Newly elected members announced for the 2017-18 MCBA board of directors

Four new candidates and one incumbent have been elected to serve on the 2017-18 MCBA board of directors. The newly elected candidates are Joy Isaacs, Amanda Reeve, Benjamin Taylor and Tina Ziegler. Incumbent Hon. Julie LaFave was re-elected to serve on the board for an additional two-year term.

Twelve candidates ran for five open seats on the board of directors. MCBA members licensed to practice in Arizona and in good standing with the State Bar of Arizona were eligible to vote in the electronic election, which ran from Oct. 10 through Oct. 24, 2016. Board members will assume their roles (or continue) on Jan. 1, 2017.

State supreme court affirms interpretation of broad sexual molestation law

Parents, grandparents, caregivers and doctors often touch children in their private parts for proper reasons. Unfortunately, some people also sometimes do so for heinous, illegitimate purposes, at which point the state hopefully steps in to mete out punishment and protect our children. When that happens, how do we distinguish a benign touching from an evil one? That question has plagued the state for decades, and it severely fractured the Arizona Supreme Court in its recent opinion interpreting the legislature’s most recent enactments on the subject. State v. Holle, No. CR-15-0348-PR (Ariz. Sep. 13, 2016).

The issues arose in Jerry Charles Holle’s appeal from his convictions for child molestation and sexual abuse of a minor under the age of 15. According to the opinion, Holle’s 11-year-old step-granddaughter told the police that he had inappropriately touched and kissed her. He was charged with sexual abuse of a minor under 15, sexual contact with a minor and child molestation. Claiming that he had acted innocently and the allegations against him had been blown out of proportion, Holle asked the judge to instruct the jury that the state had to prove beyond a reasonable doubt that his actions were sexually motivated. The judge refused, holding that lack of sexual motivation is an affirmative defense; it instructed the jury that the burden would be on Holle to prove by a preponderance of evidence his lack of sexual motivation in touching the girl.

So instructed, the jury convicted on the child-molestation and sexual-abuse charges, but hung on the sexual-conduct charge. The court sentenced Holle to a prison term followed by probation, and he appealed. Despite holding that lack of sexual motivation is not an affirmative defense, the court of appeals nevertheless affirmed Holle’s convictions, concluding that the superior court’s error in instructing the jury to be harmless. State v. Holle, 238 Ariz. 218 (App. 2015). The supreme court granted the state’s petition for review and, in an opinion by Vice Chief Justice John Pelander, vacated the court of appeals’ opinion.

To Pelander, the issue was a basic question of statutory construction. The statutes under which Holle was convicted — A.R.S. §§ 13-1404(A) and 13-1410(A) — required the state to prove that he had “intentionally or knowingly” engaged in “sexual contact.” The latter phrase was defined as “any direct or indirect touching, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object or causing a person to engage in such contact.”

So, does the defendant have to have had a sexual motivation to be convicted? That depended on how the legislature defined “intentionally” and “knowingly.” Pelander noted that neither term’s definition included sexual motivation. Instead, the legislature had provided in A.R.S. § 13-1407(E) that “[i]t is a defense to a prosecution … that the defendant was not motivated by a sexual interest.”

In concluding that sexual motivation is an element of the offenses, the court of appeals had concluded that the statutes required judicial construction because they are ambiguous. Pelander rejected the premise, concluding that no judicial construction was necessary because the statutory language is “clear and unambiguous.”

“The statutes defining the crimes do not mention, imply, or require sexual motivation,” he wrote. Although “sexual contact’s” definition includes “any direct or indirect touching, fondling or manipulating,” in Pelander’s opinion, that “did not implicate
Small acts make a difference this season

I found out recently that my drip system is not working — a problem that could be worse if my landscaping were anything but desert plants, and if we had not received recent rain over the last couple of months, and if we were still amid the 100-plus degree summer temperatures. When the weekend arrived, I set out to fix what I assumed would be a fairly simple issue. I checked the timer, feeling confident that a system reset would resolve the issue. I received an error message. The instruction manual directed me to check all of the connections from the timer to the valves. Uh oh, now this project was testing the outer limits of my repair comfort zone. Fearing the rabbit hole of DIY videos that never seem to answer my precise question, I took some pictures on my cell phone of the timer and the inside of my valve box, and I went to a landscaping specialty shop for some advice. The kind and patient salesperson did not criticize my ignorance; instead, he suggested a few steps to try and rectify the problem — including checking the electrical capacity of the solenoids (the electronic mechanism that opens and shuts water flow through the valves). Correctly assuming by my blank stare that I may not have the proper tools, he suggested that I head to a nearby hardware outlet store to buy an inexpensive electric current measuring device.

I entered the hardware outlet store and promptly located an inexpensive voltage meter. Like most of my shopping trips, I also found a few unnecessary but interesting items to add to my cart — a small but sturdy duffel bag, a ratchet tie-down strap set and a pack of batteries. At the checkout lane, the clerk asked if I had a coupon, which I did not. She asked to look up my account, and I admitted this was my first visit to the store. The clerk began painstakingly entering my name and address into the point-of-sale system so I could become part of the store’s customer family (meaning I would soon receive weekly advertisements, yipped!).

The next customer in line dug into his pocket and offered a coupon that rendered free my voltage meter. The scruffy, gray-haired man wearing a dirty T-shirt, jeans and ball cap muttered about frequently receiving coupons offering free items and explained that he intended to use the adjacent coupon for a free headlamp to replace one of the several he had acquired in the past. His tired eyes were over rose-colored sunglasses, observing my array of assorted merchandise. As the checkout line behind us began to grow, I noticed other customer holding coupons.

Suddenly I felt exposed as a fraud. Here I am, a white-collar professional buying equipment I will use once to prove I have some mechanical abilities, while I could simply employ a tradesman (perhaps one of my fellow customers waiting in the growing checkout line). When the clerk asked me to complete my customer information profile by providing my city name, I was sure I’d face ridicule as soon as I uttered the word “Scottsdale,” one of our Valley’s cities with wealthier residents.

The customer behind me simply said, “Scottsdale, huh?” Then he extended toward the clerk the free voltage meter coupon.

I was never able to fix my drip system — all of the wire connections functioned properly and the solenoids tested correctly. Looks like I will have to conduct the repairs the way I tend to fix most things in and around my house — by hiring someone who knows how to do it right. But I felt humbled by the generosity of the customer in line behind me who appeared to have far less to give than I, and who so willingly offered to help me. Some may think he was just trying to expedite my checkout process so he could finish his shopping trip, but I think he had purer motives.

As the holiday season approaches, I reflect on how thankful I am to be part of this community — not just our community of legal professionals, but our community at-large. My shopping experience reminds me that whatever I have done to help others, I can always afford to do a bit more.

Many of us finish out the calendar year fulfilling charitable commitments of time, money and item donations. The Maricopa County Bar Foundation offers charitable opportunities throughout the year, and while I expect many of you have already made donations and/or commitments to other organizations for 2016, I ask that you consider an additional year-end contribution to the MCBF. The MCBA’s annual renewal statement invites you to make a cash donation directly to the MCBF. MCBF’s upcoming annual golf tournament on Saturday, Nov. 5, combines a day on the links with supporting the Volunteer Lawyers Program (VLP), an organization with deep ties to the MCBA. VLP’s volunteer opportunities can help you meet or exceed our state’s ethical rule that encourages lawyers to perform at least 50 pro bono hours annually, an average of less than one hour each week.

Please also include the MCBA in your charitable planning for 2017. The 25th Annual Barristers Ball (a production of the MCBA’s Young Lawyers Division) is right around the corner, on March 4, 2017, with a component of proceeds earmarked for charitable purposes. I also anticipate 2017 will include more hands-on events like this year’s Paralegal Division school supplies drive and the YLD’s necessities drive. If you would like to lead or participate in one of these activities, or if you have another idea for charitable giving, please contact the MCBA and/or MCBF.

I wish you and yours a healthy and safe Thanksgiving holiday.
Work smarter by increasing efficiency

Working efficiently is critical in the fast-paced environment in which we live. Here are a few tips that may help add more efficiency to your day:

1. Be clear in your communications and keep it concise, especially with clients. Ambiguous communications require additional unnecessary rounds of communication. Try to read your communications from the reader’s perspective and try to ensure any questions you would have are answered within the text.

2. Add buttons to your Quick Access Toolbars in Microsoft Word, Excel and Outlook. This is the toolbar that is at the very top left of the open program. If you customize it to include the items you use daily, such as “Save As,” “Quick Print,” “Print Preview” and even “Exit,” you can save yourself a few clicks for each of these tasks.

3. Set your computer to automatically initialize certain programs on startup. Simply create shortcuts to the programs you want to auto start and paste them into the Startup folder (found on the C:\ drive).

4. Create a robust form file. Take the time needed to create a template from any document you prepare for a client and expect to need for the same or a different client in the future. Although it takes time to make the forms, the one-time effort is an investment in the future. It is far more efficient to have go-to forms that can be easily tailored, rather than recreating each document from scratch — or searching your files for the case in which you last prepared that document.

5. Use the Windows “Pin” function to quickly and easily access the programs, files, webpages, etc., that you frequently use. The Windows Taskbar (at the bottom of the computer screen) can be easily tailored to always show the programs you select.

   ■ To pin programs: Right click on the program while it is open and select “Pin to Taskbar.” Once your programs are pinned, right click on them to show “Frequent” or “Recent” files/webpages; you can pin these files, webpages, etc., to the program icon.

   ■ To pin files or webpages: Right click on any of the pinned programs, move the cursor to the file or webpage you want to pin and click on the pushpin icon to the right of the name.

6. Use autocorrect options for commonly used words or phrases, or even full names. Once setup in Word, autocorrect options will also apply in Excel and Outlook. Here are a few examples from my list:

   ■ R&D = receive and review
   ■ emcomm = email communications with
   ■ mtg = meeting with
   ■ tele = telephone discussion with

7. Schedule regular blocks of time for returning phone calls, responding to emails, getting big projects done, etc., as necessary. One of my favorite mentors makes Wednesdays her “quiet, get work done day.” Picking one day a week for this is a great way to ensure big projects continue to move forward, instead of being allowed to languish because there is no time to get to them.

8. Connect more than one monitor to your computer. This can be easily accomplished by purchasing a VGA splitter or HDMI converter cable on Amazon for approximately $10.

9. Learn to love the QWERTY keyboard. The more efficiently you type, the quicker you can get emails and substantive pleadings completed with accuracy. A myriad of free typing lessons and tests can be found on the Internet.

10. Use Quick Parts and Quick Steps in Outlook to generate form emails quickly and easily (see my article in the June issue for more details about these and other time-saving tips for Outlook users).

11. Turn off the Outlook desktop notifications. The instant gratification part of our brains likes to allow those notifications to distract us. Redirecting attention at the task at hand takes unnecessary time from your day and almost always takes more time than anticipated. The emails can wait until your task is complete; that is what the inbox is for.

12. Take the time to learn the programs you use; the programs can only improve your efficiency to the extent of your knowledge. Pressing the F1 key on your keyboard will open the help menu in just about every program. These help menus are typically searchable by topic and/or keyword and provide ample ways to improve efficiency.
Paralegal Member of the Year

For the past 13 years, the Paralegal Member of the Year Award has been bestowed on members who have made valuable contributions to the Paralegal Division including promoting the division, fundraising, mentoring, demonstrating exceptional service through committee work, and assisting the division with its various causes and activities.

In keeping with the tradition of writing about things for which I am thankful in November, it is very fitting for me to be writing about this year’s Paralegal Member of the Year, Melinda Manchester. This year and last, I have been especially thankful for Melinda and all that she has done since joining the Paralegal Division Board. I have had the pleasure of working with Melinda on two conference committees, walking for the fight against leukemia and lymphoma, boxing cabbage and emergency food supplies at St. Mary’s Food Bank and helping plan this year’s Legal Professionals Mixer.

Melinda earned her bachelor’s degree from Northern Arizona University in 1980. She has over 35 years of legal experience with primary areas of expertise in civil litigation, intellectual property and mass tort/toxic tort defense. She is the senior paralegal/paralegal coordinator at Perkins Coie, LLP, where she has worked for the majority of her legal career.

Melinda joined the Paralegal Division in 2006. Two years ago, she made the decision to become a member of the board and hit the ground running, taking an active role in the early planning discussions for last year’s Paralegal Conference and eventually taking over as the division’s president in April 2015. In addition to taking on the Paralegal Conference, which is no small feat, Melinda has participated in almost every event the division has been a part of for the last year — the Race Judicata, the Barristers Ball, both St. Mary’s Food Bank events and Paralegal Career Day. She even volunteered to be a CLE speaker for the MCBA, sharing her extensive knowledge of trial preparation and presenting with the Honorable Mark Brain from the Maricopa County Superior Court.

Melinda is constantly promoting the Paralegal Division and the MCBA and is always willing to pitch in wherever needed. The best example of this was her heavy involvement with this year’s inaugural Legal Professionals Mixer held in February. Not only did Melinda and her firm agree to host this event, but Melinda was actively involved in the planning, adding her personal touches to make the event special for all who attended.

Melinda enjoys sharing her legal knowledge with paralegal students and, in addition to assisting with the mock interview portion of this year’s Paralegal Career Day, she also serves as a mentor for the division and even arranged for students to be part of mock juries at her firm.

For the past two years, Melinda has worked closely with our conference vendors and sponsors to make the event a huge success. Again, her personal touches such as the addition of our Networking Bingo cards, personal thank-you cards to our speakers and the updates to our conference materials, have all made this event more memorable. I am so glad that Melinda has agreed to collaborate with me as a co-chair on next year’s conference committee, and I look forward to working with her.

As you can see, Melinda’s continued hard work and dedication to the division made her the perfect choice for this year’s Paralegal Member of the Year. It was my pleasure to present her with this award during the conference last month. I encourage all paralegal members to become more active in the coming year so they may be eligible to receive this prestigious honor in the future. Congratulations, Melinda!’

PARALEGAL DIVISION CALENDAR

Nov. 14, 2016
November Board Meeting

Dec. 2, 2016
4th Quarter Breakfast CLE – Expert Witnesses

Dec. 12, 2016
December Board Meeting

Dec. 14, 2016
MCBA Holiday Party

March 25, 2017
SAVE THE DATE
Paralegal Career Day

Sept. 8, 2017
SAVE THE DATE
18th Annual Arizona Paralegal Conference
For more events, check out our Facebook page at www.facebook.com/mcbaparalegal

St. Mary’s Food Bank event

Members of the Paralegal and Young Lawyers divisions and students from Challenger Middle School packed 1,140 emergency boxes for families in need at St. Mary’s Food Bank on Sept. 17. A special thank you to Sergio and Jennifer from the food bank for helping to coordinate a successful volunteering event.

We couldn't have done it without you!
2016 Bench-Bar Conference

Judges, lawyers and legal professionals gathered at the Phoenix Country Club on Sept. 30 for the annual Bench-Bar Conference. A warm thank you to Phoenix Rotary 100 for hosting lunch!

2016 Paralegal Conference

Paralegals from all over the county attended the 2016 Paralegal Conference on Oct. 14 at the Desert Willow Conference Center in Phoenix. They participated in a light breakfast buffet, a vendor fair, “networking bingo” and breakout sessions.

From left: Maricopa County Bar Foundation paralegal scholarship recipient Brigitte Rosales, Paralegal Division President Tina Ziegler, Paralegal Division scholarship recipient Thérèse Garnes, Paralegal Division Director Shaay Farago and Paralegal Member of the Year Melinda Manchester.

From left: Paralegal Division Past Presidents Maureen Zachow and Stacy Palmer with Paralegal President-Elect Nilda Jimenez

A packed crowd at the vendor fair.

Keynote speaker Hon. Dawn Bergin

Scot Claus from Dickinson Wright presents a breakout session titled, “Prepare to Win: Trial Preparation Strategies for Success.”

Paralegal Division Secretary Norma Franco mans the membership desk.

2016 Paralegal conference co-chairs Kate Hofland (left) and Melinda Manchester

Networking Bingo was a great way to meet other attendees.

Teresie Zmyslinski and Kathryn Sieger

Cat Cubel and Cheryl Triplett

Nancy James and Andrew Gertz

Mandie Cass, Stephanie Anderson and Lori Rader
Lawyer discipline

One of the biggest mistakes a lawyer can make is attempting to defend themselves in responding to State Bar investigations or defending against formal discipline complaints. If you were arrested on suspicion of a serious felony, would you represent yourself? Of course not. Yet lawyers often believe that they can competently defend themselves against the State Bar of Arizona without the advice and counsel of a lawyer experienced in that practice area. That is a serious mistake that I urge readers of this column to avoid at all costs.

Considering the importance of avoiding formal discipline on a lawyer's record, I decided to devote this month's column to answering some important questions routinely asked by lawyers who receive a State Bar investigation letter.

Question: What is a State Bar investigation letter?

Answer: This is a letter from the State Bar of Arizona notifying the lawyer that it is investigating a charge of unethical or unprofessional conduct. The letter will identify the complainant, attach any documents received from the complainant, and will be signed by the State Bar Counsel assigned to investigate the conduct and will include a deadline for providing a written response. It is important to understand that if you don't respond in a timely fashion, the matter will continue even if you do not want to address it.

Should I consult a lawyer?

I highly recommend consulting with a lawyer anytime you receive a State Bar investigation letter. The discipline process involves unique procedural rules and law. Too often, lawyers feel that they can simply explain what happened and State Bar Counsel will understand and dismiss the charges. In reality, it is not that simple. First, a lawyer receiving a State Bar investigation letter will almost never be fully objective. The lawyer will want to defend their conduct or, worse, make excuses for misconduct. Second, both the State Bar Counsel and, if it gets further, the court, will likely consider your decision to retain an experienced discipline defense lawyer as an indication that you are taking the matter seriously. That is a helpful factor when the court considers the proper level of discipline. Third, an experienced discipline defense lawyer will place your actions in the proper context from an objective perspective, apply the appropriate rules, and advise whether your actions might require an acceptance of some level of discipline or whether there is a legitimate basis for opposing the charges. If the charges are unwarranted, an experienced discipline defense lawyer will be in the best position to make that case on your behalf.

Does my malpractice insurance cover a lawyer for discipline investigations?

Probably. Most professional malpractice policies provide coverage for responding to State Bar discipline charges. Oftentimes, such coverage will have a capped amount of coverage, but will not have a deductible. If you receive a State Bar investigation letter, you should contact your malpractice carrier and ask if they have coverage and if you have the right to choose your counsel.

How do I select a lawyer?

This is always a personal choice. If you are a member of an organization, that organization might recommend a referral tool. For example, AADC (Arizona Association of Defense Counsel, www.aazadc.org) provides a free one-hour consultation with an experienced discipline defense lawyer. There is no reason to not take advantage of such an opportunity if you have it. Even if you do not belong to an organization like AADC, your malpractice carrier might provide a recommendation from their list of panel counsel.

What procedural rules govern State Bar discipline investigations?

The applicable procedural rules are found in Section V of the Rules of the Supreme Court of Arizona. Most of the rules applicable to disciplinary investigations and formal complaints will be found in Rules 46-59. The potential sanctions are found in Rules 60-62.

What happens after I receive a State Bar investigation letter?

After you consult with a lawyer with expertise in this field, you will submit a responsive letter to the assigned State Bar Counsel. A copy of that letter will be provided to the complainant (the person who brought the issue to the State Bar’s attention) and the complainant can provide additional information.

If the complaint is found to be meritorious, the assigned State Bar Counsel will discuss your file with other State Bar Counsel and, if deciding to seek authorization to file a formal complaint, offer you an opportunity to respond. The Report of Investigation (and any response) is submitted to the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona (ADPCC). Before the State Bar files a formal complaint, it must receive a finding of probable cause from ADPCC.

What happens if ADPCC makes a finding of probable cause?

At that point, the State Bar is authorized to file a formal complaint. A discipline complaint is similar to any typical civil complaint, except that it is filed with the presiding disciplinary judge. The respondent lawyer will file an answer, the parties will exchange disclosure statements, and the presiding disciplinary judge will issue appropriate scheduling orders and conduct a pre-hearing conference. As the matter proceeds, the parties will file a joint pre-hearing statement and pre-hearing memoranda, and will disclose witnesses and exhibits before ultimately participating in a hearing before a panel composed of the presiding disciplinary judge, a lawyer member, and a public member.

Are there any avenues of appeal?

Yes. Pursuant to Rule 59, both the respondent lawyer and the State Bar of Arizona have the right to appeal to the Arizona Supreme Court.
Why even have a clerk’s office?

Have you ever had a filing rejected? Has the clerk’s office ever called your office to say it cannot distribute funds or take an action because the underlying order lacked specific direction? As an office, the clerk of the court shares your frustration with these delays. Why not just automate the clerk’s operations? Couldn’t all submissions just be filed directly into their cases and let the court take it from there? Couldn’t the court just add the responsibilities of filing and distributing funds to what they already do? These are questions that have come up in Arizona and they will keep coming up as people look for better, faster and more convenient ways of operating a justice system.

This article looks beyond what the clerk’s office does and explains why the office exists. It answers the common statement, “I don’t understand why you can’t just fill in the blank with any given frustration.” The short answer is this: There is a lot at stake in superior court. People can be sentenced to death, lose their freedom, their children, their rights to determine their own choices, the list goes on. Arizona’s original constitution created a clerk of superior court, arguably to ensure that the court imposing these difficult decisions should not also oversee the public records that detail each step making up the complete record. The clerk of the superior court is an independent agency that supports the court’s operations by overseeing the filing and distribution of records and accounting for restitution, fees, bonds and other details of the justice system. The clerk and the court are a partnership by design, and the constitution requires the clerk to operate the office within the requirements of rule and law.

Arizona’s constitution created a clerk of the court in each county and requires the qualified electors to decide every four years whether to re-elect their clerk or to elect a new one. Clerks are often viewed as county officials and Arizona’s original constitution required clerks to run for office when the judge of their county ran for election. Recent history clarified that there is one superior court in Arizona that is placed in each of the 15 counties. As a result, the clerks are considered part of the state judicial branch and their terms run with other state-elected offices such as the governor, secretary of state and attorney general. Each clerk has to staff their county’s office and determine its operations to fit each county’s needs, resources, caseloads and demands.

There are a few authorities that direct the clerk’s office to make substantive decisions, such as statutory proceedings decided by the Probate Registrar. Most of what the clerk’s office does is ministerial; documents are filed-in to the official record and a judicial officer makes a determination. Allowing documents to be directly filed into cases based only on a case number, for example, would not promote justice. Superior court receives high-volume filings like civil collection actions and criminal complaints. Those filings often have similar content and only the party names, case numbers and other limited information are adjusted for specific cases. One thing the clerk’s office ensures is that names and case numbers match, which prevents direct-filing documents into the wrong cases.

Other procedural matters like paper and electronic filing, minimum accounting standards and timely submitting records on appeal are among the hundreds of rules and laws that define the clerk’s mandates. The operations of a clerk’s office are complex, ever changing and highly specific. Speed, accuracy and customer service are invaluable, as is having an independent office of professionals committed to supporting both the courts and the people who interact with them.

Last month’s article stated that the clerk’s office values innovation, collaboration, excellence and diversity. What that means is, the people who work in the clerk’s office are looking for ways to do things differently and better. They look for ways to say yes and to distribute work and answers in ways that make sense without staking claims and taking credit or placing blame. This office seeks input from other perspectives to see things in ways that recognize other experiences, backgrounds, viewpoints and opinions. The goals and actions show that we are not in the business of filing documents and distributing money. We are in the business of access to justice.

MCBA Members Lounge Grand Opening & Vendor Fair

On Sept. 21, the MCBA formally celebrated the grand opening of the Members Lounge by kicking off with a vendor fair at the MCBA office. Attendees learned more about how to take advantage of member benefits while mingling with vendors, checking out the new lounge space, and enjoying appetizers and beverages.

A huge thank you to the vendors who participated in the grand opening event.

Hon. Roxanne Song Ong (left) and Kalin Myers checking out the new lounge.

MCBA Treasurer Hon. Geoffrey Fish and MCBA Secretary Melinda Sloma checking out the vendors.

Quintairos, Prieto, Wood & Boyer, P.A.
Attorneys At Law

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What do you like most about being in the legal field?

The legal field is unique because it allows attorneys to connect with students and the community in very meaningful and rewarding ways. I enjoy mentoring law students and young attorneys as they embark on their adventures in finding volunteer positions, gratifying careers and ways to give back to their communities. I am fortunate to have a job that provides me with those opportunities and allows me to serve the public in a very fulfilling and impactful way.

What are your hobbies or interests?

I am interested in all things Phoenix. I love learning about how our city is growing and developing, and supporting new businesses. I especially love following the culinary community in the Valley. It’s probably not the healthiest hobby, but I love checking out new restaurants with my husband.

If you weren’t a lawyer what would you be?

If I wasn’t an attorney, I think I would be a hairstylist or an esthetician.

What’s the craziest job you’ve had?

When I was in high school (go Rams!), I served as a form of security at a heavy metal concert titled, “New Year’s Evil.” I was probably 5 feet tall and less than 100 pounds at the time. It was a blast!

If you were a character in a movie or TV show, which character would you be?

Winnie Cooper from “The Wonder Years.”
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The firm has changed its name from Berk & Maskowitz, P.C. in light of the departure of Frank W. Maskowitz to become a Maricopa County Superior Court Judge.
Welcome, Sustaining Members!

The MCBA is proud to welcome the following attorneys who have joined the association as Sustaining Members for 2016:

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<tr>
<td>Ms. Krystal M. Ahart</td>
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<td>Dr. Bruce L. Bauman</td>
<td>Mr. Justin S. McKay</td>
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<td>Ms. Barbara R. Berman</td>
<td>Mrs. Carla Miramontes</td>
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<td>Mr. Garvey M. Biggers</td>
<td>Mr. Charles F. Myers</td>
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<td>Mr. Bryan J. Blehm</td>
<td>Ms. Michelle N. Ogborne</td>
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<td>Ms. Laura K. Chapman</td>
<td>Mr. Rich J. Peters</td>
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<td>Comm. Terri L. Clarke</td>
<td>Mr. Donald W. Powell</td>
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<td>Mr. James C. Dutson</td>
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<td>Mr. Michael J. Sheridan</td>
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<td>Ms. Jill M. Hulsizer</td>
<td>Mr. Howard A. Snader</td>
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<td>Hon. Carey S. Hyatt (Ret.)</td>
<td>Ms. Carol A. Soderquist</td>
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<td>Ms. Nikki J. Johnson</td>
<td>Mr. Robert E. Thomson</td>
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<td>Mr. James F. Kahn</td>
<td>Mr. William S. Whitaker</td>
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<td>Hon. Ronce F. Korbin Steiner</td>
<td>Mr. James P. Yeager</td>
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(List updated Oct. 11, 2016)

For a single payment of $500, Sustaining Members receive unlimited attendance at live Continuing Legal Education programs and other benefits.

For more information or to become a Sustaining Member, please contact Membership Director Cynthia Quinonez at 602-682-8582.

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 Foundation’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 “About Us” on the top menu bar then “Maricopa County Bar Foundation.”

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- Services offered during MCBA normal business hours 8:30 a.m. – 5 p.m.
- Arrangements can be made for evening and weekend meetings at a cost.
- The MCBA also has a board room and CLE room available to rent!

For more information or to make reservations, contact Stephanie Ricardes at 602-257-4200 or sricardes@maricopabar.org.
NAPCO appoints judicial branch leaders as president and vice president

The National Association for Presiding Judges and Court Executive Officers (NAPCO), formerly the National Conference of Metropolitan Courts (NCMC), elected Presiding Judge Janet Barton of the Judicial Branch of Arizona in Maricopa County as president and Judicial Branch Administrator Ray Billotte as vice president. As president and vice president of NAPCO, Barton and Billotte will lead an independent, nonprofit education and research organization comprised of chief/presiding judges and court executives in state and local trial courts who are committed to enhancing the effective administration of justice in general, limited and specialized courts. The organization has worked to improve the administration of justice in America’s state trial courts for more than five decades. “I am honored and flattered by this appointment. NAPCO’s past leaders and executive board have worked hard to establish NAPCO as the preeminent national organization for presiding judges and court executive officers,” Barton said. “I look forward to working with them to continue their efforts in that regard.”

Barton and Billotte were elected during NAPCO’s First Annual Trial Court Leadership Conference on Sept. 25-28 in Cleveland, Ohio.

“The creation of NAPCO is an important step in helping presiding judges and court executive officers develop and improve their leadership skills,” said Billotte. “The organization provides a valuable forum for court leaders to work collaboratively to advance the efficiency and effectiveness of our nation’s trial courts.”

Billotte is the first vice president of the newly formed NAPCO. Prior to this, he was a board member of the National Conference of Metropolitan Courts (NCMC) and its strategic planning committee, which was instrumental in creating NAPCO.

Nominees for Arizona Supreme Court announced

The Commission on Appellate Court Appointments has recommended seven nominees to Gov. Doug Ducey for two new openings on the expanded seven-member Arizona Supreme Court.

The nominees for the two new positions on the Arizona Supreme Court are:
- Pamela S. Frasher Gates, a Maricopa County Superior Court Judge
- Thomas A. Gilson of Beus Gilbert, PLLC
- Andrew W. Gould, an Arizona Court of Appeals Judge – Division I
- John R. Lopez, IV of the Arizona Attorney General’s Office
- Robert J. McWhirter of the Law Office of Robert J. McWhirter
- Peter B. Swann, an Arizona Court of Appeals Judge – Division I
- Samuel A. Thumma, an Arizona Court of Appeals Judge – Division I

Gov. Ducey will appoint the new justices.

Nominees for Arizona Court of Appeals announced

The Commission on Appellate Court Appointments has recommended nine nominees to Gov. Doug Ducey for an opening on Division I of the Arizona Court of Appeals. The nominees for the opening created by the retirement of Judge Maurice Portley are:
- James P. Beene, Republican, a judge for Maricopa County Superior Court
- Cassie E. Bray Woo, Democrat, deputy chief and assistant U.S. Attorney at the U.S. Attorney’s Office, District of Arizona
- Timothy R. Hyland, Democrat, senior member at The Cavanagh Law Firm
- James B. Morse, Jr., Republican, section chief at the U.S. Attorney’s Office, District of Arizona
- Jennifer M. Perkins, Republican, assistant solicitor general at the Arizona Attorney General’s Office
- Pamela B. Petersen, Republican, director of litigation at TASER International, Inc.
- Timothy J. Thomason, Republican, a judge for Maricopa County Superior Court
- Randall H. Warner, Democrat, a judge for Maricopa County Superior Court
- David D. Weinzweig, Independent, senior litigation counsel at the Arizona Attorney General’s Office

Division I of the Arizona Court of Appeals decides cases appealed from eight of Arizona’s 15 counties: Apache, Cochise, La Paz, Naco, Maricopa, Mohave, Yavapai and Yuma Counties. Gov. Ducey will appoint the new judge.
NOV. 8 • 11:30 A.M. • 1 P.M.
Third-Party Litigation Financing: Legal, Ethical and Financial Impact on Corporations
Sponsored by: Corporate Counsel Division
1.5 CLE credit hours available
Third-party litigation funding is increasingly being used by private and corporate plaintiffs to finance high-exposure cases with anticipated high expenses for discovery and other pretrial preparation and trial. It has changed the defendants’ approach to and evaluation of litigation and settlements. This presentation will cover:
- Definition and scope of third-party litigation financing
- Providers
- Cost to litigants
- Types of cases suitable for third-party funding
- Legal and ethical issues, including champerty, maintenance, conflicts, privilege, etc.
- How it changes the corporation’s defense approach to financed litigation, discovery, trial and settlement
Presenters: Merton (“Mert”) E. Marks, Gordon & Rees, LLP; Neil Mitchell, President of Fulbrook Capital Management, LLC.
Cost: MCBA members: $75/$90; Non-members: $122.50/$137.50

NOV. 9 • 11:30 A.M. TO 1 P.M.
(Lunch included)
Mediation: What Works, Best Practices and Creative Solutions
1.5 CLE credit hours available
Mediation is the key to helping your clients finalize their divorce and move forward. The court’s docket is full and trial time is limited. This CLE will explain how attorneys can prepare for a successful mediation. Successful mediation involves more than just a savvy mediator; it requires that the attorney is knowledgeable about the case and also that the client is prepared for the process. That means educating your client on the negotiation process. The benefit of mediation is the ability to enter into creative financial and parenting solutions that would likely not be ordered by a judge at trial. The panel discussion will also educate attendees on how to avoid various mistakes and pitfalls that could jeopardize the mediation process and its success.
Presenters: Hon. Bethany Hicks (ret.), Tabitha Jecmen, Nancy Hetrick and Deborah Johnson.
Cost: MCBA members: $82.50; Non-members: $112.50/$127.50

New CLE Self Study Website
Participating in CLE courses just got easier with our new self study website! Go to www.shop.maricopabarcircle.com for downloadable videos and course materials.

Race Judicata
MCBA members and their friends and family woke up early on Oct. 15 to cross the finish line at the 2016 Race Judicata at Kiwanis Park in Tempe. Great job, everyone!

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Race Judicata at Kiwanis Park in Tempe. Great job, everyone!
State supreme court affirms CourtWatch, continued from page 1

the defendant’s motivation.” He pointed out that the only mention of sexual motivation came in § 13-1407(E), which “unambiguously refers to a defendant’s lack of sexual motivation as a defense.” He believed that the dissenting opinion’s agreement with Holle’s argument, Pelander rejected it. He agreed that “the criminal code should clearly differentiate between unlawful conduct and innocent, acceptable behavior without unnecessarily broadening the latter into the former.” But, he wrote, “proscribing certain conduct and defining what constitutes a crime and any defense thereof are solely within the purview of the political branches of government, not the courts.”

He continued, “The majority improperly ‘read the statute’s words literally or in isolation,’ when it should have ‘interpreted the statute in light of its intended purpose.’” He implied that the majority had improperly “read the statute’s words literally or in isolation,” when it should have “interpreted the statute in light of its intended purpose.” When a criminal statute lacks “a necessary element of intent or scienter,” he believed, courts may infer it.

Holle’s argument “would make § 13-1407(E) superfluous,” Pelander wrote. “[A] defendant who engages in conduct embracing both innocent and culpable conduct” would be excused from that violation and be found ‘not guilty’.

“While we reasonably interpret the language in § 13-1407(E) as negating an element of child molestation or sexual abuse, particularly when the statutes defining the crimes do not require the state to prove the defendant’s motive,” he wrote.

Pelander also rejected the notion that § 13-1407(E) creates a defense, but not an affirmative defense. He noted that the former negates an element of the state’s case, while the latter excuses the defendant’s conduct, allowing him to escape liability even if the state proves all the necessary elements. These defenses, Pelander concluded, are mutually exclusive.

“While the requisite facts are established,” he wrote, “§ 13-1407(E) provides that a defendant who engages in conduct embracing both innocent and culpable conduct is excused from that violation and must be found ‘not guilty.’

That is precisely what an affirmative defense does,” he wrote. “And the legislature,” he added, “may allocate to defendant the burden of proving it.”

Holle’s argument “would make § 13-1407(E) superfluous,” Pelander wrote. “[A] defendant would not have to invoke the defense if the state has and fails to carry the burden of proving sexual motivation as an element of the offense,” he explained.

Pelander rejected Holle’s argument that his construction rendered the statutes unconstitutional. Holle contended “that the legislature overstepped its constitutional authority by removing sexual motivation as an element and shifting the burden to defendants by making the lack of such motivation an affirmative defense.” Such a statute, Holle argued, “produced intolerable, absurd results” that are unconstitutional because they do not require the state to prove the defendant’s motivation and culpable conduct. “It would mean that parents and other caregivers commit those crimes whenever they change an infant’s diaper or bathe or otherwise clean a child’s genitals.” And medical professionals “would likewise violate those laws when properly and professionally examining a child patient’s private parts.”

Acknowledging the dissenting opinion’s agreement with Holle’s argument, Pelander rejected it. He agreed that “the criminal code should clearly differentiate between unlawful conduct and innocent, acceptable behavior without unnecessarily broadening the latter into the former.” But, he wrote, “proscribing certain conduct and defining what constitutes a crime and any defense thereof are solely within the purview of the political branches of government, not the courts.”

“Anyway, ‘prosecutors are unlikely to charge parents, physicians, and the like when the evidence demonstrates the presence of an affirmative defense under § 13-1407.’”

“Neither Holle nor the dissent suggests that a diapering parent or a physician conducting an appropriate examination has ever been charged under §§ 13-1404 or 13-1410,” he added. He pointed out that the assault statute applies to unwanted touchings that result in any physical injury, but prosecutors do not charge assaults with assault for cutting into their patients.

“Holle’s bare assertion that ‘absurd prosecutions’ might arise, Pelander continued, “does not warrant ignoring the plain language of the subject statutes.” “We cannot and will not assume that the state will improperly prosecute persons who, though perhaps technically violating the terms of broad statutes such as §§ 13-1404 and 13-1410, clearly engaged in reasonable, acceptable, and communally permitted activities involving children.”

“Based on the language in question and our analysis of the statutory defenses recognized in Arizona,” Pelander continued, “the legislature — joined by Justices Ann A. Scott Timmer and Clint Bolick — held that ‘§ 13-1407(E) provides an affirmative defense’ and that sexual motivation is not an element of sexual abuse or child molestation.”

Chief Justice Scott Bales dissented. “Parents and other care-givers who have changed an infant’s soiled diaper or bathed a toddler,” he wrote, “will be surprised to learn that they have committed a class 2 or 3 felony.” He believed them unlikely to be comforted by the availability of the affirmative defense.

“If the defense does not mean that a crime has not occurred, but instead that the miscreant may avoid ‘culpability’ by persuading the factfinder that the ‘criminal conduct’ should be excused.”

The majority’s interpretation of the statute, he believed, creates “a constitutional vagueness problem, as it would mean both that people do not have a fair notice that the conduct they actually criminalize.”

The majority’s interpretation “criminalizes[s] a broad swath of indisputably innocent conduct but assigns to defendants the burden of proving their innocence.” Bales wrote. He implied that the majority had improperly “read the statute’s words literally or in isolation,” when it should have “interpreted the statute in light of its intended purpose.” When a criminal statute lacks “a necessary element of intent or scienter,” he believed, courts may infer it.

He viewed § 13-1407(E) “as acknowledging a defendant may deny the implied element that the charged conduct was motivated by a sexual interest, rather than as referring to an affirmative defense.” By reading the statutes literally, the majority created laws that “do not identify the conduct they actually criminalize.”

In his mind, relying on prosecutors not to proceed against innocent parties does not solve the vagueness problem. He wrote that “unduly broad criminal prohibitions cannot be salvaged by assurances that prosecutors will wisely exercise their discretion.”

“Holle’s argument ‘would make § 13-1407(E) as unconstitutional, and shifting the burden to defendant may denounce the implied element that the charged conduct was motivated by a sexual interest, rather than as referring to an affirmative defense.’” Bales wrote, “turns on a fundamental question: may the state, consistent with due process, sweepingly criminalize a broad range of conduct embracing both innocent and culpable behavior and assign to defendants the burden of proving their innocence?” Answering that question in the negative, he would “interpret §§ 13-1404 and 13-1410 as implicitly requiring the state to prove a defendant acted with a sexual motive.”

He therefore dissented from Pelander’s opinion. But, like the court of appeals, he believed that the superior court’s refusal to give the requested instructions was “harmless beyond a reasonable doubt,” and he therefore concurred in affirming Holle’s convictions. Justice Robert M. Brutinel joined his opinion.

For more than 120 years, Quarles & Brady LLP has provided quality legal services to a wide range of industries on a national stage. The firm is a multidisciplinary AmLaw 200 legal services provider with about 475 attorneys practicing at the top of the profession in Chicago, Indianapolis, Madison, Milwaukee, Naples, Phoenix, Scottsdale, Tampa, Tucson, and Washington, D.C. We learn our clients’ businesses—to see the horizons through their eyes. Quarles & Brady doesn’t just counsel, but invests in the success of each client, partnering with them to achieve their business goals.

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Began with her upbringing in Baton Rouge, to them, are humbling and inspiring.”

“I have for family members who are caregivers for incapacitated young adult children and parents in creating wills and powers of attorney. Equally motivating is the deep respect she has for her expertise in probate and trust law, she says. “I have more out of the experience than I give, and I encourage any attorney who isn’t already involved to accept at least one pro bono matter,” she says. “One case doesn’t require a large commitment and there’s help available if you need it. That’s how you’ll discover what it is all about and whether it is right for you.”

Following graduation, Berman obtained her law degree at Harvard Law School. She remembers how she was inspired by her great-aunt Elizabeth Cox. “My great-aunt passed the bar in mid-life, at a time when women lawyers were relatively rare,” she says. “She had an interesting and successful career as a trusts and estates lawyer in Washington, D.C. She lived to see me graduate from law school and was always encouraging and enthusiastic about my chosen profession.”

Berman spent her first years as an attorney working for the federal government in Washington, D.C. Shortly after she married her husband, Mike, they decided to follow their desire to live in the Western U.S. and moved to Phoenix. Here, they raised their three children. At present, “We have adjusted to being empty nesters,” she says. “I have more time to read, improve my Spanish skills, walk with friends and enjoy our sometimes-hectic household with three rescue dogs.”

Reflecting on how she became involved in VLP, Berman recalls it being recommended by attorney Marsha Goodman. “I get more out of the experience than I give, and I encourage any attorney who isn’t already involved to accept at least one pro bono matter,” she says. “One case doesn’t require a large commitment and there’s help available if you need it. That’s how you’ll discover what it is all about and whether it is right for you.”

Volunteer Lawyers Program Thanks Attorneys

The Volunteer Lawyers Program thanks the following attorneys and firms for agreeing to assist on 23 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 at VLP at (602) 254-4714 or pgerrich@claz.org.

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Arizona Litigation Guide
Produced by the Maricopa County Bar Association Litigation Section

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NEW HIRES

Sanderson & Parlos, PC, is pleased to announce that Joel Fugate has joined the firm as an associate. Fugate will focus his practice on complex civil litigation, including business and intellectual property litigation, tort liability and insurance disputes.

Fugate earned his J.D. from the Sandra Day O’Connor College of Law at Arizona State University and his engineering degree from the University of Tennessee, Knoxville.

The firm practices in Arizona and the United States District Court for the District of Arizona.

HONORS & AWARDS

The national law firm of Quarles & Brady, LLP, announced that Phoenix office partner Steven A. Hirsch, a member of the firm’s litigation and dispute resolution practice group, will be honored by the William E. Morris Institute for Justice at the University of Florida Levin College of Law.

Christopher Houk, attorney at law firm of Gentle, Shields, Durrant and Goldfarb, has been selected as a Black Board of Directors Project Dr. Charles R. Campbell Outstanding Alumnus Award. This award is given to a mid-career member of the Black Board of Directors Project whose civic and professional engagements have been exemplary.

Among his civic, professional and religious activities, Houk has been involved with the Arizona Lawyers Association, the Temple Emanuel Relations Commission, the National Advisory Council of the U.S. Conference of Catholic Bishops and Saint Mary’s Basilica Pastoral Council.

Prior to his present employee, he was a trial attorney with EEOC and worked in the Arizona Attorney General’s Office of Civil Rights.

This award is named in honor of the late Charles R. Campbell who was a strong supporter of the Black Board of Directors Project whose civic and professional engagements have been exemplary.

If you are an MCBA member and you’ve moved, changed your name, or received a promotion or award, we’d like to hear about it. Send your news to mhaskins@maricopabar.org.

When Westward, the University of Arizona, and its engineering degree from the University of O’Connor College of Law at Arizona State University as a result of superb performance and the promise of low-income Arizonans that works on issues including civil rights, immigration and citizenship services.

Hirsch received both his bachelor’s degree from The University of Arizona.

Kimberly A. Demarchi, a partner in the litigation practice group at Lewis Roca Rothgerber Christie, LLP, has been selected to membership in the American Academy of Appellate Litigation.

Demarchi represents public, private and nonprofit clients in civil appeals and in the litigation of complex matters. Her practice also includes government representation, state, local and tribal governments in administrative and court proceedings. She also advises a wide range of clients on complex litigation with campaign finance, election and lobbying laws.

She is active in numerous bar and community organizations, is a frequent speaker and periodically teaches undergraduate and law classes in ethics, government and constitutional law.

BULLEITIN BOARD POLICY

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