

Professor Paul Brand, senior research fellow and academic secretary at All Souls College, University of Oxford, will give the plenary address on Friday, October 26. Brand will present “Thirteenth-century English Royal Justices: What We Know and Do Not Know About What They Did,” in the Great Hall at the Sandra Day O’Connor College of Law.

“He is the world’s leading scholar in early medieval English legal history,” said Jonathan Rose, a professor and Willard H. Pedrick Distinguished Research Scholar at the Sandra Day O’Connor College of Law.

“It’s a significant honor for the law school to host this conference, which is the largest of its kind” said Rose.

“The intellectual quality of this annual meeting is extraordinary and tremendously varied, and most of it will be interesting to lawyers because it gives insight into the development of legal institutions and documents both in the Anglo-American legal system and those in other parts of the world.”

The event is expected to draw an international audience: professors at law schools and history departments from around the country, Israel, South America, Germany and England, as well as lawyers, judges and private scholars. It will offer a rich program of both historical and cutting-edge legal topics, including:

* “American Indians and the Federal Government,” chaired by Peter Ironson, Arizona State University
* “What We Know and Do Not Know About What They Did,” chaired by Paul Brand, All Souls College
* “Constituting Gender and Citizenship in the American Polity,” chaired by Michael Grossberg, Indiana University

Panelists are Felice Batlan, Chicago-Kent College of Law; Gwen Jordan, University of Wisconsin Law School, and Christopher Schmidt, Harvard Law School.

* “Rounding up on Keith Whittington’s new book, The Political Foundations of Judicial Supremacy,” moderated by Michelle Landis Dauber, Stanford University

Panelists are Whittington, of Princeton University; Jack N. Rakove, Stanford; Leslie Friedman Goldstein, University of Delaware, and Barry Friedman, New York University School of Law.

* “Grassroots Lawyering in the Long Twentieth Century,” chaired by Marjorie E. Kornhauser, Sandra Day O’Connor College of Law

Panelists are Felice Batlan, Chicago-Kent College of Law; Gwen Jordan, University of Wisconsin Law School, and Christopher Schmidt, Harvard Law School.

* “Telling the Story: Legal History and the Art of Documentary Filmmaking,” moderated by Maeva Marcuse, University of Iowa

Panelists are filmmakers Maeva Marcuse, John Kaminski, Ann Gordon and Charlene Bickford.

* “Constituting Gender and Citizenship in the American Polity,” chaired by Michael Grossberg, Indiana University

Panelists are Kristin Collins, Boston University School of Law; Rebecca Rix, Yale University, and Serena Mayeri, University of Pennsylvania Law School.

Registration is $100, $15 for students with ID and $25 for the annual lunch on October 27. To register or for more information about the ASLH and the conference, go to www.aslh.net and for details about the Tempe and Phoenix metropolitan areas, go to www.law.asu.edu/aslh07.

HAVE YOU GIVEN A SPEAKING ENGAGEMENT?

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ASK THE EXPERT continued from page 15

Further advice (Some credit card issuers then advise the customer to report the card “lost or stolen”). Any joint accounts (both parties vested) that do not carry a balance should be closed immediately.

Q. What about jointly vested accounts?

If there are jointly vested accounts which carry a balance, your best option is to advise your client to freeze their accounts. This will ensure that no future charges can be made to the accounts.

When an account is frozen, however, it is frozen for both parties. If your client does not have any credit cards in their name, it is recommended to obtain one before freezing any joint balances into the account, guaranteeing they’ll get paid.

Joseph Velez is a real estate attorney and a commercial real estate banker in Scottsdale, Arizona. He is a frequent lecturer on credit issues, and can be reached at (480) 946-2200 x116.

Q. If an account is frozen, can it be reopened?

Yes. If your client is looking to reopen the account, they must bring the frozen account back in good standing and make a payment on any account that is reported on a credit report.

Q. Is there a way to pay other accounts that carry a balance?

Yes. If your client is looking to pay other accounts that carry a balance, they should call the creditor and advise them that they will be paying the account.

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