A night to celebrate: The 2015 Barristers Ball

By Randy Nussbaum

The 2015 edition of the MCBA Barristers Ball was blessed with perfect weather, an enthusiastic crowd, active gambling tables, a skilled band, surprisingly delectable food and a perfect setting at the venerable Camelback Inn in Paradise Valley. The Feb. 28 gala raised thousands of dollars for the Maricopa County Bar Foundation, which was this year’s named beneficiary for the annual event put on by the Young Lawyers Division of the Maricopa County Bar Association.

The Maricopa County Bar Foundation, which is the charitable arm of the MCBA, provides funding for the Volunteer Lawyer Program. The VLP has provided desperately needed legal services for individuals throughout the Valley unable to pay for private legal representation.

Attendees were greeted by MCBA staff and volunteers and a professional photographer who ensured that everyone would receive a keepsake from this black-tie extravaganza. Every year, the Barristers Ball provides attendees with an opportunity to bid on a vast variety of silent auction items, and this year was no exception. Numerous tables displayed an almost overwhelming choice of items ranging from foods to exciting vacations to unique leisure items and many pragmatic and useful options as well. Because of the efforts of the Auction Committee, headed up by attorneys Jason Wood and Robert Kethcart, the bidding was active and competitive.

The event planners listened closely to comments about previous years’ balls and took steps to ensure that the evening’s entertainment would not only meet attendees’ expectation, but also exceed them. Besides expanding the space for the silent auction items in the reception area, the main room was greatly expanded in size, which not only added to everyone’s comfort, but also encouraged all to circulate throughout the room and catch up with friends and colleagues.

The Camelback Inn’s professional staff expertly served dinner, and many of the guests commented on the superior quality of the food. It was obvious that the planners had paid special attention to the meal being offered, which nicely added to the overall experience. Once dinner was completed, a myriad of options were available for further entertainment. The band successfully convinced many to wander out onto the busy dance floor, a photo booth in the back of the room was continuously occupied and was highlighted by some unusual couples seen taking photos together and, what was probably the highlight of the night, there was an exciting array of blackjack, roulette and craps tables. The sheer number of people surrounding the gambling tables simply added to the atmosphere and ambiance. That evening, the screams coming from the craps tables at the Camelback Inn rivaled those heard at Caesar’s Palace during its heyday.

MCBA Executive Director Allen Kimbrough expressed his thanks to all who attended, especially the Barristers Ball Planning Committee, those who donated silent auction items and to the staff of the Camelback Inn. Special thanks also went out to the firm of Case, Huff & Associates, which once again was the presenting sponsor for the event, and to all of the businesses and law firms that supported the evening.

A special thanks to the Barristers Ball chairperson, Kim Davis, and the Young Lawyers Division of the MCBA, which once again was responsible for one of the highlight events of the year. Everyone is looking forward to next year’s Barristers Ball, which has been promised to be even bigger and better.

Randy Nussbaum is a founding shareholder of Nussbaum Gillis & Dinner, PC. His areas of practice include complex bankruptcy law, real estate, construction and contract law. Nussbaum is a board member of the Maricopa County Bar Foundation.
How to (not) write your president’s column

By (Not) T.J. Ryan

Dearest Mr. Kyle Hirsch, President-Elect of the Maricopa County Bar:

The deadline for this column was Friday, March 6, then, upon reasonable request, was delayed to Friday, March 13. Having died the night before neither deadline, the first lesson about writing an effective president’s column is clear: Wait until the very last minute. Then miss that deadline and ask for a new one. Then miss that one, too. I find that my best ideas come with a lack of sleep, the mind aided only by copious amounts of caffeine and allergy medication. Quality writing topics are dissolved by the unique fear that the space set aside for the president’s column would be printed in blank.

Complete sentences flow like rush-hour traffic on the I-10 when you only have 45 minutes to complete a task you were given on time really enjoys a challenge every once and again, and the delayed delivery provides them just that. As you hurriedly hammer out your delayed doggerel, ignore the interests of the reader. Sure, those who receive this monthly newspaper are a definable group of lawyers, paralegals, law students and some non-lawyers as well, but that is unimportant when you consider the task at hand: Filling this page with enough words so as to satisfy your monthly responsibility. Indeed, having read my fair share of exemplary columns from the executive leadership of other voluntary bar associations, I can assure you that there is no consistent theme. Topics range from “What I did this weekend: A retrospective” to “How to be the best lawyer you can be tomorrow (because you stink today),” while others exist only as rambling missives about apostrophes. Ignore a set formula and write what you want to write about. Trying to “fit into convention interests no one.”

With this framework in mind, do not talk about the bar association. Remember: Everyone reading your column is already a member of the Maricopa Bar, so you don’t need to beat them over the head with all the activities, services and community outreach the bar engages in on a daily basis. What would you expect to come from doing so? Do you honestly believe that our membership would benefit by hearing about the opportunities and economic incentives of being a Maricopa Bar member? Do you think they would share those features with others with whom they interact? I postulate the reader would much prefer to hear about your vacations or the life lessons gained therein, are overplayed. If our readers want to learn about self-improvement, they can purchase one of Tony Robbins’s numerous books, wherein they can awaken giants with unlimited power, all while mastering money in seven easy steps. You see, we call this exercise of ‘lawyering “practice”’ for a reason: you really never master it. But if you share your personal experiences, those readers are denied the opportunity to learn the same lesson themselves, suffering the same fate, first hand.

One last thing: Don’t ask for help. Sure, there are many who have gone before you and who would readily provide you with a fount of ideas and suggestions. But to ask for help indicates weakness and acknowledges that you can’t handle your role independently. Shun assistance, for after all, you are the president of the largest voluntary bar association in the state of Arizona. And it’s #YourMaricopaBar.

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The Magna Carta and Law Day 2015

May 1 of each year is also known as Law Day, a national day set aside to celebrate the rule of law. Law Day was established in 1958, when I was negative 27 years old, by President Dwight D. Eisenhower. In 1961, Congress designated May 1 as the official date for celebrating Law Day. This year, the American Bar Association selected the Magna Carta as the Law Day theme. If it’s been too long since your high school U.S. history class and you only have vague memories about the Magna Carta, let me help you.

A brief history of the Magna Carta

The Magna Carta was issued 800 years ago, in 1215, and resulted from negotiation between King John and rebellious English aristocrats on the brink of civil war. “Magna Carta” means “Great Charter” in Latin, which gives you a pretty good sense of how self-important the signors were. From a visual standpoint, the Magna Carta was handwritten in Latin on a single piece of sheepskin parchment approximately 18 inches square — about the same surface area as a 27” computer monitor or TV screen.

If you have to see an image of the Magna Carta, it is hiding something. If I tried to write anything on some piece of sheepskin parchment, it would come out looking like the “paintings” my 9-month-old does at daycare (which I treasure, of course).

The most persistent misconception about the Magna Carta is that King John “signed” the document. In reality, the king’s seal was affixed to the document (and more than 40 other documents) to signify his assent and granting of the charter to his subjects. However, this so-called peace treaty between the king and the rebellious nobles didn’t even last a year. The 1215 charter was annulled by Pope Innocent III within 10 weeks of its issuance. I’m Catholic and two annuls can hardly make amends for an English aristocrat on the brink of civil war...

Today, the Magna Carta symbolizes our tradition of constitutional governance, its “rule of law” and, above all, that no ruler is above the law. In May 2011, in a speech to the UK Parliament, President Barack Obama said: “Centuries ago, when kings, emperors, and warlords reigned over much of the world, it was the English who first spelled out the rights and liberties of man in the Magna Carta.”

In addition, Ret. Supreme Court Justice Sandra Day O’Connor, who I am obligated to mention in all Arizona legal publications, wrote that the “Magna Carta has risen above its uncertain beginnings. It has been a crucial influence on the development of the rule of law, first in England and then around the world.”

Law Day program presented by the MCBA

In celebration of the Magna Carta’s 800th anniversary, the MCBA has tasked a special committee to come up with a program to benefit the legal community and the general public — and help remind all of us how the core principles of the Magna Carta influence some of the major issues affecting our society today.

On Law Day, May 1, 2015, the MCBA will host a panel to discuss one of the great issues of our time: security and privacy. Notable speakers that have been intimately involved with the legal complexities of this issue will share their (often opposing) viewpoints of how to properly balance the need to make our nation secure, and the privacy rights of Americans. It should be a wonderful program and as card-carrying members of the MCBA, I encourage all of you to not only attend, but also bring non-lawyers to this event.

The Magna Carta’s legacy and its influence on civil liberties, trial by jury, due process and other fundamental aspects of our society cannot be overstated. Together, we should celebrate its impact on our history and explore its application to our world today.
Spring cleaning tricks and organizational tips

Spring is finally here, bringing with it all of the amazing things we love about living in Arizona — beautiful days, refreshing nights, spring training baseball, outdoor festivals and, yes, the cleaning out of our homes, offices, cars and lives.

It is important to be tidy and organized, and keeping track of your tasks, projects and papers — as well as the tasks, projects and papers of the attorney or attorneys you work for — is imperative to your success and sanity! We work in an industry that is deadline-driven so staying on top of the current status of any and every deadline in your files is an extremely important component of your job. Even if it is not your responsibility to monitor and/or enforce the deadlines, it is still very important for you to be aware of and to stay ahead of them.

Organizing your desk drawers and cubbies. Put all like things together and apply labels if you find that helpful, or if you share your space with someone else. Buy a caddy for your drawers to compartmentalize your pens, Post-its, paper clips, binder clips, etc. Prepare folders for filings, tasks, taxes and mail and label them accordingly: Keep them in one place (so your attorney can find them if needed) so every item that comes across your desk can go into a folder, be addressed at the appropriate time, then put into the file or tossed. This also is quite helpful when you are looking for something that has not yet made its way into the file. There is no digging through your inbox — you know it is in the folder.

If your attorney relies on you for the organization of his or her workspace, you have your work cut out for you! Spend some time (during meetings or while you wait for them to review and sign papers) watching how they work. Do they have pens and Post-its on their desk? When they discuss a case or impending deadline, where do they look for the information? All of these will give you clues as to how to help organize your attorney’s space. If they prefer to keep items on their desk, make sure there is a place for everything to go. Does your attorney like to use colored tabs while reviewing a file? Ensure that there are plenty of tabs on their desk, or perhaps stick them to the pen holder. If you work for someone who likes to take notes during telephone calls, make sure there is always a legal pad right next to the phone. If you work for someone who likes paper calendars or a print out of next week’s appointments and/or deadlines, print it out and highlight appropriate tasks and/or meetings (one color for items the attorney needs to address, another color for items that you will address) and place it on the same spot every time you hand it off.

Everyone has their own system, so stick to what you know and love, or try something new and see how it works for you. I would love to hear your tips and suggestions. The next Paralegal Division Board Meeting is Monday, April 13, 2015, at 5:30 p.m., at the MCBA office. I hope to see you there!

CLE shares stories and lessons learned the hard way

By Jason Houston

On Feb. 26, 2015, MCBAs Litigation Section hosted a panel of esteemed practitioners who, we were assured, would regale us with true accounts of sobering lessons learned the hard way. As it turns out, the most creative writers in Hollywood could never have come up with some of the scenarios and faux pas we were treated to.

Lighter moments are scarce in this profession, but emphatically so when they take place in open court. After the first anecdote, I settled in for what was going to be one very entertaining evening.

Unfortunately, there isn’t room here to cover the whole event, but here are some of the highlights.

Tom Toone relayed an experience he witnessed in an aviation accident case that went to trial. The client was a Mr. Laughlin — the same Laughlin who founded and owns the Nevada gambling town that bears his name. Laughlin also owned a helicopter, which he kept for commuting for his staff.

One day, a cowboy needed a ride to Kingman — and with the pilot, they took off in the helicopter. During the trip, the pilot suddenly developed a spirit of during bravery and attempted to set the craft down on the back of a large flatbed semi truck traveling along Interstate 40. The foolhardy operation failed and the craft collided with overhead power lines, injuring both of the helicopter’s occupants. The cowboy sued and a jury awarded him $1 million.

As Toone’s firm geared up for appeal and settlement negotiations, Laughlin insisted, “No, just pay it!” They not only paid the judgment, but Laughlin offered the cowboy a complimentary penthouse suite at his casino.

David Tierney cautions against believing everything your clients tell you. In the early 1960s he had a client charged with the clumsy robbery of a cab driver and purse-snatchings of two female bystanders.

A suspect was immediately arrested and identified by all parties involved. He pleaded to the charges and was sentenced to one year in prison. Upon being released, he contacted Tierney and offered to rebuild the engine on Tierney’s white 1962 Impala SS 4-speed convertible. Tierney indicated that wasn’t necessary and thanked him anyway. But the client persisted, saying, “I owe you one.” Curious, Tierney drove over to see the client where he was living with his brother, who looked nothing like the client. During this visit, it was revealed the client wasn’t the one who committed the crime, but his brother was. His brother agreed to take the fall and leave the fake villain to stay at home and care for a pregnant wife. Not only were the eyewitnesses’ identification constructively impeached (albeit after the fact), the case gave a new dimension to just how deep brotherly love can run.

Gerald W. “Buzz” Alston recited a wrongful death action in Globe, in which a well-respected elderly resident who ran a local bakery happened to be the driver in a fatal motor vehicle accident. The jury was unable to decide on a dollar amount for damages and turned to the judge. Most of the jurors were familiar with the baker and his car, and found it hard to believe he would ever have killed anybody. Their lone question to the judge was how they could give the widow some money, but without taking it from the baker.

Perhaps the most interesting anecdote of the evening was another one of Alston’s. During a rape trial, one elderly gentleman on the jury kept nodding off. The rape victim was asked what, exactly, the defendant had actually said to her to indicate he was going to rape her. Embarrassed by the necessarily explicit language, the judge agreed to let the young victim write it down on a piece of paper. After so doing, the note was passed to the defense, and then to the prosecution, and then on to the jury. By the time it reached the juror who had been doodling off, he read it then slipped it into his shirt pocket. When advised he had to give the note back, he replied, “I’d rather not, it’s personal.”

A warm thanks to the Litigation Section, who brought in the panel to share some of their “career moments.” A lot of us may not otherwise get to experience such professionally sobering events, and it made for a very entertaining evening, to say the least!

Jason Houston is a family court mediator and civil arbitrator in private practice and serves on the California State Bar’s Mandatory Fee Arbitration Panel. He is a member of the Maricopa Lawyer Editorial Board.

The War Stories and Lessons Learned CLE was held on Feb. 26.
Sealed documents and sensitive information

Clerk’s Corner
Michael K. Jeans
Clerk of the Superior Court

Millions of documents are filed with the clerk’s office each year, but less than one-half percent of them are ordered sealed by the court. When petitioning the court to seal, the motion and relevant documents should be delivered on paper directly to the assigned judicial officer’s division. If documents are delivered to the clerk’s office prior to being ordered sealed, they may end up in the electronic court record and viewed by the public while the court is reviewing the request. The eFiling Guidelines and AZTurboCourt require that documents filed under seal must be on paper and cannot be filed electronically.

When a sealing determination is made, the judicial officer’s division delivers the order and the original documents to the clerk’s office at the same time for filing. If the motion is denied, the documents will be filed in the case as public records. If the motion is granted, the clerk will file-in and maintain the documents under seal per the specific direction in the court’s order.

Motion to seal before filing

Sometimes the court’s order to seal individual documents applies to items that will be filed in the future. Those documents must be filed on paper only. In that situation, the original documents for filing should be placed in an envelope before delivering them to the clerk’s file counter. A copy of the order to file under seal should be placed on the outside of the envelope.

To docket sealed items, the clerk’s office needs a cover sheet generally describing the document in the envelope. For example, “Report dated April 2, 2015” or “Medical records ordered filed under seal.” When the information allows, parties may include a copy of the first page of the document outside the envelope instead of a cover sheet and the clerk can type the docket entry based on the document’s title. If conformal copies are desired, they should be handed to the clerk to stamp and hand back. The filing party can also place their copies in envelopes and the clerk will conform-stamp the envelopes. These precautions alert clerk staff that special handling applies and reduces the chance of the documents being processed with public-record filings. A notation alone on the face of the document is insufficient, as the clerk’s office can only seal records when the court-ordered authority is identified.

Entire case sealed

Sometimes the court seals an entire case. In that situation, all parties in the case must file all documents on paper and the clerk’s office flags the case in its case management system. When an entire case is ordered sealed, all paper filings can be presented to the clerk’s office without envelopes, as the case management system will recognize the case number as a sealed matter and its programming will prevent public access to the records.

Sensitive information

Be aware of differences between the courts and other government agencies regarding sensitive information and public records. Most state agencies are subject to the public access requirements in Title 39 of the Arizona Revised Statutes and have affirmative duties to redact information from records before making them available to the public.

Divorce and Arizona Supreme Court Rule 123 controls access to court records and is similar in many ways to the statutes, but with key differences. Filing parties are responsible for keeping sensitive or protected information out of documents before filing with the clerk’s office. Once filed-in, the clerk’s office requires a court order to modify, redact or replace a public case record.

For example, one filer included each petitioner and respondent’s social security number next to their name in the case caption of their pleading. Family court filers have disclosed personal and medical information in public documents. The clerk’s office does not have the authority to reject a document on this basis and no independent authority to alter the content of a document presented for filing that contains this information. With tens of thousands of pages filed each day, review clerks do a quick scan of documents looking for obvious formatting, signature, appearance and payment issues. Clerks are unlikely to know that information contained in a document is either sensitive or restricted and do not second-guess what the filing party includes in a filing.

A document containing social security numbers, financial account information, victim information, details ordered by the court to be kept out of the public record or other sensitive information will be available in the public record unless and until the court or a party takes specific action to correct the filing party’s oversight. Several court rules and case types, such as mental health, probate and juvenile, have special procedures for filing documents with sensitive information in a way that the judicial officer and parties can access the records, but not the general public.

By following the suggestions here and the specific rules and statutes that apply, you can be confident your documents will be filed and maintained as required.

BOOK REVIEW:

“Divorce in Arizona: The Legal Process, Your Rights, and What to Expect”

What is a Petition for Dissolution of Marriage? How many years must I have been married before I’m eligible to receive a part of my spouse’s retirement fund or pension? Is there any reason not to pay or receive payments directly to or from my spouse once the court has entered a child support order?

Looking for answers to these or similar questions? Then look no further than “Divorce in Arizona: The Legal Process, Your Rights, and What to Expect” by Arizona attorneys Marlene Pontrelli and Robert Schwartz. Pontrelli and Schwartz bring a combined 70 years of family law experience to their book and use it to guide both unrepresented parties and attorneys through what can sometimes be a complex and emotional family law process.

The goal of “Divorce in Arizona” is to provide a general analysis of common family law problems in a simplified question-and-answer format. The book goes by issue in an attempt to walk readers through the entirety of the divorce process. Initially, the authors provide the reader with a general overview of the divorce process in Arizona, then move through the divorce process explaining issues such as the difference between fault and no-fault divorce, jurisdiction and whether there is any advantage to filing a petition before one’s spouse. The book then moves into the matter issues such as child support, legal decision-making, parenting time, and division of assets and debts.

For a few important topics, Pontrelli and Schwartz go a little deeper than simply providing a general overview. For example, the authors thoroughly explain the issues of legal decision-making and parenting time and the various statutory factors that a party must address with the court. This is a difficult issue to explain to clients, but the authors do a fine job of explaining these concepts. Another example is the authors’ focused discussion on how the division of assets and debts occurs and why.

The book does not just provide legal information; the authors also address the emotional and psychological side of the divorce process. Any family law attorney or client will tell you that family law issues are bursting with emotion. The authors attempt to confront this issue head-on with advice as to how a reader can avoid allowing the divorce process to overwhelm them or cause unneeded stress. This information is almost as important as the legal information and analysis contained in the rest of the book.

When all is said and done, “Divorce in Arizona” is a solid resource for both family law litigants and attorneys to rely on as a guide through the entire divorce process. The authors break down complex issues into easily understandable questions and answers. At the same time, the book appropriately details the important factors that all family law litigants need to know.

Max Mahoney is an associate at Berkshire Law Office, PLLC. He is a member of the Maricopa Lawyer Editorial Board.

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Mistake No. 1 – Professionalism

By Russell Yurk

Over the past year, this column has focused on the most significant ethics issues that I see in today’s world. This final column in the series will discuss what may be the most misunderstood “ethics” requirement of all — professionalism. For too many years, the public’s perception of our profession has been unacceptably low, and that must change.

It is a privilege to be a member of the bar — every member spent significant time and resources to earn that privilege. They attended and graduated law school, took and passed the bar exam, and successfully completed a character and fitness review. But it does not stop there. As officers of the court, it is vital that all lawyers regularly take a moment to reflect on their professional obligations to clients, the courts, opposing parties and counsel, and the public.

Yes, Virginia, there is a professionalism rule

Whereas Rule 42 contains the Rules of Professional Conduct (or ERs), Rule 41 requires lawyers to “avoid engaging in unprofessional conduct …” Ariz. R. Sup. Ct. 41(g). Unprofessional conduct is defined by Rule 31(a)(2)(E) as “substantial or repeated violations of the Oath of Admission to the Bar or the Lawyer’s Creed of Professionalism issues included in the Oath and the Lawyer’s Creed. The following discussion is far from exhaustive, so I encourage every lawyer to read the Oath and the Lawyer’s Creed in their Arizona Rules of Court. You’ll find them following Ariz. R. Sup. Ct. 31.

The Oath of Admission to the Bar

The Oath is significantly shorter than the Lawyer’s Creed. Although it incorporates many of the same tenets of the Lawyer’s Creed, the Oath tends to be a little more general in scope. Here are a few requirements of the Oath:

“I will maintain the respect due to courts and judicial officers.” Lawyers must always remember that they are officers of the court and, as such, they must always respect the courts and judicial officers. Examples of disrespect include “eye-rolling, dramatic sighing, and other expressions of displeasure in a courtroom …” State v. Martinez, 230 Ariz. 208, 215, 282 P.3d 409, 416 (2012). Other examples would include interrupting judges or talking loudly during courtroom proceedings. There is no room for this behavior in our profession.

“I will not assert any defense except such as I honestly believe to be debatable under the law of the land.” Lawyers have an obligation to assert only those defenses appropriate to the case.

As is also reflected in other portions of the Oath and Lawyer’s Creed, it is inappropriate for lawyers to include defenses (or claims) in a “kitchen-sink” approach without any regard to their actual relevance.

“I will abstain from all offensive conduct.” There is no room in the practice of law for offensive conduct. Lawyers have an obligation to treat others with respect and courtesy and act at all times with integrity. See, e.g., In re Airlines, 227 Ariz. 248, 253, 257 P.3d 167, 174 (2011) (finding that a judge’s improper sexual advances violated the Oath).

Lawyer’s Creed of Professionalism of the State Bar of Arizona

The Lawyer’s Creed is divided into four categories of conduct as they relate to the client, opposing parties and their counsel; the courts and other tribunals; and the public and our system of justice. Here are just a few examples:

“I will advise my client against pursuing litigation (or any other course of action) that is without merit and I will not engage in tactics that are intended to delay the resolution of the matter or to drain the financial resources of the opposing party.” Lawyers must not take actions purely for purposes of delay or to increase the expense of litigation. Although clients may often argue that this is a proper tactic in litigation in an effort to force opponents into submission, lawyers must remain vigilant in refusing to follow such client directives.

“Will be courteous and civil, both in oral and in written communication.” As William Shakespeare wrote in The Taming of the Shrew, “And do as adversaries do in law, strive mightily, but eat and drink as friends.” Lawyers have an obligation to diligently represent their clients’ interests, but that does not translate into a need for incivility and disrespect among members of the bar.

“In litigation proceedings, I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected.” Very rarely will granting these requests truly prejudice your client. More often than not, clients who urge their lawyers to deny such requests do so for personal reasons and out of spite for their opponent. Lawyers must rise above the fray and grant reasonable requests. One of Murphy’s Laws should be that when a lawyer denies a request for an extension, that lawyer will soon be in need of an extension from opposing counsel.

This brief discussion of the Oath and the Lawyer’s Creed barely scratches the surface of what lawyers need to remind themselves on a regular basis. It is easy for lawyers to get caught up in the heat of litigation or high-stakes negotiations and forget their obligations to the profession and to our system of law. I cannot urge enough that every lawyer should keep a copy of the Oath and the Lawyer’s Creed on their desk and refer to it on a regular basis. Law firms should also make a priority of ensuring that their lawyers comply with the requirements. By doing so, everyone wins.

Russell Yurk is an attorney with Jennings, Haug & Cunningham, LLP, in Phoenix. His practice focuses on professional liability, lawyer discipline and complex civil litigation. He can be reached at (602) 234-7819 or ryurk@jhclaw.com.
A night to celebrate: The 2015 Barristers Ball

The Gammage & Burnham table, including Maricopa County Bar Foundation Chair George Winney (lower right)

The DeShon Pullen & Associates table

Attendees dancing it up and enjoying the Upper East Side Big Band.

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Tesz Millan and Howard Weiss enjoying the silent auction.

MCBA President T.J. Ryan (left) with Nathaniel and Brittany Ohl from Case, Huff & Associates

Afsanieh Rassti and Ben Eid

The casino action heats up.

Barristers Ball Chair Kim Davis with raffle prize winner Judith O’Neil

Attendees dancing it up and enjoying the Upper East Side Big Band.

Maricopa County Bar Foundation board member Donna Gandre (second from right) and former Chair Hon. Frank Moskowitz (far right) with guests
Kudos to the 2015 100% CLUB MEMBERS!

We applaud the twenty-four Valley firms that have committed to support the MCBA

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Overhead as a practice killer, a cautionary tale

By Alexander Benikov

At a law professor teaching a class on law office management, one of the most common questions I get from students is, “Why do practices fail?” Often the students think the reason is lack of legal knowledge, lack of clients or bad communication skills. While any of those factors can doom a practice, I think the No. 1 cause is failing to manage overhead. There are several different definitions of overhead, but for our purposes, let’s say overhead is the amount of money you spend on your practice. It’s everything from lunches to office expenses to insurance and everything in-between.

Measuring the income of a practice is rather simple. Income minus overhead equals net profit. What this means is that no matter how large the income, the net profit the firm generates will always be affected by overhead. If a practice generates $10 million a year but spends $11 million a year, that practice has a serious problem and will likely not be around for very long. On the other hand, if a firm generates $100,000 a year but only spends $10 on overhead, that firm is doing pretty well. There is no secret to managing overhead but there are several important things all practices can do to manage overhead and have a higher net income.

A business can’t control overhead if it doesn’t know what their overhead is. I am always amazed when firms bring me in to help reduce overhead and the lawyers don’t know their numbers. They either don’t know what their overhead is or are only familiar with what they are spending. A practice serious about managing their overhead must know exactly what they are spending. A simple program like QuickBooks can easily tell a practice where their money is going. With my Quickbooks, I can easily see how much money I spend and compare the spending to past months and years to know if I am becoming more or less efficient. If you are still doing your accounting on a piece of paper, it might be time for a change.

The second part of having a manageable overhead is learning to be mean and keen. With the recent advancements in technology, it is truly possible to run an entire practice with a cell phone and a laptop. One huge place to save money is to consider not having a physical office. There are many options such as a virtual office, office sharing, co-working, an office-by-the-hour program and so on. Think how much money your practice would be saving if you didn’t have a monthly rent or mortgage payment. My point is not that you have to give up your office, but to think of places where you could save money. Be creative and think outside the proverbial box.

Another key to managing overhead is to realize that little things add up. Most attorneys I speak with know what their big expenses are, but don’t think about the smaller ones. One of my favorite examples is money spent on coffees and lunches. Do you know how much you spent on lunches last year? If an attorney eats out once a week, they spend approximately $500 a year on lunch. If that same attorney eats out four times a year, they’re spending $2,000. Over a 10-year period, the difference between eating out once a week and four times a week is $15,000. And there are many expenses like this, from eating out to coffee to dry cleaning to gyms to office cleaning and software upgrades. Little things can add up quickly.

As there are more and more attorneys saturating the market and competing for the same clients, it is more important than ever to manage overhead. The practices that will succeed in this new legal market will adapt, evolve and thrive. The practices that don’t evolve will face extinction.

Alexander Benikov is the founding partner of the Benikov Law Firm. He is also a law professor and author of two legal texts. He can be reached at aby@benikovlaw.com.

Four local teens win national Magna Carta video competition

By Heidi McNeil Staudenmaier

Four high school students from the Phoenix and Scottsdale areas are the national winners of the American Bar Association’s 2014-2015 Film/Video Competition. The “Magna Carta: What’s So Great About The ‘Great Charter’?” competition is among numerous activities celebrating the 800th anniversary of the Magna Carta, which was sealed in June 1215.

For their efforts, the students will receive an all-expense paid trip to Washington, DC, in April (as part of the Law Day celebration). They will have a personal meeting with U.S. Supreme Court Justice Sonia Sotomayor, who will watch the video with the students. The students also will be recognized at a dinner at the National Archives, among other events. The students are Allison Gooch (sophomore), Jacob Staudenmaier (freshman) and Dallas Greene (freshman) of Arcadia High School, and Joshua Babu (freshman) of Notre Dame High School. The group has a film production company called Babushka Productions.

The contest-judging criteria were film formatting; technical production; understanding of content and how well the video demonstrated a comprehension of the various historical and contemporary issues associated with the competition’s name, “What’s So Great About The Great Charter?”; supporting evidence from a factual standpoint; and affective impact of the film on Magna Carta scholarship. Among the many facets of the video, the students expanded upon President Dwight Eisenhower’s quote, “The clearest way to show what the rule of law means to us in everyday life is to recall what has happened when there is no rule of law.”

The competition was jointly sponsored by the ABA and its Solo, Small Firm & General Practice Division, the Center for Teaching and Division for Public Education. As of press time, the winning video is available for viewing on the ABA’s Solo, Small Firm and General Practice Division homepage at www.americanbar.org/groups/gpsolo.html.

Heidi McNeil Staudenmaier is a partner at Snell & Wilmer, LLP. She practices in the areas of Indian law, gaming law and business litigation. She was the 1999-2000 MCBA president.

From left: Dallas Greene, Jacob Staudenmaier, Allison Gooch and Joshua Babu at the Almost Famous Film Festival, where the group made the Top 20. They were the youngest group to ever make the Top 20 in this film competition involving professionals of all ages.
New judge Q&A: Hon. Lori Horn Bustamante

Q: What has surprised you the most about making the transition from commissioner to judge?
A: My transition has been very smooth and I have not had many surprises. I have an incredible judicial assistant, Jucilica Singleton, who was a tremendous help with the transition.

Q: Who has been the biggest inspiration in your legal career?
A: I have had many people who have mentored and inspired me throughout my career, but my parents have been my biggest inspiration. They have encouraged me every step of the way and instilled in me the values of integrity, work ethic and having a positive attitude.

Q: What's your favorite quote?
A: “If you can dream it, you can do it.” — Walt Disney

Hon. Lori Horn Bustamante

Hon. Robert Gottsfield says farewell

Judge Robert Gottsfield left full-time work with the court on March 6, 2015. Gottsfield was appointed as a judge on Feb. 1, 1980 when the court had only 40 divisions. Since then, he has served continuously as a judicial officer for the last 35 years. “During that time no one in our court’s history has worked harder or longer hours to serve the court and provide legal access to litigants. Stories of Bob’s work ethic, willingness to do any assignment and professionalism are legendary,” Presiding Judge Norman Davis said. “He regularly started a second jury trial while the jury in the last one was still deliberating. We owe Judge Gottsfield our profound thanks and recognition for his valuable and dedicated service. An institution is leaving the court, and I know you all join me in applauding Judge Gottsfield’s service and example to each of us.”

AZ Supreme Court approves commercial court pilot program

Civil commercial disputes may soon be handled in a new venue, thanks to an administrative order by the Arizona Supreme Court. In May 2014, the court established an 18-member advisory committee to study the feasibility of establishing a special venue within the superior courts to address the unique needs of businesses engaged in commercial civil litigation. The superior court in Maricopa County is in the process of launching a three-year pilot commercial court program.

“This court recognizes that disputes between companies or involving the internal governance of businesses often raise issues that require specialized knowledge and that implicate potentially expensive discovery,” said Chief Justice Scott Bales. “By appointing experienced judges and establishing processes shaped for commercial civil litigation, we hope to show that these disputes can be resolved more efficiently and economically.”

The advisory committee cited several reasons that a commercial court would be beneficial to Arizona, including:
- To make Arizona a more favorable forum for resolving business disputes;
- To improve the community’s access to justice;
- To expediently resolve business cases and reduce litigation costs;
- To improve the quality of justice; and
- To gain the business community’s support for the state of Arizona’s dispute resolution system.

The pilot program is slated to begin July 1, 2015, giving the superior court in Maricopa County time to re-assign workload as necessary and implement other administrative steps in advance of taking on its first docket of cases.

The establishment of a commercial court is budget neutral and will be achieved through the use of existing judges and resources that are currently in place at the trial court level. Judges Dawn Bergin, Roger Brodman and Christopher Whitten are the three judges who will hear commercial court cases.

Once a case is assigned to commercial court, there will be a mandatory early scheduling conference to help address discovery issues and adopt an effective and efficient schedule for progress of the case.

The MCBA will be presenting a CLE program on the special rules and procedures in the new Commercial Court on Wednesday, May 13 at Noon. Presenters will include several judges in the pilot program. For more information and to register, see the listing on page 13 of this issue.

GET THE MOST OUT OF YOUR MEMBERSHIP
Join a section or division by calling the Membership Dept. at (602) 257-4200
Our speakers will share about the challenges and issues their agencies and offices face in 2015-16. We will then host an informal breakout session giving you a chance to “speed-date” the regulators as they rotate from table to table for introductions and questions. 

PRESENTERS: Chris McIsaac, Governor Ducey’s Policy Advisor for Energy and Environment; Thomas Buschatzke, Director, Arizona Department of Water Resources; Michael Fulton, Deputy Director, Maricopa County Air Quality Department; Trevor Baggioire, Director, ADEQ Water Quality Division; Laura Malone, Director of ADEQ’s Waste Programs Division

COST: MCBA members: $55
Bring your paralegal/legal assistant (Please provide their name and email): $25
MCBA Paralegal & Public Lawyer Division members: $35
MCBA Corporate Counsel Division members (use promo code OBSCURE): $45
MCBA student members: FREE
Non-members: $75

SeSSion iii
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Discovery: Can’t We All Just Get Along? Preparing Your Case With the End in Mind
This session will discuss do’s and don’ts in the discovery process, and choosing your battles wisely.

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

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

ATTENDANCE POLICIES
ADVANCE REGISTRATION: Full payment must be received in advance of the program before you are considered registered.
LATE REGISTRATION: All registrations must be paid in full two business days prior to the program date or a late fee of $15 applies. For example, registration for a September 17 program must be paid by September 15 in order to avoid the late fee.
WALKINS: You may register at the door if space is available; the $15 fee will apply. If you do not register at least two business days in advance of a program, MCBA cannot guarantee space or availability of materials.
CANCELLATION/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 email Kelly at librarian@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.

APRIL 14 • NOON – 1 P.M.
(Lunch provided)
Obscure Concepts & Common Misconceptions of Intellectual Property Law
SPONSORED BY: Corporate Counsel Division
1 CLE: credit hour available
Protecting intellectual property and avoiding infringing the intellectual property of others can be vital to the success of a business. However, it may not always be clear what may be protected as intellectual property and how best to protect that intellectual property. Likewise, it may not always be clear when acts of the business infringe the intellectual property of others. This seminar aims to address obscure concepts and common misconceptions of intellectual property law to help corporate counsel to address these issues. For example, the seminar will discuss the differing scopes of protection afforded by patents, copyrights and trademarks; the differences between trademarks and trade names; and the Prior Use Defense and Doctrine of Equivalents under patent law, etc.

PRESENTERS: Stephen Benyi, Bryan Cave, LLP
COST: • MCBA members: $50
Bring your paralegal/legal assistant (Please provide their name and email): $25
• MCBA Paralegal & Public Lawyer Division members: $35
• MCBA Corporate Counsel Division members (use promo code OBSCURE): $45
• MCBA student members: $10
• Non-members: $70

APRIL 21 • 4:30 – 6:30 P.M.
Speed Networking with the Regulators
SPONSORED BY: Environmental Law Section
1 CLE: credit hour available
In celebration of Earth Day, join us for a unique CLE opportunity featuring some of your favorite regulators and policymakers!

COST: • MCBA members: $115
Bring your paralegal/legal assistant (Please provide their name and email): $25
• MCBA Paralegal & Public Lawyer Division members: $70
• MCBA Family Law section members: $100 (use promo code FAMAPRIL)
• MCBA student members: FREE
• Non-members: $175

APRIL 22 • 1 – 4 P.M.
Parental Alienation
SPONSORED BY: Family Law Section
3 CLE: credit hours available
The panel will discuss:
• The history behind the term “alienation”
• Current research regarding alienation dynamics
• Ways the system can respond (what attorneys and judges can do in the face of alienation)
• Interventions

PANELISTS: Marlene Joy, JD; John Moran, PhD; Diana Vigil, PhD; David Weinstock, PhD, JD

COST: • MCBA members: $115
Bring your paralegal/legal assistant (Please provide their name and email): $25
• MCBA Paralegal & Public Lawyer Division members: $70
• MCBA Family Law section members: $100 (use promo code FAMAPRIL)
• MCBA student members: FREE
• Non-members: $175

APRIL 23 • 4 – 5:30 P.M.
(Reception to follow)
2015 Meet the Judges & Annual Reception
SPONSORED BY: Estate Planning Probate & Trust Section
1.5 CLE: credit hours available
Come meet the judicial officers of the Probate/Mental Health Department of the Maricopa County Superior Court. You will be presented with court updates, practice tips and the opportunity for an open give-and-take with the judges and commissioners. Immediately following the presentation will be the MCBA Probate & Estate Section Annual Reception.

COST: • MCBA members: $62.50
Bring your paralegal/legal assistant (Please provide their name and email): $25
• MCBA Paralegal & Public Lawyer Division members: $45
**CLE COMMUNIQUE**

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**WHERE THE LEGAL COMMUNITY CONNECTS**

**MCBA EPPT Section members (use promo code EPMJREC): $55**
**MCBA student members: $10**
**Non-members: $102.50**

**MAY 12 • 11:30 A.M. - 1 P.M.**

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**Important Developments in Attorney-Client Privilege**

**SPONSORED BY:** Corporate Counsel Division

1.5 CLE ethics credit hours available

A review of recent cases involving the corporate attorney-client privilege and internal investigations, and discussion of how to safeguard the privilege in investigations.

**PRESENTERS: Mark Harrison and Kathy Brody, Osborn Maledon**

**COST:**
- **MCBA members:** $62.50
- **Bring your paralegal/legal assistant (Please provide their name and email):** $25
- **MCBA Paralegal & Public Lawyer Division members:** $40
- **MCBA Corporate Counsel Division members (use promo code CORP):** $55
- **MCBA student members:** $10
- **Non-members:** $92.50

**MAY 13 • NOON - 1 P.M.**

| Lunch provided |

**The New Commercial Court Project – A View from the Bench**

1 CLE credit hour available

Join the three judges assigned to the new Commercial Court Pilot Project and the chair of the committee that created the program as they discuss the goals of the program and the nuts and bolts of how cases will be managed differently.

**PRESENTERS:** Hon. Dawn Bergin; Hon. Roger Brodman; Hon. Chris Whitten; David Rosenbaum, committee chair

**COST:**
- **MCBA members:** $50
- **Bring your paralegal/legal assistant (Please provide their name and email):** $25
- **MCBA Paralegal & Public Lawyer Division members:** $35
- **MCBA Corporate Counsel Division members:** $45
- **MCBA student members:** $15
- **Non-members:** $70

**JUNE 9 • NOON - 1 P.M.**

| Lunch provided |

**What Happens, What To Do When Things Legal Go Awry**

**SPONSORED BY:** Corporate Counsel Division

1 CLE credit hour available, including 1 hour of ethics

Lawsyers know where the bodies are buried and sometimes disoment within the corporate legal ranks can sow dissent and potential liability within a company. Enjoy this discussion of lawyers behaving badly, ethical obligations as an in-house employer to the "client," managing lawyer performance and problems in order to avoid issues, and gracefully exiting and dealing with fall-out when departures and separations occur.

**PRESENTERS:** Joe Clees, Ogletree Deakins; Nonnie Shivers, Ogletree Deakins

**COST:**
- **MCBA members:** $50
- **Bring your paralegal/legal assistant (Please provide their name and email):** $25
- **MCBA Paralegal & Public Lawyer Division members:** $35
- **MCBA Corporate Counsel Division members (use promo code OBSOURE):** $45
- **MCBA student members:** $10
- **Non-members:** $70

**MAY 20 • NOON - 1 P.M.**

| Lunch provided |

**Revising Arizona’s LLC Statutes**

**SPONSORED BY:** Corporate Counsel Division

1 CLE credit hour available

Scott DeWald and Jim Reynolds have been working with members of the subcommittee for about four years on revisions to Arizona’s LLC Act, using as a point of reference the Revised Uniform Limited Liability Company Act (“RULLCA”), a product of the Uniform

Laws of the National Commissioners on Uniform State Laws, LLC laws of Delaware and the Model LLC Act of the ABA have also been compared. Although the work of the committee is not complete, it is time to start sharing the key changes proposed with a wider community. This program will be a comprehensive review of the proposed amendments, the reasons for the committee’s decisions and the possible impact of the changes. Topics to be covered:

- Fiduciary duties (current act is silent)
- Indemnification (current act is silent)
- Annual report requirements
- Dissolution
- Derivative actions
- Charging orders
- Members vs. assignees of LLC interests
- Series LLCs
- Dissenters rights

**PRESENTERS:** Scott DeWald, Lewis Roca Rothgerber, LLP; James Reynolds, Tiffany & Bosco

**COST:**
- **MCBA members:** $50
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- **MCBA Paralegal & Public Lawyer Division members:** $35
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- **MCBA student members:** $10
- **Non-members:** $70

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**A Small Donation Makes a Big Difference**

**Arbitration Fee Donations Help**

Partnering with the Maricopa County Superior Court, the Maricopa County Bar Foundation (MCBF) is once again encouraging attorneys assigned to arbitration to donate the $75 fee to the Foundations’s fundraising efforts.

**It’s Easy to Contribute**

The court has made it easy to contribute with a convenient “pro bono” check-off box located at the bottom of the Invoice in Support of Request for Warrant, a form provided in your arbitration packet. For more information, go to maricopabar.org and click on the Maricopa County Bar Foundation link located on the homepage sidebar.

**Thank you for making a difference!**

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Contingency Fee splitting available in compliance with Ethical Rule 1.5(e)
The Maricopa Lawyer invites members to send news of moves, promotions, honors and special events to post in this space. Photos are welcome. Send your news to mhaskins@maricopabar.org.

NEW HIRES

Business and real estate attorney Andrea M. Simbro has joined the Phoenix law firm of Warner Angle Hallam Jackson & Forman, PLC. Simbro earned her law degree in 2014 from the James E. Rogers College of Law at the University of Arizona.

If you are an MCBA member you’ve moved, been promoted, hired an associate, taken on a partner, or received a promotion or award, you might want to hear from you. Talks, speeches (unless they are of national stature),

HONORS & AWARDS

Jennings, Haug & Cunningham, has been actively involved with the Epilepsy Foundation for several years. His three-year term on the board commenced in February 2015.

Sowders is also pleased to announce that Mina Cerimagic, an associate attorney at the firm, has been elected to the board of directors for the Epilepsy Foundation of Arizona. Cerimagic received her J.D. from the Sandra Day O’Connor College of Law at Arizona State University, where she was a PediMed Scholar. Prior to starting her legal career, she worked for the Arizona Justice Project.

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

MCBA Books for Lawyers

Guide to Arizona Statutes of Limitation 2011 (2nd edition)
The one reference every lawyer really needs to meet critical deadlines and avoid malpractice

This 174-page book (softcover, spiral bound), newly updated through 2011, includes most, if not all, statutes where a time limitation is specified. Compiled, updated and edited by the MCBA Young Lawyers Division, the Guide is intended for use as an aid to Arizona attorneys in all areas of practice.

The essential criminal law practitioner’s reference

This book is a compilation of the most frequently referenced criminal statutes, rules, guidelines, timelines, and sentencing information, among other useful information. This second edition contains updates and additional sections to make it more practical and helpful for use as a portable criminal law desk reference. Use it as a quick reference during Arizona criminal proceedings. Spiral bound, 210 pages, the book lies flat and is convenient to take to court. Compiled by the MCBA Criminal Law Section. Downloadable online.

The Most Frequently Asked Questions in Environmental Law (2nd edition)
The environmental answer book for Arizona businesses and non-specialists

Completely up-to-date and comprehensive, this publication of 16 chapters and 200 double-sided pages in a three-ring binder. It is written and edited by the MCBA Environmental & Natural Resources Section and can be downloaded online.

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CLASSIFIEDS

If you are an MCBA member and you’ve moved, been promoted, hired an associate, taken on a partner, or received a promotion or award, you might want to hear from you. Talks, speeches (unless they are of national stature),
For Love of Justice’ awards honors outstanding pro bono work

By Peggi Cornelius, VLP Programs Coordinator

Since 1981, when the Volunteer Lawyers Program (VLP) was founded by the Maricopa County Bar Association and Community Legal Services, Arizona attorneys have joined in pro bono service to low-income clients referred to them by the VLP. Today, active participation by hundreds of attorneys helps thousands of people seeking pro bono assistance with civil law matters each year.

Some volunteer attorneys conduct intake interviews to screen and evaluate requests for help. Some provide advice and brief services, or educate and instruct applicants in self-advocacy; and some accept VLP case referrals for direct representation. Volunteer lawyers also support and increase the participation of their colleagues by sharing their expertise as presenters at continuing education programs, serving as mentors, or becoming liaisons between their law firms and the VLP. Many volunteers simultaneously serve in more than one capacity.

In appreciation of all those who belong to the VLP — and in recognition of those whose contributions this past year have been exceptional — we have planned a reception and awards presentation:

VLP’s “For Love of Justice” pro bono awards will be presented for outstanding contributions in 2014.

Outstanding Individual Awards

Joshua P. De La Ossa
Law Office of Joshua P. De La Ossa

William A. Hicks, III
Ballard Spalt

Joy Issacs
Snell & Wilmer

Sarah J. Michael
Law Office of Sarah J. Michael

Lawyers

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Lawyers

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April 15, 2015
5 to 7 p.m.
Hyatt Regency Phoenix
RSVP
www.maricopabar.org/vlpawards
or
Kelly at (602) 682-8588

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