High court rules in favor of Arizona commission’s redistricting powers

Arizona voters are notably innovative in attempting to rein in politicians. Arizona politicians often fight back. In 2011, they persuaded the U.S. Supreme Court that the matching-funds provision of the Arizona Citizens Clean Elections Act violated the First Amendment.


In 2001, Arizona voters decided to take legislative redistricting out of the hands of the legislators. They adopted Proposition 106, which established the Arizona Independent Redistricting Commission. Its mission is to draw the districts for both congressional seats and seats in the Arizona Senate and House. The five-member commission is made up of two Republican members and two Democratic members, along with a chair who is not a member of either of those parties.

If you had predicted that politicians would chafe at this, you would have been right. In 2011 then-Governor Jan Brewer and the state senate, unhappy with the commission’s actions, impeached Commission Chair Colleen Mathis and removed her from office. The Arizona Supreme Court reinstated her, holding the impeachment constitutionally defective. Arizona Independent Redistricting Commission v. Brewer, 229 Ariz. 347 (2012).

Following the 2010 census, the commission redrew the congressional and state legislative lines for the 2012 elections. In short order, the Legislature sued, asking the district court to hold that both the 2012 map and Proposition 106 violate the Elections Clause of the United States Constitution. Article I, § 4, clause 1 of the Constitution provides: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations ...”

A three-judge panel of the district court ruled that although the Legislature had standing, its complaint failed to state a viable claim. With one judge dissenting, it held that “Legislature” as used in the Elections Clause is not limited to the representative body but instead “refers to the legislative process and at times, encompassing the entirety of the legal work environment. The second breakout session includes “Can I Share This or Do I Have to Pay Royalties? A Closer Look at Intellectual Property Laws,” presented by Scot Claus, Esq. of Dickinson Wright, PLLC, which focuses on what information can and cannot be legally shared over the Internet and on social media sites; and “I’ve Fallen and Can’t Get Up: Personal Injury Strategies for Plaintiff and Defense Paralegals,” presented by Geoff Trachtenberg, Esq. of Levenbaum & Trachtenberg and Erik Stone, Esq. of Jones, Sherron & Hochuli. This segment examines both sides of a personal injury case and provides valuable tips for preparing such matters for trial.

See Join us for the 2015 Arizona Paralegal Conference page 14.
A case for PE: “Physical and engaging” legal education

I vividly recall the first encounter I had with legal-writing guru Bryan Garner, while joining a multitude of attendees at one of his whole-day legal-writing workshops held in Scottsdale. The seminar was offered both in person and digitally (via webinar), and I opted for the more expensive in-person option. I made this choice because I wanted more from the experience than just the credits or the materials. The in-person offering gave me the ability to interact with the mind of a writing genius; unfettered access to a resource that did not present itself to me with any frequency. Further, I found in my practice that online CLE, while generally worthwhile, did not yield the depth of educational results that I desired.

Subconsciously, I was motivated by the specific reasons that in-person CLE remain more beneficial than online, unidirectional education. Self-study and online educational courses are typically static in nature, where participants are unable to interact with the educators. One need not look very far for scholarly studies that prove, without doubt, that interactivity between the educator and the students has a strong positive effect on learning — and yields positive retention in the students receiving the information. Indeed, schools throughout the country are now purchasing and installing “interactive whiteboards” which allow the teachers in each classroom to engage with each of their students, on a one-on-one basis, giving the children an interactive environment which fosters faster, deeper learning through a hands-on, multisensory educational experience. Collaborative problem-solving allows the students to participate in the educational process with one another, working toward a common goal.

So, too, are similar benefits found when lawyers personally attend a legal education seminar, which typically include sample problems and problem solving, along with collaborative discussions. Attendees increases because the participants are engaged in working toward the common solution or, alternatively, debating the correct solution. In my own work, I challenge presenters of educational seminars to refrain from the “teaching head” structure. Certainly there are times when a lecture format is required, but interperspective dynamic conversations foster problem solving, and issues and questions posed for audience participation not only fosters deeper learning and collaboration, but also (selfishly, for the speaker) lessens the amount of static material one must prepare. That is, hit your bullet points and then let the audience do the majority of the talking for you.

In such collaborative environments, the attendees learn not only from the “sage on the stage” but from one another via informal exchanges surrounding the topic. In-person CLEs encourage networking and expansion of your professional relationships, including beyond your specific practice area. Some of the best dynamic discussions I have witnessed resulted from practitioners in separate practice areas debating topics of law shared by both communities. Those who attend online are passive observers, without ability to engage at the same level as those attending in person, if they are even paying attention at all.

In Chris Anderson’s book “Free: The Future of a Radical Price,” he explains how giving away their programs online for free, the TED conference is able to charge hundreds of dollars for their seminars. The key, Anderson explains, are the benefits received by physically being there. Rubbing elbows with billionaires, interacting between sessions with other entrepreneurs and tech mavens, and even just the pure energy of being surrounded by other intellectuals and business leaders. None of this is available digitally or online.

Anguishing that “CLE is broken,” Professor Joseph Marino suggests that part of the fix is to require attendance at live CLE for all attorneys. Indeed, states like Pennsylvania and New Jersey require their lawyers attend in-person CLE as part of their annual requirement, understanding, Marino argues, that “a live credit requirement allows attorneys to network in a way that LinkedIn and Facebook cannot.” (Ask the Professor: Why Do We Need Continuing Legal Education?, Above the Law, January 8, 2015, available at http://abovethelaw.com/2015/01/ask-the-professor-why-do-we-need-continuing-legal-education/)

Indeed, the synergistic effect of grouping lawyers and paralegals together in one room is undeniable. Too often I find myself lingering long stretches of time at the conclusion of educational seminars, if only to debate and share ideas with other practitioners, some long-time friends and colleagues, and others new introductions. With few exceptions, those willing to present CLE are even more willing to engage one-on-one after the presentation to enlighten or highlight aspects of the discussion. Most often, I overhear (or engage in) conversations with the presenter or other lawyers about current cases, and how to apply the topic of the day to such case or our practice in general.

After Garner concluded his seminar, I was stunned to watch 90 percent of the attendees gather their materials and shuffle out toward their cars. The remaining few of us lined up to speak candidly and individually with Garner, engaging in such stimulating topics like research organization, semantics, and the serial comma. In my opportunity, I confided to Garner our shared love of golf. He smiled wryly, reached into his briefcase, and produced the “Rules of Golf in Plain English.” “You’ll enjoy this,” he said, “and let’s tee it up when I’m back in town next.”

I have yet to take him up on the offer, but I know it still stands. Needless to say, those on the webcast did not enjoy such an invitation. ■

**CLE Review: Important Developments in Attorney/Client Privilege**

By Jason Houston

Recent decisions involving the corporate attorney-client privilege have brought renewed importance to the protection of legal and business considerations when embarking on internal investigations. Two such cases involve Wal-Mart stores and Kellogg, Brown & Root, a government defense contractor.

Maritza I. Munich was a Wal-Mart lawyer who took an aggressive approach to investigating scandals — but who had been silenced by Wal-Mart, which invoked the attorney-client privilege to keep her from speaking about an ongoing 2004 bribery scandal in Mexico. But a recent Delaware court decision may not only allow Munich to talk, it may give shareholders of all companies a new way to bypass the attorney-client privilege when they suspect wrongdoing.

Of necessity, Munich resigned in 2006, after which the investigation was buried by the general counsel of Wal-Mart’s Mexico operations, a man later implicated in the scandal. Only after The New York Times reported the scandal did Wal-Mart reopen its investigation and report the misconduct to the U.S. government. Since then, Wal-Mart has spent $439 million on the scandal, and many of Wal-Mart’s top executives involved in the company. Even now, the full story has yet to be told. Since Wal-Mart has asserted the attorney-client privilege, and Munich herself has held the privilege, saying she’s available to speak with investigators,

...
How (not) to use parentheses

Many legal writers use parentheses in their writing, especially in persuasive writing. The most common (and helpful) use of parentheses is to provide a parenthetical explanation or interruption, as shown in this sentence. A writer may also use parentheses effectively to label something in a sentence: “Adams, Monroe, and Lee (the owners) pay the taxes every quarter.” I have recently spotted two parenthetical trends that are troublesome, however.

**Trend No. 1:** Using parentheses in documents to indicate a possible plural. This use is troubling because it leaves the writer with the dilemma of when to stop using this construction. It may also result in uncertainty in subject-verb agreement. Consider the following examples.

- A tenant(s) pay the maintenance fee(s), put deposit(s), and closing deposit(s). The owner(s) does not provide insurance.

   In the first example, the overuse of the parenthetical plural results in clumsy writing. The second example illustrates the subject-verb agreement dilemma. Should the verb be “does” or “do”? The worst thing a writer can do is to make the writing even clumsier by inserting a choice: “does/do.” Thus, the best way to handle this situation is to rewrite to avoid the parenthetical plural. Remember that legal writers generally draft legal documents in the singular unless the plural is needed.

**Trend No. 2:** Using parentheses to add a subject to the sentence. Some writers defend this use as a persuasive tool because they want to keep the focus on one subject while downplaying those subjects in the parentheticals. This use, however, always results in a subject-verb agreement dilemma.

Dr. Tyler (and his full-time and temporary staff) wants to settle the matter.

Should the verb be singular (wants) or plural (want)? I found lots of advice that suggests to ignore the parentheses when choosing the verb, yet the singular verb sounds funny to a reader’s ear. Because legal writers should always make writer easier for readers to follow, I suggest rewriting to avoid putting subjects in parentheses.

A legal review of “Ted 2”

Since this issue will be sent out when many lawyers are on vacation, let’s have a little fun. I recently saw the movie “Ted 2,” and I cannot confirm or deny that some of my colleagues saw it with me. While the movie is a sophomoric comedy at heart, it’s also a law-related film. Like most films that include lawyers and courtroom drama not everything shown in “Ted 2” is an accurate depiction of our justice system. Before I begin, I am obligated to say that this article contains SPOILERS, so if you’re planning on seeing the movie and don’t want to know what happens, come back to this article after your cinematic experience.

For those who did not see the original “Ted,” I’ll get you up to speed. In 1985, John Bennett, a child in Boston, wishes for his teddy bear named Ted to come to life. The wish comes true, and Ted becomes a fully mobile sentient being. That sounds like a Termina-tor, but what means is, Ted can walk and talk. Fast forward to 2012, and grown-up John (played by Boston-native Mark Wahlberg) and Ted are immature best friends and “thunder buddies.” For the purposes of “Ted 2,” you need to know that Ted gets a job as a grocery store cashier and begins dating a fellow cashier, Tami-Lynn. To be clear, Tami-Lynn is a human woman, not a bear. Lastly, the villain in the first film is Donny, a weird stalkler who idolized Ted as a child and eventually kidnaps him. Thankfully, John saves Ted.

“Ted 2” begins with Ted marrying Tami-Lynn. Once married, however, Ted and Tami-Lynn begin to fight constantly. To save their marriage, they decide to have a baby (which is a questionnaire message to send, but, OK). Unfortunately, Ted is incapable of reproductive functions, because remember, HE IS A TEDDY BEAR. Ted and John try and fail to get a sperm donor, despite asking Flash Gordon (seriously) and assaulting Tom Brady (seriously). Ted eventually accepts John’s donation offer only to find out that Tami-Lynn is unable to get pregnant. Out of options, Ted and Tami-Lynn decide to adopt. This is where the legal drama begins.

Ted’s attempts to adopt get the attention of the government, who inform Ted that he is not a person, but property, and thus Ted (1) cannot adopt a child with Tami-Lynn, and (2) is not legally married. Ted also loses his job and financial accounts. John encourages Ted to take the situation to court, but Ted cannot afford an attorney. Thankfully, a first-year associate, Samantha Leslie Jackson (played by Amanda Seyfried), agrees to take their case pro-bono.

Here’s where things start to unravel from a legal procedure standpoint. We learn that Donny is now a janitor at Hasbro Toy Company and is still obsessed with Ted. Donny convinces the Hasbro CEO that if Ted is determined to be property, Hasbro should take Ted, cut him open to discover what’s inside and mass-produce him. Hasbro would make huge profits, and Donny will finally get a Ted bear all to himself. To ensure that Ted loses in court, the Hasbro CEO hires attorney Shep Wild (who has never lost a case) to argue against Ted. We quickly cut to a courtroom scene, where Shep Wild speaks to a jury, followed by Samantha, on Ted’s behalf. It is never revealed who exactly is challenging Ted’s “personhood” nor is it explained how Hasbro, a private company, could get their desired attorney injected in this civil-rights case.

Sadly, the jury rules against Ted, as the foreman simply announces that the “jury finds that Ted is property.” Disheartened, Samantha, Ted and John approach Patrick Meighan, a highly respected civil-rights attorney, to take Ted’s case in hopes of overturning the court’s decision. Meighan is played by Morgan Freeman and serves as the (very smooth) voice of reason in this romp. Meighan initially refuses to accept Ted’s case, mostly because he thinks Ted cannot win. Meighan explains that the case is about appealing to the jury’s emotion, and being a person is about making a contribution to society — something the juvenile Ted hasn’t done. Ultimately, Meighan does take Ted’s case, after seeing that John was willing to risk his life to save Ted. You see, John was nearly killed by a giant model Starship Enterprise from Star Trek at Comic-Con, when John was helping Ted avoid being kidnapped (again) by Donny, who was dressed as Raphael, the Teenage Mutant Ninja Turtle. If that last sentence seems insane, ALL OF THAT ACTUALLY HAPPENS IN THE FILM.

Back in court, Meighan gives a passionate argument, insisting that Ted is in fact a person because he feels complex emotions and is capable of empathy. You would think that this argument would be before a three-judge appellate panel, or something similar. And you would be wrong. Meighan is again arguing in front of a jury, and quite possibly in the same courtroom. This time though, Ted wins! He and Tami-Lynn adopt a baby boy, and name him Apollo Creed Clubber Lang (it’s a long story) and they all live happily ever after.

Overall, the portrayal of our justice system in “Ted 2” succeeds and fails in the same ways most other films do. The movie speeds up the progress of the case (one can dream) and skews court procedure. But, more importantly, the film promotes the idea of justice and, particularly when Morgan Freeman is speaking, the courtroom scenes are genuinely moving. Ted’s counsel reminds the jury of our country’s past failures in civil rights, including the mistreatment of African Americans. While part of me was uneasy with the comparison of slavery to a stupefied teddy bear being classified as property, I understood that this movie shouldn’t be taken that seriously; it is a comedy, after all. In the end, “Ted 2” is about the laughs — but it’s also about a flawed, but ultimately positive, view of the legal system, where even a teddy bear can find justice.
Purification of local politics frustrates district attorney

It was more than a man like George Pundy Bullard should have to put up with. After all, he was district attorney of Maricopa County, a powerful force in Territorial politics, lived in one of the finest homes in Phoenix and, as an avid autoist, drove a fine new 1908 2-cylinder Maxwell. Yet, he was being unreasonably vexed in open court by a stream of lies and political hacks, an activist do-gooder and even opposing counsel.

After failing to obtain a conviction in two back-to-back election-tampering trials, a good-natured comment in the courtroom by defense counsel Capt. Joseph L. B. Alexander, to the effect that the D.A. had been “foolish” by a local anti-saloon activist named Canning, ignited Bullard’s simmering fuse. Alexander, as a private attorney, had successfully represented the defendants in the two election cases. He had previously commanded the first squadron of the Rough Riders under Colonel Theodore Roosevelt, and was currently also serving as U.S. Attorney for the Territory of Arizona at the time of the election trials.

Bullard, usually “cool and pleasant under trying circumstances,” did not find the war he-his comment helpful and turned to Alexander and angrily retorted, “I want none of your suggestions. You have a capacity of being insulting at all times and under all circumstances.” Given the events of the previous month, Bullard’s frustration was understandable.

Local elections

About a month earlier, on May 5, 1908, it was Election Day in the city of Phoenix. City council seats were to be decided in the Second and Fourth Wards. The Fourth Ward was located south of Washington and east of Center Street, and was home to much of Phoenix’s minority community. The prior Saturday, May 2, had been a special election to decide whether Maricopa County would choose to prohibit the sale of alcohol. Although a majority of county voters opted to make the county dry, the tally fell short of the two-thirds required to close down the local liquor business. The Fourth Ward strongly voted down the proposal.

The Republican candidate for the Fourth Ward council seat was selected with some controversy in early April. The ward caucus split into two elements — one, consisting of the regular party men, supported Donald W. Cisney. The other, made up primarily of members of the Taft Colored Club and the Spanish American Club, backed historian and reporter, Col. J. H. McIntloch. The Cisney faction prevailed and Cisney, a supporter of both the generally unpopular Republican Territorial administration and the pro-saloon faction was eventually elected by a margin of 59 votes.

Political shenanigans

District Attorney Bullard’s troubles began when Judge Edward Kent empanelled the Spring Term District Court Grand Jury. One of the jurors, J. W. Canning, was a well-known local reformer and temperance activist. Canning frequented local beverage purveyors in search of evidence of juveniles being served so that he could report the owners to the authorities. He also apparently had a fervent enthusiasm for clean elections (in the primary election caucuses to select Republican delegates to attend the convention, Canning was punched in the neck trying to prevent ballot box stuffing when the lights were blown out). After being named to the Grand Jury, Canning shared with Bullard that he had heard from defense counsel Capt. Joseph L. B. Alexander, that the four witnesses were paid off to bolster the defense and sold in the Fourth Ward election and urged Bullard to pursue an indictment.

Within a few days of the elections, the Grand Jury was investigating claims that the City Streets director, Grigs Carr, and City Hall custodian, Fred Gardner, had unlawfully expended funds to pay Republican workers in the Fourth Ward election. Counter charges were raised by Gardner against the head of the local Democratic Committee for similar activities a year earlier.

Gardner, a large African American man, alleged that the Democrats had offered him $50 to help influence the prior election in favor of the Democratic mayoral candidate. Republican Gardner took $50 from Gardner to pocket the Democrat’s money, but did nothing to support the party’s candidates.

Juror bias

Canning, the juror, reported to Bullard, the prosecutor, that he had been told by defendant Carr that Carr had bought more than 100 votes in the Fourth Ward election and that Gardner had told him that “things had been so framed up in the Fourth Ward that defeat was impossible.”

In response to these accusations, Bullard proceeded to gather testimony from several Black and Hispanic Republican Party workers who had been charged in city court with selling their votes. Their testimony before the Grand Jury supported a charge that the party had indiscriminately employed voters on Election Day to induce the casting of their votes for particular tickets or persons. Specifically, it was alleged that Carr and Gardner had recruited a number of Hispanic and African American “workers” for the primary purpose of securing their votes and encouraging the workers to solicit other minority voters who would support candidate Cisney.

When defense counsel Alexander heard from local Democrats of Canning’s comments about the defendants, Alexander asked for a hearing before Judge Kent to determine Canning’s qualifications to act as a Grand Juror in the same case where he had offered evidence that inititated the investigation. After a heated exchange between Alexander and Canning, and Canning’s admission that he was biased against Gardner and that he would “kill” Gardner and “reform” Alexander, he was summarily excused for bias. Nonetheless, indictments were issued later that same day, May 22, against all three defendants in an effort the press described as an attempt to “purify” the election process.

On the following day, the Grand Jury issued a report broadly condemning corruption of the elections by both parties. Trial was set for early June.

Trying trials

Jury selection for the trials of Carr and Gardner appeared to favor the prosecution. Reportedly, the venue was predominantly Democratic, with only three potential Republican jurors (with one of them reportedly “more dangerous than a normal Democrat”). The jury selected for Carr’s case had only two Republicans. On the other hand, of District Attorney Bullard’s witnesses (those accused of having received payoffs from the defendant) failed to repeat their apparently substantially more colorful and dazzling Grand Jury testimony. Bullard’s efforts to elicit the previously offered testimony were met with successful objections from Capt. Alexander that Bullard was trying to impeach his own witnesses.

One witness at trial testified that he had been paid $700 on Election Day for “getting a lunch for the Republican Club” and “hustling voters out to the polls.” He admitted telling the voters how to vote, but claimed that Carr had not instructed him to do so. When asked by the frustrated Bullard if he had testified in the Grand Jury proceedings that the barber had instructed him to “sell voters to put a cross under the flag,” he denied offering such testimony. The case went to the jury at 5 p.m. and by 10 p.m. that evening, the dozing jurors were called back to the court room and found to be hopeless deadlocked (8 for conviction and 4 opposed), resulting in a mistrial.

The next morning, an all-Democratic jury was selected to hear the case against Gardner. The charge against Gardner rested on the testimony of African American barber. The barber claimed that upon arriving at the Fourth Ward polls he encountered Gardner and asked how much there was in it for him. Gardner allegedly replied that there was a day’s work (understood to be $12). The barber pocketed the money and cast his vote. Gardner denied the transaction had taken place and claimed that the barber’s testimony was offered in revenge for Gardner tipping off the police that Gardner was living with a white woman. A parade of character witnesses then testified that Gardner had an unstained reputation for honesty and reliability and, conversely, that Gardner was corruptible and was “not an ornament to society.”

It then was revealed that each of the negative character witnesses had been “coerced” with the discredited Grand Juror Canning, who was responsible for inspiring the indictment of Gardner in the first place. The jury received the case late in the day and by 10 p.m. could not reach a verdict and was deadlocked at seven to five to convict. The jury was discharged and a mistrial was declared.

The following morning, the prosecution undertook to try Gardner on one remaining count. Bullard, after again being thwarted in his efforts to reproduce witness testimony heard by the Grand Jury, took the unusual step of calling the Assistant District Attorney to offer evidence of the Grand Jury testimony of the cooperative witnesses. This desperate measure by Bullard was claimed not to be for bolstering his case or impeaching the witnesses, but to establish a record for the court and the public to understand that the election fraud indictments had been based on “some evidence that at the time seemed reliable.” Upon Capt. Alexander’s motion, Judge Kent dismissed the case and the 1908 movement to “purify the polls” was detailed.

Bitter with the sweet

District Attorney Bullard dealt with his trial-induced frustration on the following Monday by selling his two cylinder Maxwell automobile and leaving for Los Angeles to purchase a magnificent new two cylinder Royal Tourist roadster that he then put on an extensive tour of Arizona. Probably the first, but definitely not the last, Arizona lawyer to soothe his bruised professional ego and seek solace in the driver’s seat of a flashy new set of wheels.
Candidates for MCBA Board of Directors invited to declare candidacy

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

Members with terms expiring at the end of this year are Lynne Adams, Gail Barsky, Flynn Carey, Michael Kiehlcy and Matthew Meeker. Each of the five positions consists of a two-year term beginning in 2016.

Board members attend monthly meetings, liaise with one or more MCBA sections, divisions, or committees, and support the work of the association.

Candidates must be licensed Arizona attorneys or judges, active members of the MCBA, and in good standing with both MCBA and the State Bar of Arizona.

Candidates are asked to:
1. Submit a letter of candidacy to MCBA Executive Director, Allen W. Kimbrough, either by email or postal mail: MCBA, 303 E. Palm Lane, Phoenix, AZ 85004-1532 or akimbrough@maricopabar.org no later than 5 p.m., Sept. 15, 2015.
2. Provide additional required election materials. A 200-word bio and a color jpeg photograph must be submitted by email only to Mindy Haskins at mhaskins@maricopabar.org no later than 5 p.m., Sept. 15, 2015.

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

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

Election Review Committee appointed by the President of the Association.

B. Candidate Election Materials

The following materials are required from candidates no later than Sept. 15.
1. A letter formally declaring candidacy for the Board of Directors, with the candidate’s signature and addressed to the Executive Director. This document may be submitted electronically as a pdf document, but a mailed paper version is also acceptable.
2. A 200-word biographical statement. This bio may include an optional position statement of the candidate’s vision and priorities for the MCBA. This information must be submitted.

See Candidates for MCBA Board on page 9

Q&A

By Russell Yurk

This month, I will address common questions I receive regarding conflict checks.

QUESTION: When do I need to run a conflict check?

ANSWER: You need to run a conflict check before you give legal advice to a client or potential client. When you are asked for legal advice, you should first ask for the names of parties (and key witnesses if known) and ensure that you do not have a conflict before receiving privileged information or providing legal advice.

Q: When do I need to re-run a conflict check?

A: Conflict checks should be re-run whenever new parties are added and when non-parties at fault, experts and other key witnesses are disclosed. Any potential conflict with those individuals would not have been apparent in an original conflict check. Additionally, it is always a good idea to run a new conflict check on each of your cases annually to ensure that no conflicts have arisen over time.

Q: What people or entities should be listed in my conflict system?

A: Conflict systems should include not only the obvious (clients and opposing parties), but also several groups of individuals you may not be thinking about. You should include opposing counsel, non-parties at fault, expert witnesses, third-party payors (such as insurance companies or parents paying legal fees for their children) and prospective clients. You may also include close family members of lawyers and staff in your firm, which would at least alert the firm to potential conflicts between firms or clients employing spouses or relatives. Each individual in the system should be identified by name and by role in the matter.

Q: Do I need to buy expensive conflict-checking software?

A: Not necessarily. Although professional conflict-checking software is always preferable, the key is to have a system that is thorough, current, and used by lawyers and staff. Someone at each firm should be responsible for ensuring that the conflict system is properly maintained and that conflict checks are appropriately conducted. Whatever system is used, it needs to alert lawyers or staff to potential conflicts of interest.

If you have a question about ethics or lawyer liability that you would like addressed in this column, please email me at rry@jbc-law.com.

Russell Yurk is a partner with Jennings, Haug & Cunningham, LLP, in Phoenix. His practice focuses on professional liability, lawyer discipline and complex civil litigation.

The MCBA-Affinity Partner ClientConflictCheck.com offers cloud-based solutions for handling conflict checks.

2015 BENCH-BAR CONFERENCE

FRIDAY • OCTOBER 2 • 1 P.M.
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STATE OF THE COURTS
Presiding Judge Janet Barton

Panel/Table Discussion 1
What the Judges Want

Panel/Table Discussion 2
What the Lawyers Want

Panel/Table Discussion 3
Ethical Pitfalls

Panelists to date include:
Hon. Janet Barton
Hon. Aimee Anderson
Hon. Sally Duncan
Hon. Geoffrey Fish
Hon. Jennifer Green
Hon. Julie Mata

Hon. Brian Rees
Hon. Christopher Whitten
Allister Adel
Booeker T. Evans
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Join us for a reception following the conference.
Registration at www.maricopabar.org/event/benchbar

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Hall of Fame Nominations Sought for 2015

The Maricopa County Bar Hall of Fame Selection Committee is now seeking nominations for 2015. The committee expects to select inductees from the broad diversity of lawyers in the county.

The deadline for submissions is August 21, 2015.

Hall of Fame Criteria
The Maricopa County Bar Hall of Fame will recognize Maricopa County attorneys who have practiced for at least 10 years and who have:
- Played prominent and important roles that have had an impact on the history and development of our local bar and the legal profession;
- Made significant or unique contributions to the law or the administration of justice; and/or
- Demonstrated significant leadership, advocacy and accomplishments in service to the community or the profession.

Please note that nominees from previous years will not automatically be re-considered for 2015. You are, however, invited to re-submit a previous nominee with complete information as noted below.

Submission Requirements
- Full name of nominee, including date of birth (and death, if applicable).
- A brief statement or summary of nominee’s significant qualifications and achievements (about 100 words or less).
- A detailed biographical description of nominee. The committee relies on the information supplied by the nominator(s), so comprehensive information is important. Supporting letters from others are also welcome.
- A photograph, preferably in color, submitted in electronic jpg format as an attachment to email.

Where to Submit Nominations
Nominations will be accepted by mail, email or through the MCBA website. For mail or email, please use the form on this page, or you may download the form from the website or use the website’s electronic form: www.maricopabar.org.

Forms should be mailed or emailed to: Laurie Williams, Hall of Fame, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, AZ 85004-1532. Phone: (602) 257-4200. Email: bwilliams@maricopabar.org.

Hall of Fame Inductees 2008-2014

| PIONEERS | (all deceased) | HONORARY
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<td>Dr. John Alsap</td>
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<td>Alice Birdsell</td>
<td>Richard F. Harless</td>
<td>Hon. John C. Phillips</td>
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<td>Frank Haze Burch</td>
<td>Leon S. Jacobs</td>
<td>Francis J. Rykey</td>
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<td>Louis Chalmers</td>
<td>Edward Kent</td>
<td>Hon. Richard E. Sloan</td>
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<td>Judie Early Craig</td>
<td>Hon. Joseph Khibey</td>
<td>Hon. Rawleigh Stanford</td>
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<td>Hon. Walter E. Craig</td>
<td>Hon. A.D. Lemon</td>
<td>George J. Stoneman</td>
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<td>Amelia Dietrich-Lewis</td>
<td>Anita Lewis</td>
<td>Hon. Frederick C. Struckmeyer, Sr.</td>
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<td>Rafael (Ralph) Carlos Estrada</td>
<td>Hon. Ernest W. Lewis</td>
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<td>Herbert H. Finn</td>
<td>Hon. Frank H. Lyman</td>
<td>Philip Von Ammon</td>
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MODERN ERA

| Hon. Rebecca Albrecht | Larry A. Hammond | Hon. Sandra Day O’Connor |
| Jerry L. Angle | Mark I. Harrison | Frank A. Parks |
| Charles (Chick) Arnold | William F. Haug | Willard H. Pedrick* |
| Bruce Babbitt | Hon. Michael Daly Hawkins | Hon. Cecil B. Patterson, Jr. |
| Roxanna C. Bacon | Ed Hendricks, Sr. | Hon. Robert W. Pickrell |
| Peter D. Baird* | Tom Hentze | Hon. Maurice Portley |
| Hon. Scott Bales | Hon. Andrew Hurwitz | Hon. William H. Rehnquist* |
| Hon. Rebecca White Berch | Edward “Bud” Jacobson* | Philip A. Robbins |
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| Hon. Robert L. Gottfried | Hon. William H. Rehnquist* | |

*Deceased
California Western School of Law congratulates

Judge Lawrence F. Winthrop
Class of 1977

on his receipt of the James A. Walsh Outstanding Jurist Award, given in recognition of his exemplary work serving the judiciary and the people of Arizona.

Judge Winthrop serves as a member of the law school’s Council of Visitors and advisor to the Phoenix Regional Alumni Association.

To learn more about California Western, visit www.CaliforniaWestern.edu

CALIFORNIA WESTERN
School of Law | San Diego

Curtis, Goodwin, Sullivan, Udall & Schwab, PLC (CGSUS) is a trusted Arizona law firm. Our experience includes civil litigation, government law, utilities, employment law, land use and zoning, municipalities and special taxing districts, water rights and management, telecommunications, elections, construction, regulatory defense, police advisory services, conflicts of interest and open meeting laws. Our attorneys also excel at legislative relations, public affairs, and crisis management.

Clients turn to us when they need creative solutions to unique problems or advice on handling difficult situations. We offer value to our clients because of our extensive backgrounds with public entities and private sector clients.

At Donaldson Stewart, PC, we possess the qualities essential to serve the needs of our clients. We are a knowledgeable team of professionals committed to providing quality services at reasonable rates. Our attorneys and team of professionals provide clients with a compassionate, results-oriented representation that encourages our clients to actively participate in every step of his or her legal action. We practice primarily in the areas of family law and estate planning, and can assist in a variety of other matters as well.

Community Legal Services is a non-profit Arizona law firm that strives to assure fairness in the justice system no matter how much money you have but provides direct services to individuals falling below 125% of the federal poverty level. We were incorporated in 1952 as a legal aid program organized to promote “equal access to justice for all.” Community Legal Services is committed to eliminating poverty-based inequities in the civil justice system by providing high-quality legal advice, advocacy and assistance to low-income Arizonans.
Tips on how to write a strong appellate brief

By Jennifer Allen

I am a former appellate clerk now practicing law. That experience was remarkably valuable; partners here frequently seek my advice on appellate writing. So, I want to share some ideas for improving your appellate work that I learned during my clerkship. I encourage you to get the perspectives of others like me, as well as judges, if you want to write strong appellate briefs.

You might wonder why my opinion matters. Well, in my experience, drafting an appellate opinion was highly collaborative. While my judge was the ultimate decision-maker, he valued my opinions. Judges have large firms experience small firm flexibility.

While my judge was the ultimate decision-maker, he valued my opinions. Judges have large firms experience small firm flexibility.

Jennifer Allen

Put time and effort into your brief. Your writing quality doesn't really matter. Yes, you read that right. The decision on appeal usually doesn't depend on who best frames the facts. That's it.

Now, if the facts and the law are on your side, your task should be relatively simple. Tell the story and explain the law. Even if your writing quality is mediocre, you're probably home free. And if the facts and the law are not on your side, I hate to say it, but no matter how good your writing is, you probably won't tip the scales.

But about the more rare case involving a close issue? Perhaps the appeal involves a matter of first impression, with persuasive authority supporting both sides. Now everyone needs to step up their game, and this is when writing quality matters. But, ironically, this is when many writers make some classic mistakes. The three most common mistakes I saw were repetition, pathos and brashmouthing.

Let's start with repetition. All too often, the writer bludgeons his audience by repeating his argument, ad nauseam, 30 different ways. Take my word for it — this technique will likely lose the reader, and he or she will turn to the soles of the (much shorter) competing brief.

What about pathos? Well, that's the brief as "Oscar speech." Just because public policy favors you is no excuse for needlessly turning up the melodrama. Let the public policy argument speak for itself. Make the arguments reasonably and rationally and leave the pathos at home.

And then there's the brashmouthing. Too often the writer resorts to scathing and sarcastic diatribes about their opponent. Don't do it! That's all I need to say about that.

So what should you do when facing a close argument? Well, the nuts and bolts of doing this are well outside the scope of this article. For that, just turn to Bryan Garner, or any number of books about legal writing. Suffice to say that your focus should be on persuasively framing the issues; perhaps more than any other writing technique will lead the reader to your worldview. This is your opportunity to influence how the reader views and weighs the facts, tipping the scales in your favor.

How does this work in practice? Let's take an example. Suppose a statute, never interpreted before by the Arizona courts, assesses heavy fees for certain types of water use. Some states with similar statutes apply these fees to backyard pools, making it cost-prohibitive to own one, and other states exempt backyard pools. The Water Board has successfully sued your client for not paying the statutorily imposed fees for his backyard pool. The sole issue on appeal is whether the statute applies to him.

If you represent the Water Board, you'd tell the court how scarce water is here. You'd provide statistics about annual water use by backyard pool owners. You'd sound the alarm about Arizonans' complacent water wasting. You'd make scary comparisons to the drought in California. Then you'd point to the absence of any specific exclusion under the statute for backyard pools. And if you had heeded this article, you'd do this calmly, rationally and with brevity. Your facts and the law speak for themselves.

But if you represented the pool owner, you wouldn't dupe over statistics and predications. Instead, you'd talk about family life. You'd argue that pools provide a healthy and safe way for families to be together and stay cool during Arizona's hot summers, and also provide exercise and divert kids from their smartphones. You'd argue that the statute threatens these benefits and discourages families from spending quality time together. Then you'd point to the legislative history — the purpose of the statute was to curtail wasteful industrial use of water, not to place pool ownership out of reach. And you'd do this calmly, rationally and with brevity. Your facts and the law speak for themselves.

Assuming your judge lays any biases at the door, the outcome of this appeal depends on who best frames the facts. That's when your writing quality truly matters. So remember: Be clear, be concise and be rational. And whatever you do, don't repeat yourself!

Jennifer Allen is an associate at Stinson Leonard Street, LLP.
Unwritten rules:
An overhaul of the Arizona Rules of Civil Procedure

By Aaron Nash

An Arizona Supreme Court-appointed task force has been reviewing the Arizona Rules of Civil Procedure since December 2014. The task force’s final product will likely result in the rewording of every rule for style and, where appropriate, conformity with the recently restyled federal rules. The task force is considering some substantive revisions as well. Public input is available and welcome, and all meetings are open to the public. The task force will work through the summer and fall before proposing a consolidated rule change petition by January 2016.

The task force plans to reach out proactively to interested groups before it submits its rule petition. Initial drafts of proposed changes are expected in August 2015, allowing the task force to review and implement input before drafting a rule change petition.

The supreme court’s strategic agenda includes restyling, simplifying and clarifying court rules. An overhaul of the civil rules follows previous updates and rewrites of the rules of appellate procedure, evidence and the justice court rules. Chief Justice Scott Bales appointed the task force in Supreme Court Administrative Order 2014-116 to “identify possible changes to conform to modern usage, to clarify and simplify language, and to avoid unintended variation from language in counterpart federal rules.”

Co-chaired by private practitioners William Klain and David Rosenbaum, the task force includes plaintiff and defense counsel, legal scholars, judges, Community Legal Services, the Attorney General’s office and a clerk of Superior Court. For more information, visit the Arizona Judicial Branch’s website at www.azcourts.gov. Click on “Court Admin/AOC” then “Committees & Commissions” and “Task Force on the Arizona Rules of Civil Procedure” for meeting information and materials, links to rules and other resources.

Petitions posted in January are usually available for comment through May or June of the same year, with supreme court review and action in August or September. Approved rule changes usually take effect the following January. To review rule petitions, visit the Court Rules Forum from the Arizona Judicial Branch’s website at www.azcourts.gov. Click on “AZ Supreme Court” then “Rules” then “Rules Forum.”

Candidates for MCBA Board

continued from page 5

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!
2015 Arizona Paralegal Conference
Enhancing the Paralegal Profession: A Broader Perspective

Friday • October 16
Desert Willow Conference Center
4340 E. Cotton Center Blvd., Phoenix, AZ 85040

7:30-8:15 A.M. Registration and Breakfast Buffet/
Visit Vendor Exhibit Hall

8:15-8:30 A.M. Opening Announcements and
Introductions – Tina Ziegler, President
Proclamation – Doug Ducey, Governor,
State of Arizona
Welcome to Attendees/Honored Guests

8:30-10 A.M. Keynote Speaker Panel
The Paralegal’s Role in the Appellate Process
Panelists:
Hon. Samuel A. Thumma, Arizona Court of Appeals, Division One
Hon. Danielle Viola, Maricopa County Superior Court
Kimberly Demarchi, Esq., Lewis Roca Rothgerber

10:10 A.M. Morning Break – Visit Vendors!

10:30-11:30 A.M. 1st Breakout Session
What Generation Do You Identify With? Bridging
the Gap in our Multigenerational Workforce
Presenter:
Tracy Laurie, Director of Staff Training and Development, Perkins Coie, LLP
Preparing for a Jury Trial: An Examination of Voir Dire and Jury Selection
Presenters:
Ulises Ferragut, Jr., Esq., Ferragut Law Firm, P.C. (Criminal)
Scott Ambrose, Esq., Kent & Wittekind, P.C. (Civil)

11:30 A.M. Lunch Break/Visit Vendor Exhibit Hall
Division Retrospective and Overview
Door Prize Drawings/Vendor Prize Drawings
Scholarship Awards – Division Scholarship/MCBF Scholarship
2015 Paralegal of the Year Award

1-2 P.M. 2nd Breakout Session
Can I Share This or Do I Have to Pay Royalties?
A Closer Look at Intellectual Property Laws
Presenter:
Scott Claus, Esq., Dickinson Wright, PLLC
I’ve Fallen and Can’t Get Up: Personal Injury Strategies for Plaintiff and Defense Paralegals
Presenters:
Geoff Trachtenberg, Esq., Levenbaum & Trachtenberg and Erik Stone, Esq., Jones, Skelton & Hochuli

2:45-3:00 P.M. Afternoon Break
Visit Vendors and Grab a Snack!

3:00-4:00 P.M. General Session
The Freedom to Marry: An Examination of Same Sex Marriage and the Law – Part 1
Presenters:
Dan Barr, Esq., Perkins Coie, LLP
Additional presenter to be announced

3:45-4:45 P.M. Ethics Session
Can I Do This? The Ethical Do’s and Don’ts for Paralegals
Presenter:
Craig Henley, Esq., State Bar of Arizona

4:45-5 P.M. Closing Announcements
Nilda Jimenez, President-elect
Remaining Door Prize Drawings/Grand Prize Drawing

Registration Fees for Paralegals/Legal Assistants
Paralegal/Legal Assistant Members: $110
Paralegal/Legal Assistant Non-Members: $225
Paralegal Student Members: $80
Paralegal Student Non-Members: $105

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

Please call or email Laurie Williams for more information: 602-682-8585 or lwilliams@maricopabar.org
Judge Blakey retires

Judge A. Craig Blakey II submitted his retirement letter to the Gov. Ducey, effective June 30. Blakey served in family, criminal, civil and juvenile court and made a major impact in each of them. He chaired the Mental Health Committee during his family court tenure; implemented new trial case processing techniques in the civil department; presided over significant capital murder cases in criminal court and played a significant role in creating and implementing the Crossover Youth Practice Model that he currently presides over in juvenile court.

Two years ago, Blakey was honored as the 2013 Judge of the Year by the Phoenix Chapter of the American Board of Trial Advocates (ABOTA).

Judicial appointments

Gov. Ducey has appointed Judges Laura Reckart and Ted Campagnolo to the Maricopa County Superior Court bench to fill the vacancies created by the retirements of Judges Brian Ishikawa and Carey Hyatt.

Reckart is a prosecutor with the Maricopa County Attorney’s Office, Capital Litigation Bureau. She prosecuted many high-profile criminal cases, including the Serial Shooters and the Honor Killing case. She also prepared legislation on matters such as victims’ rights, date rape and sexual assault, which have become law in Arizona.

She obtained an undergraduate degree from the University of Arizona in 1984 and her law degree from Arizona State University in 1988.

Campagnolo previously served as the Arizona Attorney General’s Office Senior Litigation Counsel in the Fraud and Special Prosecutions Section; was a prosecutor with the Maricopa County Attorney’s Office; and served on the Maricopa County Arson Task Force. Currently, he teaches criminal law as an adjunct professor at Arizona Summit Law School and has been active at the highest levels of the State Bar of Arizona, including the Board of Governors.

Campagnolo graduated from Southern Methodist Law School in 1978. He clerked for Judge Reynaldo Garza of the U.S. District Court for the Southern District of Texas, and then for Judge Garza at the U.S. Court of Appeals for the Fifth Circuit. Prior to joining government service, he worked in private law practice in Texas, where he gained experience in civil litigation, business, family and probate law.

Listening to victims of hate crimes describes the traumatic events that shaped their lives. Blakey's presentation was filled with powerful stories of survival and resilience.

Honor. Laura Reckart

Honor. Ted Campagnolo

INSIDE THE COURTS
Judges visit Museum of Tolerance

Judges visit Museum of Tolerance

I've ever met. When I went to shake his hand was as strong and inspiring as any person I've ever met. When I went to shake his hand was as strong and inspiring as any person I've ever met. When I went to shake his hand was as strong and inspiring as any person I've ever met. When I went to shake his hand was as strong and inspiring as any person I've ever met. When I went to shake his hand was as strong and inspiring as any person I've ever met.

Price, who at the age of 15 survived the Auschwitz concentration camp, was amazing. He finally, in 1945, the American Army liberated him. Although he survived, Price lost both parents and his village in the Holocaust. Later, in 1947, he was sent to the death camp at Dachau. Finally, in 1945, the American Army liberated him. Although he survived, Price lost both parents and his village in the Holocaust. Later, in 1947, he was sent to the death camp at Dachau.

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THREE WAYS TO REGISTER

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

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

PHONE
Call Kelly at (602) 682-8858

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

ATTENDANCE POLICIES

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

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

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

CANCELLATIONS/REFUNDS: Refunds, less a $10 fee, will be issued only if the MCBA receives your cancellation, in writing by mail, fax at (602) 682-8801, or email Kelly at kbraniger@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).

SEPTEMBER 11 • 1:30 – 3:30 P.M.
Jury Selection - “Perspective: The Illusion You Understand”

SPONSORED BY: Public Lawyers Division

2 CLE credit hours available

Dr. Thomas Baggett will cover pre-trial jury research methods, jury selection techniques and strategy development for considerations for a jury trial. Dr. Baggett has experience consulting with various governmental entities regarding jury matters and an extensive background in behavioral science.

PRESENTER: Dr. Thomas P. Baggett, Ph.D., FACFE

LOCATION: 175 W. Madison (South Court Tower), Conference Room D

COST: 
• MCBA members: $70
• MCBA Public Lawyer Division members: Free
• MCBA Paralegal Division members: $40
• MCBA student members: $15
• Non-members: $115

SEPT. 24 • NOON – 1 P.M.
(Lunch provided)
Five Ethics Tips Every Family Lawyer Should Know

SPONSORED BY: Family Law Section

1 CLE ethics credit hour available

This seminar will provide five (maybe even more!) practical ethical tips including how to deal with pro per (ethically), what lawyers must consider before entering an “avowal” of their clients’ positions, and a provision that should be in every fee agreement.

PRESENTERS: Lynda C. Shely, The Shely Firm, PC

COST: 
• MCBA members: $50
• Bring your paralegal/legal assistant (Please provide their name and email): $25
• MCBA Paralegal & Public Lawyer Division members: $35
• MCBA Family Law Section members: $45 (use promo code AVOWAL)

OCTOBER 21 • 11:30 A.M. – 1 P.M.
(Lunch provided)
Financial Exploitation Claims Under Arizona’s Adult Protective Services Act

1.5 CLE credit hours available

This will be an interactive session to discuss:
• Purposes & construction of the Act
• Who is protected
• Your reporting obligations
• Other issues, e.g. standing and statute of limitations
• Who is subject to the Act
• Standard of care and exceptions
• Remedies

PRESENTER: Kent S. Berk, Esq. Berk Law Group, PC

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 student members: $10
• Non-members: $102.50

August 27 • 7:30 – 9 A.M.
Assisting the Disabled Client: An Overview of Public Benefits, Special Needs Trusts and “Allowable Disbursements”

SPONSORED BY: Estate Planning and Probate Section

1.5 CLE credit hours available

This program will provide guidance on:
• Identifying the Public Benefits for Which your Disabled Client is Eligible
• Determining when a Special Needs Trust is Advisable
• First Party versus Third Party Special Needs Trusts
• Drafting Strategies for Special Needs Trusts
• “Allowable Disbursements” from a Special Needs Trust
• Specific Needs to Consider for the Individual
• Home Ownership and the Vehicle
• Termination of First Party Special Needs Trusts

PRESENTERS: Bridget O’Brien Swartz, Esq., VP, Sr. Trust Officer, First International Bank and Trust; Charles “Mike” Dyer, Esq., Dyer & Ferris, LLC

COST: 
• MCBA members: $62.50
• Bring your paralegal/legal assistant (Please provide their name and email): $25
• MCBA Paralegal & Public Lawyer Division members: $40 (use promo code: ASSIST
• MCBA EPPT section members: $55 (use promo code: ASSIST
• MCBA student members: $10
• Non-members: $102.50

August 19 • 11:30 A.M. – 1 P.M.
(Lunch provided)
Leveling the Playing Field: Receivership and Special Commissioner Appointments in Family Law Matters

SPONSORED BY: Family Law Section

1.5 CLE credit hours available

Special Commissioner Appointments: Bringing Order to a Chaotic Sales Process

• Standard Orders
• Customized Order Provisions
• Maximizing Value
• Reporting
• Contract Negotiations

Receivership Appointments: Operating Closely Held Businesses and Real Estate Assets

• Acquiring Operational and Financial Information
• Valuation
• Operational Expertise/Continuity
• Financial and Physical Foreclosures
• Sale of Businesses and Assets in Receivership

PRESENTER: Beth Jo Zeitzer, Esq., R.O.I.

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 Family Law Section members: $55 (use promo code: ASSIST
• MCBA student members: $10
• Non-members: $102.50

2015 MCBA TRIAL SKILLS INSTITUTE

SPONSORED BY: LITIGATION SECTION

Up to 7 CLE credit hours available, including 1 hour of ethics

SATURDAY • SEPT. 19, 2015
8:30 A.M. – 5 P.M. • LUNCH PROVIDED
Arizona Summit Law School, One North Central Ave., Phoenix

The MCBA Trial Skills Institute provides litigators with the chance to get real world trial experience and feedback in an intensive, single-day, CLE. Scheduled for Saturday, September 19, 2015, this year’s Trial Skills Institute will have the opportunity to prepare or fine-tune their case. Participants will conduct and defend direct and cross-examinations of the witnesses, as well as make opening statements and closing arguments.

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

The Institute is open to any active Arizona attorney, of any level of experience. The Institute is likely of most value to inexperienced trial attorneys and practice group leaders looking to train associates in an affordable manner. In making the pairings for the trials, every effort will be made to try to match attorneys with similarly experienced attorneys. In order to ensure one-on-one feedback, the program is limited to 24 participants, so space is limited.

PRICING: $280 MCBA members; $385 Non-members

TWO WAYS TO REGISTER:

ONLINE: maricopabar.org under CLE/EVENTS header, then click CLE Calendar

PHONE: Call 602-682-8858, M/F, 8:30 a.m. to 5 p.m. Have your credit card information handy.
VLP ATTORNEY OF THE MONTH

Attorney’s early calling brought meaning to pro bono work

By Peggi Cornelius, VLP Programs Coordinator

If you ask Larissa Murakami why she wanted to become a lawyer, she will share with you a childhood revelation. “When I was a kid I had the opportunity to help build a playground for an inner-city school in Chicago,” she says. “When I realized that some kids didn’t have a safe place to play and just be a kid, I became aware of just how privileged I was. I believed early on that becoming a lawyer would give me the skills and knowledge to help people.”

As VLP’s most recent recipient of the “Attorney of the Month” award, Murakami is a wonderful example of an advocate who brings a social conscience, academic acumen, compassion and enthusiasm to her work on behalf of people who are “disadvantaged by a lack of educational, financial and social resources. I believe everyone is entitled to an equal opportunity to succeed,” she says.

Murakami is the second of four children, and was born to immigrant parents living in Indiana at the time of her birth. However, by the time she completed high school, she had lived in Europe, Illinois, Maryland and California. As an undergraduate at the University of California, Davis, she volunteered as a school mentor and a court-appointed advocate. She graduated cum laude with a B.A. in psychology. Following undergraduate school, Murakami was employed as a preschool teacher, an in-home aide and a fund-raiser for assistance to homeless families. Thereafter, she resumed her education at Ohio State University, Moritz College of Law. Upon graduation, she was honored as a Public Service Fellow with Recognition and received a Certificate in Dispute Resolution.

Then came life in Chicago, where Murakami worked as a law clerk at the U.S. Bankruptcy Court for the Northern District of Illinois. But destiny had another move in store for her and her husband. In June of 2014, they moved to Phoenix. By December, Murakami had discovered the Volunteer Lawyers Program.

“I started by observing attorneys at VLP and began conducting intake interviews, attending staff meetings, and working with staff attorneys to prepare demand letters and help people negotiate agreements,” she says. “Now, having an Arizona license, I’m also participating in VLP’s tenants’ rights advice clinic and enjoying the option to provide representation in VLP cases, as well.”

Interviewing people seeking help through Community Legal Services is one of Murakami’s favorite ways to participate as a volunteer attorney. As she says, “Often, clients do not know which facts are most important to seeking a legal remedy. Their stories can be akin to puzzles. Sorting out the factual pieces of the puzzle in search of legal defenses or claims makes it both interesting and challenging.”

A favorite success story Murakami tells involved a client who had endured a number of hardships and was seeking help with a debt related to damages to a rental car. The charges were in excess of $2,500, which was 1/8 the client’s annual earned income. When she was interviewed at VLP, the client had already borrowed to make the first installment payment of $600.

Murakami’s research of the situation, scrutiny of the rental contract and subsequent communication with the creditor resulted in cancellation of collections and a full refund to the client.

Murakami devotes much of her life to her profession, but she balances the equation with a happy family life and the expression of her talents as an artist. She enjoys hiking, playing with the family bulldog and credits her husband for his unconditional support of her aspirations. She describes her older brother as a “role model who has always made me feel proud of my desire to serve non-profits.” And she describes one of the rewards of pro bono work as being the recipient of “the sincere gratitude most clients show for just a bit of your time and ability.”

Volunteer Lawyers Program Thanks Attorneys

The Volunteer Lawyers Program thanks the following attorneys and firms for agreeing to assist on 55 cases referred by VLP to help people with low incomes. VLP supports pro bono service of attorneys by screening for financial need and legal merit and provides primary malpractice coverage, donated services from professionals, training, materials, mentors and consultants. Each attorney receives a certificate from MCBA for a CLE discount. For information about ways to help, please contact Pat Gerrich at VLP at (602) 254-4714 or pgerrich@clsaz.org.

BANKRUPTCY

Thomas H. Allen—3 cases
Nancy C. Maguire & Barnes

Nathan Finch
Nedy Law Firm

Carolyn Tatkin
The Frutkin Law Firm

CONSUMER

Henry Alzate
Alzate & Assoc Law Firm

Edith Cooke
Sole Practitioner

David Engelman—2 cases
Engelman Berger

Rick Erickson
Sned & Wilmer

COURT ADVISORS

FOR CHILDREN IN FISTR

Annette M. Cox
Law Office of Annene M. Cox

Christina W. Kelly
Polinendi

FAMILY LAW

Lincoln Combs
Gallagher & Kennedy

GUARDIANSHIP OF INCAPACITATED ADULTS

Barbara Richmond Berman
Law Office of Barbara Rich-

mmond Berman

Sheila Carmody
Sned & Wilmer

Christopher Colyer
Sned & Wilmer

Gregory Gautham
Sned & Wilmer

Kyle Hirsch
Bryan Cave

Karen Lowell
Sedpc & Johnson

Rachel Nicholas
Lewis Roa Rothgerber

Jeffrey Potter
Sned & Wilmer

Bruce Samuels
Lewis Roa Rothgerber

Robert Miller
Saul Devany & Associates

GUARDIANSHIP OF MINOR CHILDREN

Michael Ross
Gallagher & Kennedy

Marie Zawocki
Zawocki Law Offices

**PRO BONO SPOTLIGHT ON CURRENT NEED**

Volunteer lawyers are needed to assist families who are renting and need to resolve problems with their landlords.

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

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ation with easy access to I17, H1, 51, 202, 101, and Downtown courts. Included: conference room spaces, copier, fax, kitchen, storage, conference rooms, admin bays. Benefits: free covered tenant and client parking, 24/7 card access, no building operat-
ng costs/CM. Perfect for sole practitioner, or multi-
staff. Flexible terms. Please call Phil Bridenthal, Colliers International, at 602-222-5073 or email phil.bridenthal@colliers.com.

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ng costs/CM. Perfect for sole practitioner, or multi-
staff. Flexible terms. Please call Phil Bridenthal, Colliers International, at 602-222-5073 or email phil.bridenthal@colliers.com.
Coppernith Brockelman, a business law firm in Phoenix, welcomes John DeWolf to its practice. DeWolf brings more than 30 years of experience in complex commercial litigation. He has tried cases in state and federal courts in the areas of contracts, business torts, trade secrets, real estate, securities, intellectual property and partnership.

Freddy Saavedra has been named a new partner at Alex & Associates, PC. Saavedra, a passionate advocate for the disabled, will be practicing in the areas of social security disability and personal injury. Saavedra, a native of Los Angeles, joins the practice after two years of private practice focusing on social security disability.

Saavedra has worked on over 1,000 SSDI cases and personally represented clients in over 75 appeals. He earned his J.D. from the Sandra Day O’Connor College of Law at Arizona State University, where he was nominated to the National Order of Barristers and was the recipient of the 2013 Justice For All award.

Hall & Lawrence, PLC, announced that Tabitha Jecmen is now a partner with the firm. Jecmen practices family law and has been with the firm since October 2009.

Arizona Summit Law School has appointed Donald Lively as its new president. Lively, who served as Summit Law’s founding dean from 2004–05, succeeds Scott Thompson who served as the school’s president for more than 4 years. Lively’s return coincides with the law school’s 10th anniversary.

Lively has also served as senior vice president for academics and faculty at a private law school consortium which also owns Florida Coastal School of Law and Charlotte School of Law; and president of Charlotte School of Law. He is a co-founder and founding dean of Florida Coastal School of Law. His objective in conceptualizing what became Florida Coastal School of Law and Arizona Summit Law School was to create an institution that would be more student-centered, professionally readying and committed to providing opportunities for historically disadvantaged groups. Lively was a tenured law professor at two public universities: University of Toledo and West Virginia University College of Law, where he held the William H. Maier Chair. During his law school career, he wrote or co-authored 40 law review articles and 19 books, which primarily focused on constitutional law.

As a practicing attorney, Lively served in the Office of the General Counsel for the Securities and Exchange Commission; as assistant general counsel with the Des Moines Register; and in private practice in Denver. He earned his law degree from the University of California, Los Angeles. He received his M.S. from Northwestern University after earning his bachelor’s degree from University of California, Berkeley.

Richard Amoroso, an insurance recovery litigation attorney of the national law firm Polsinelli, has been elected to serve as president of the Arizona Captive Insurance Association. The ACIA serves as a resource to businesses, management firms and professionals active in the captive insurance industry.

Amoroso focuses his law practice in the areas of reinsurance litigation, arbitration and asset recovery. His background as a former insurance executive and a licensed insurance broker enables him to use his extensive experience to assist clients in developing insurance programs and strategies to protect their assets.

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 mhskins@maricopabar.org.
High court rules in favor
CourtWatch, continued from page 1

“The dominant purpose of the Elections
Clause,” Ginsburg wrote, “was to empower
Congress to override state election rules,
not to restrict the way States enact legisla-
tion.” It was enacted, she added, “to act as a
safeguard against manipulation of electoral rules by polit-
cicians and factions in the States inimical to,
or place their interests over those of the elector-
ate.” She noted that South Carolina delegates
to the Constitutional Convention were be-
held to a “coastal elite [that] had malapprop-
riated their legislation, and wanted to retain
the ability to do so.” According to Ginsburg,
this problem has hardly abated over time and is
inherent in a system in which the persons
who run for seats are given the power to de-
fine the districts that they will represent.

Ginsburg wrote that there was no debate
concerning “the legislative processes by which
the States could exercise their initiating role in
regulating congressional elections.” This was
“hardly surprising,” given the “attention fo-
cused on potential abuses by state-level politi-
cians, and the consequent need for congress-
ional oversight.”

Because at that time “the people’s legisla-
tive prerogatives — the initiative and the refer-
endum — were not yet in our democracy’s ar-
senal,” she concluded, “[t]he Elections Clause —
not is reasonably read to disarm States
from adopting modes of legislation that place
the lead rein in the people’s hands.” She added
that “it is characteristic of our federal system
that States retain autonomy to establish their
own governmental processes.”

“The Framers may not have imagined
the modern initiative process in which the people
of a State exercise legislative power exponen-
tive with the authority of an institutional leg-
sislature,” she wrote. “But the invention of the in-
itiative — as a modern response to the prob-
lem of gerrymandering. And Congress
adopted a plan to provide the information later
through the privilege merely because the person
holding it was not an attorney and that hold-
ging a plan to provide the information later
was protected. But within the corporate structure, it has always been a slippery
slope, since the company is owned by share-
holders. The Delaware decision essentially gives to the shareholders the freedom of deciding
whether there is wrong.

Our thanks to the Corporate Council Divi-
sion and to Kathy Brody and Mark Harrison of
Oshorn-Malekon for a truly informative pre-
sentation.

Houston is a family court mediator and civil arbitra-
tor in private practice and serves on the California State Bar’s Mandatory Fee Arbitration Panel. He is a mem-
ber of the Maricopa Lawyer Editorial Board.

CLE Review: Important
continued from page 2

inner investigation into the alleged fraud. KBR
argued the investigation had been conducted for
the purpose of obtaining legal advice and there-
fore was protected by the attorney-client privi-
lege. Barbo responded that the internal investi-
gation documents were unprivileged business
records that he was entitled to discover. The Dis-

criminal court circuit court denied protection
of the privilege. The appellate court concluded
the district court was in error and reversed.

The Southern District of New York held
that General Motors’ internal investigation over
ignition switch matters and accompanying inter-
views were conducted as part of the company’s
request for legal advice in light of “possible mis-
conduct and accompanying government investiga-
tions and civil litigation,” and were protected.

That same court found in Wulff v. Bank of
China Ltd., that their investigation was conduct-
ed by the bank’s own non-lawyers and that hold-
ging of such information is not protect-
ed by the privilege merely because the person
“harbors a plan to provide the information later
to an attorney,” particularly when there was no
proof an attorney sought the information.

On the upside, waiving the attorney-
client privilege/work product protection with

government agencies could substantially
reduce charges, sanctions or otherwise per-
suade the government not to take action. The
downside is that adverse third parties are
often successful in seeking discovery of such
internal documents.

Upholding a. United States continues to be the
leading case on corporate attorney-client privi-
lege, and an Upholding warning should be given to
each employee interview as a routine part of any
internal investigation.

When a company decides to share investiga-
tive documents with the government, perhaps
the safest approach is to follow Joe Friday’s
simple mantra — “Just the facts, ma’am.”

Maintaining the attorney-client privilege is
important because it permits people to discuss
their problems in confidence. But within the
corporate structure, it has always been a slippery
slope, since the company is owned by share-
holders. The Delaware decision essentially gives to the shareholders the freedom of deciding
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