Accusing the Arizona Supreme Court of a 15-year span of refusing to follow clearly established U.S. Supreme Court precedent, the Ninth Circuit Court of Appeals has overturned the death sentence given a man convicted of first-degree murder in two fatal home-invasion robberies. The Ninth Circuit concluded that Arizona had improperly refused to consider mitigation evidence offered by James Erin McKinney in trying to avoid the death sentence. In the first, Christine Mertens was savagely attacked in her home before being shot in the head. In the second, Jim McClain was shot in the head as he slept. McKinney was found guilty of two counts of first-degree murder. Hedlund was found guilty of first-degree murder in McClain’s death and second-degree murder in Mertens’s death.

During the penalty phase, both brothers offered uncontradicted evidence of their horrific upbringing. McKinney also offered expert testimony that as a result he suffered from post-traumatic stress disorder. The state’s expert disagreed with this diagnosis, but Judge Steven Sheldon found McKinney’s expert more credible. He nevertheless concluded that the aggravating factors outweighed the mitigating factors, and he sentenced McKinney to death. The Arizona Supreme Court affirmed. The federal district court denied McKinney’s petition for habeas corpus, and a Ninth Circuit panel affirmed. The court granted en banc review and, in an opinion by Judge William Fletcher, reversed. The controversy centered on the Arizona Supreme Court’s treatment of mitigation evidence in capital cases and the deference that a federal habeas court owes to the state court who is reviewing it.

Ninth Circuit: ‘Arizona Supreme Court consistently bungled federal law in death-penalty cases’
Be more than just a bystander; become an agent of change

I was recently reminded of the “bystander effect” — a psychological phenomenon where bystanders do nothing when witnessing someone in need of assistance, assuming that another bystander is more qualified and/or willing to help. Social psychologists Bibb Latané and John Darley noted the “bystander effect” after the murder of Kitty Genovese in New York City in 1964. Genovese was brutally stabbed to death outside her apartment, but dozens of witnesses failed to assist or even call the police for 20 minutes while Genovese screamed and, eventually, died.

Why do public bystanders do nothing? I am not a psychologist and have no formal training in psychology, so like others I rely on the Internet for the truth. I discovered several reasons why bystanders do nothing, including lack of awareness of a problem, unfamiliarity with the environment and indecisiveness. Further, inaction eliminates the fear of risk or inconvenience that may lurk behind good intentions.

What triggers a public bystander to take action? Perhaps acclaim for a heroic deed, though I propose there is usually a deeper psychological calling — a moral obligation to act, resolution of guilt arising from a prior episode of inaction, or an empathetic response to a similar event in which the bystander was the victim.

We lawyers and legal professionals are uniquely qualified to affect change. We are lawmakers and judges, business leaders and teachers; we research, advocate and document. But the vast majority of practicing lawyers spend careers representing clients to act, resolution of guilt arising from a prior episode of inaction, or an empathetic response to a similar event in which the bystander was the victim.

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Legal bystanders, however, are specifically trained in the legal field and are hired to resolve legal issues. Third, a public bystander does not seek out a circumstance to act, but rather finds himself in the place at the time where action is necessary. A legal bystander generally cannot act unless empowered to do so by a client.

The Maricopa County Bar Association is the largest voluntary bar organization in the state with more than 3,000 members, and thus has the clout to influence change in our community. During my tenure as a board member, I have listened to and participated in several debates involving topics of general interest to our community and of specific interest to our legal community. These debates would typically reveal a controversy of opinion among board members, which in turn led the board to forge a formal position to avoid offending segments of its members. The reality of course, is that controversy is likely to exist in any important issue, virtually guarantying that all MCBA members would never agree on a single issue; and any issue lacking controversy likely does not need the MCBA to take a position. The MCBA has been a platform for discussion, but a bystander as to the issues.

Inspired by a recent meeting of the past presidents of the MCBA, I expect that this year the MCBA will implement a fair, streamlined process that will allow the board to consider important issues raised by its members, carefully evaluate whether to take a position and craft a position statement that can be publicized in our community as the official stance of the Maricopa County Bar Association. Our community needs us to lead, and we cannot effectively lead as a bystander.

Much like the representative system of government in which we operate daily as citizens, the MCBA needs its members to take action — to not be bystanders — so the MCBA can accurately reflect the opinions of its members. Communicate with your board members. Write an article for the Maricopa Lawyer to share your views and educate your colleagues. Defeat the bystander effect as an agent of change as a legal professional and support your Maricopa County Bar Association.
Tips for all lawyers

Don’t let your client’s legal issues become your personal problems. An attorney’s job is hard. We should take care to ensure that we properly advocate for our clients without allowing unduly burdensome issues to control our thoughts and actions. Your clients’ issues are their issues; let that be what it is.

Do not yell at or be rude to opposing counsel or other parties. This goes hand-in-hand with the previous tip. Someone very wise told me, “You don’t have to be a jerk to be a good lawyer” — and he is so right! Clients have legitimate differences of opinion and a good attorney will assert his/her position. An easy way to keep clients informed is efficient and regular communication. An important key to effective representation is to simply BCC (blind carbon copy) them on your outbound emails; doing this allows you to save the step of forwarding emails to them with a separate message. (Note: The BCC function is not on by default in Outlook, but in most versions you can easily turn it on in the Options). A side-tip: Warn clients before you do this so they understand emails coming from you are sometimes just copies for their information only. They should be cautious about clicking “Reply All.”

Get involved/volunteer in your local community. I am going into my third year of participating in the Arizona Bankruptcy American Inn of Court and I cannot speak highly enough about what a great experience it has been. In addition to formal monthly meetings and small-group meetings, Inn members collaborate once per year for a volunteer/community service event. The events are always well attended and it is so fun to enjoy a morning with judges and colleagues on a more casual level. The MCBA also has myriad opportunities for getting involved, from CLE events of all kinds, to networking events (happy hour events, new associates summertime events of all kinds, to networking events (happy hour events, new associates summer time events of all kinds, networking events) as well as you can and add to your profile regularly. Your profiles are only as good as you make them, so keeping them up to date is crucial. Be sure to add special writing projects/articles, speaking engagements, group affiliations, etc. Some websites where you should have a professional profile include www.AVVO.com, www.martindale-hubbell.com, www.lawyers.com, www.azbar.org (see expanded profile options) and www.NOLO.com.

Seek out positive client reviews. When a client tells you what a great job you have done for them, ask them to go to AVVO (or other rating website of your choosing, like www.yelp.com) and add a client review to your profile. Be sure to also welcome referrals from happy clients. Referrals from people who know who you are and what you do are the most valuable, as they will undoubtedly have the greatest hire rate.

Be a good communicator; speak to clients on their level (whatever that might be). It is our duty as lawyers to be good communicators. When your client is well-informed, cases run more smoothly and your work-life balance can be less stressful. The first step is determining what level of knowledge and understanding the recipient has; the best way to do this is to start with the basics and work your way through the details.

Update your website. You should maintain and update your website often because it’s important to stay relevant with potential clients, should they seek your services. Keep up-to-date on ethical issues. Be sure to review the ethical rules at least annually to be sure you and your website are in full compliance. For ethical rules and opinions, see http://www.azbar.org/Ethics/RulesOfProfessionalConduct.

ASAP can also mean “As Simple As Possible.” Lawyers are not paid by the word. Using unnecessary words in your pleadings only makes it more difficult for your reader (the judge!) to understand what you seek and why the law supports your position.

“Eat a live frog first thing in the morning and nothing worse will happen to you the rest of the day.” — Mark Twain. In other words, take the most important and/or most undesirable task on your daily agenda and do it FIRST. There may be days when you only get one item marked off your to-do list. Focus your attention on that task and give it priority.
Avoiding ethical violations: Navigating the gray areas of the law

As part of their legal training, paralegals take at least one course on ethics. Most ethical violations seem pretty clear when presented in textbook form, but once you get out into the real world, you find many gray areas that create ethical dilemmas. Certified paralegals in particular have a lot to lose if they violate the code of ethics governing their certification.

As professionals, paralegals are held to a higher standard of competence. This includes continuing their legal education through on-the-job training, reading legal publications and attending seminars. Ignorance is not an excuse for committing an ethical violation. Keeping abreast of legal issues reduces the chance of such offenses.

One of the most important ethical responsibilities a paralegal has is maintaining client confidentiality. This duty exists during the time of representation and continues after the attorney-client relationship ends. A violation could compromise a case, take up a level of time of representation and continues client confidentiality. This duty exists during the time of representation and continues after the attorney-client relationship ends. A violation could compromise a case, take up a level of representation and continue client confidentiality.

While working closely with a client, they may disclose confidential information to you and ask that it not be shared with the attorney. Be cognizant of where you are when discussing any case. Make sure the attorney-client relationship continues.

Paralegals work under the supervision of an attorney. Even if you have worked for an attorney for a number of years, thus building up a level of trust, you need to make sure they review your work product. By doing this, you are protecting yourself if a document is later called into question. Your supervising attorney should be knowledgeable in the area of law in which you are working. If your attorney asks you to do something outside their area of practice, such as working on a probate matter when you work in personal injury law, for that particular case you should be supervised by an attorney who has knowledge in probate law. This will also avoid your attorney trying to blame you for their lack of knowledge if something is unknowingly missed.

Technological advancements create new ethical issues as they change the way documents are created and how information is communicated. Attorneys may now prefer to dispense legal advice or forward information via email. When doing so, be wary of who is on the receiving end and whether the email will be forwarded to someone else. Additionally, we rely more and more on our cell phones to communicate outside the office. The use of cell phones in public areas, like elevators or bathrooms, could result in a breach of confidentiality if a third party overhears you. Be cognizant of where you are when discussing any case.

The recent focus on eDiscovery has raised unique ethical issues including the sharing of form documents over multiple cases. These forms may contain information from previous cases embedded in their metadata. Be cautious when sharing forms as this practice could lead to an unintentional breach of confidentiality.

When changing law firms, you should disclose potential conflicts of interest with your new firm. This also applies to contract paralegals who work for multiple attorneys or firms. Additionally, you may be responsible for conducting a conflict of interest check for your cases. In doing so, be sure to bring anything you find to the attorney’s immediate attention so it can be timeously addressed. Occasionally, attorneys cause their paralegal to commit an ethical violation. Examples include having them notarize a client’s signature that the paralegal hasn’t witnessed and signing the attorney’s name to a time-sensitive pleading in their absence. These situations put paralegals in a tough position because they want to do what is asked of them yet avoid ethical issues. By refusing to do something, you may save both yourself and your attorney from a possible ethics violation. Expect to face such ethical dilemmas throughout your legal career.

It is important to know and abide by the code of ethics which applies to you as a practicing paralegal in Arizona, as well as any other legal organizations to which you belong. Ethical situations are rarely black and white and there are plenty of other examples that I could share with you. Trust your gut instinct: If you are asked to do something and it doesn’t feel right, it probably isn’t.

Always be on your guard for possible ethical violations and do your best to avoid them.
There’s no escape from the courts – but why would you want to?

Wherever you are and whatever you may be doing, a judge or court administrator can probably reach you. Using iPads, laptops, mobile phones and remote connections, court decisions and notices can be drafted, filed and distributed practically from anywhere at any time. Technology allows the clerk’s office and the courts to do more, and to do it more efficiently.

Social media and websites are channels for the clerk’s office and the courts to reach a worldwide audience and educate those who need our services. In 2015, the clerk’s office produced a “day in the life” video to accompany the job posting for courtroom clerks and posted a video for how to apply for a marriage license. The superior court in Maricopa County is on the leading edge of using technology to share factual, objective information with the public, many courts and jurisdictions still prohibit the public from bringing cell phones into court buildings, or require they be turned off and kept off while in the courthouse. The Maricopa County Justice Courts do not list social media for the courts as one entity, but at least one Justice of the Peace is active on the networking site LinkedIn, where he shares current news and information for navigating the court system. The Justice Courts website (http://justicescourts.maricopa.gov/) provides online services such as paying for traffic violations. The Arizona’s Supreme Court hosts AZTurboCourt for electronic filing in the Superior Court in Maricopa and Pima counties and for filing in the Court of Appeals, Division One, and directly with the Supreme Court. AZTurboCourt also allows parties to fill out forms online and print them for filing in numerous limited jurisdiction courts around the state. The Arizona Supreme Court’s Twitter account, @AZCourts, provides its own interesting and wide-ranging information. It also retweets information from other courts. Judicial appointments, committee applications and volunteering opportunities are posted here as well.

Electronic access to information continues to expand. Currently, minute entries are the only documents the clerk’s office produces online, followed by the general public access (http://courtminutes.maricopa.gov/) and court rules restrict some of that access. Using the clerk’s ECR website (https://ecr.clerkofcourt.maricopa.gov/login.aspx), parties can view documents in their own cases and a comprehensive list of documents is up to 100 cases at a time where they are the attorney of record. For many courts across the state, basic case information such as party names, case numbers and the docket list of items filed in a case can be viewed through the Arizona Judicial Branch’s Public Access to Court Information website at https://apps.supremecourt.az.gov/publicaccess.

The tradeoff for relatively easy access to court information seems to be oversimplifications or misunderstanding of the information. It is easy for employers, people doing background checks, the media and others to read a case disposition or docket entry and end their research at that point. Reviewing the actual documents of a case is often required to determine the context and status of a court case or court decision. For superior court cases in Maricopa County, records can be viewed at public access terminals at six locations around the Valley. Copies of records are also available by mail and fax. In the future, Internet access to more case records is expected to be available from all levels of Arizona’s courts.

The courts are no exception to using technology as a means of improving access and service. Courts are generally slower at implementing technology compared to other industries and the private sector, but Arizona and Maricopa County are farther ahead than many and continue making gains. For more information on what is available from the clerk’s office, follow the clerk’s Twitter feed at @MaricopaClerk and visit http://www.clerkofcourt.maricopa.gov.

FEBRUARY 2016 CALENDAR

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<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Litigation Section Board Meeting  Noon</td>
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<td>3</td>
<td>YLD Board Meeting Noon</td>
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<td>4</td>
<td>Construction Law Section Board Meeting Noon</td>
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<td></td>
<td>MCBA Office Closes at Noon</td>
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<tr>
<td>15</td>
<td>MCBA Closed in Observance of Presidents Day</td>
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<td>16</td>
<td>MCBA In-House Counsel Ethics Noon</td>
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<td>Family Law Section Board Meeting Noon</td>
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<tr>
<td>17</td>
<td>Barristers Ball Committee Meeting 8 AM</td>
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<td></td>
<td>MCBA: Increasing Your Chances for Getting Paid 11:30 AM</td>
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<td></td>
<td>LRS Committee Meeting Noon</td>
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<tr>
<td>18</td>
<td>MCBA: The Rules of Evidence and Family Law Noon</td>
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<td></td>
<td>Board of Directors Meeting 4:30 PM</td>
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<tr>
<td>19</td>
<td>MCBA Bankruptcy Fundamentals Session 3: Death &amp; Bankruptcy: The Intersection of Bankruptcy and Inherited Beneficiary Interests in Trusts 11:30 AM</td>
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<tr>
<td>21</td>
<td>CLE: Bankruptcy Fundamentals Session 4: How Mean is the Means Test? 11:30 AM</td>
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CLE review: It’s hard to say goodbye: Tips for resolving employment disputes

By Jason A. Houston

A Sept. 8 CLE took a focused look at some of the more sophisticated strategies being utilized by employers today in resolving disputes, including risk management concerns, employment litigation, methods of monetizing and resolving cases at mediation, and some of the more common mistakes on the part of attorneys who are attempting to settle.

About all 35,000 federal labor and employment lawsuits in 2013, only 1.5 percent made it to trial. During that period, plaintiffs won 52 percent of jury trials at the state level and 51 percent at the federal level. Over the past decade, median jury awards in employment discrimination suits have been on a steady increase. Between 2007 and 2013, the median jury award at the federal level was $150,000, compared to $294,863 at the state level. About 25 percent of U.S. employers have mandatory arbitration programs. While recent studies have found no difference between arbitration and trial results, the costs of arbitration are significantly lower than trial costs. Further, the ability to resolve a case on the merits, rather than settle to avoid costs of a jury trial, always favor arbitration. Explaining to clients, in advance, the costs and likelihood of a favorable outcome and the time it may take will go far in defusing unrealistic expectations. As well, it’s always a safe policy to reinforce this caveat with a written follow-up to the client or his counsel.

Establish your initial objectives, including counter claims and lost wages. Remember, also, incendiary information about your opponent or his witnesses have lost its shock value in today’s litigation. Review all documents you can ascertain which may have probative value, including handbooks, internal memos, full or partial insurance releases, and always interview witnesses. Also, check with the EEOC for any potentially negative history. And don’t overlook the Internet, which has become an excellent resource for locating such things as agency files, collateral court filings, divorce, bankruptcy and similar proceedings.

Always be sure discovery has been completed prior to going into mediation. Learning all you can and understanding your adversary’s and his counsel’s personalities cannot be overstated. Check websites for possible spouses or significant others who may have financial relationships with the client or counsel. Also, understand the judge who will be hearing your case. In pro se cases, which are becoming more popular, try steering the parties toward EEOC settlement or mediation; determine if they’re flying solo or have an attorney helping them backstage. Bottom line, anyone you can find who “has some skin involved” is going to be more predisposed to settling.

Allow the parties to talk casually between themselves with counsel absent. Remember that in Arizona, an employee’s failure to mitigate is subject to treble damages. Employee reinstatement, a letter of recommendation, an apology, a promise the employer will not oppose unemployment compensation, are also powerful tools that will influence a positive settlement.

The MCBA extends a special thank you to Joseph T. Clees of Ogletree Deakins for their efforts and support of the MCBA’s CLE Program.

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

By Kaitlyn Carr

In the fall, the Arizona Center for Law and Society will open its doors, housing the new home of the Sandra Day O'Connor College of Law at Arizona State University. The new building will be located in downtown Phoenix, which will provide opportunities for students to conveniently participate in public service and pro bono work, externships, clerkships, and clinics in the heart of Arizona's business, legal and political community. In addition, the center will house the ASU Alumni Law Group, a not-for-profit teaching law firm that provides a variety of affordable legal services. Space will also be dedicated to the Lincoln Center for Applied Ethics and the McCain Institute for International Leadership.

"This is more than just a move to a new building," said Michael M. Crow, president of Arizona State University. "It is a major part of our city and state’s future. This move will establish Phoenix and Arizona as the home of a great educational institution and will greatly contribute to the well-being of our fellow citizens."

The state-of-the-art facility will include the Armstrong Great Hall, which will host large national conferences and lectures as well as high-tech courtroom, law library, classrooms, study rooms, meeting spaces and clinics. In addition to the use of ultramodern technology, sustainability has been a primary goal for the Arizona Center for Law and Society. Building planners have taken into consideration environmental factors such as location, yearly sun exposure, wind and solar heat gain, and have incorporated vacancy sensors, LED lights, desert-adaptive planting and a host of other power-saving measures. A 37 percent reduction in energy consumption as compared to a baseline building is expected.

The 10 commandments of settlement

By Henry G. Miller

1. Thou Shalt Not Spurn Settlement as Being Beneath Thee.
Don’t be Judge Errante who considers settlement a crude rug-dealing auction beneath his or her learned dignity. Don’t be Mr. Uncompro- mising who must win every case to prove his toughness every day of his life. Certainly, prepare every case for verdict and never fear to take a verdict. But be like Ms. Smart who never fears to negotiate. Remember, without settlement, the system of civil litigation in America would collapse.

2. Thou Shalt Respect Thy Enemy.
Don’t be Ms. Obnoxious who tells the ad-jutant she only speaks to lawyers. Cooperate with the insurance company. Send it the sup-porting documentation. It’s the age of disclosure anyway. They’ve got a job to do. Help them. Get their reserves up and their animosity down. Don’t have them mark the case in red for warfare because you’re obnoxious.

3. Thou Shalt Treat Thy Client as Thou Wouldst Be Treated.
Don’t be Mr. Hyperbole who puff’s and exaggerates and predicts great big verdicts in order to get the client’s signature on a retainer. Don’t be Ms. Incommunicado who refuses to return clients’ phone calls. Keep your client advised of all important events, negotiations and every single offer no matter how puny. Treat your client the way you want your physi-cian to treat you — with understanding and explanations.

4. Thou Shalt Not Bargain As If Thou Were Born Yesterday.
Don’t be Ms. Naive who gives “off the record” demands which are inscribed in granite back at the insurance company; Don’t be Mr. Suspicious who won’t level with the Judge who’s genuinely trying to settle the case. Emu-late Mr. Good Judgment who always starts a bit high but somehow usually works it out with a smile on everyone’s face. Ps. Mr. Good Judg-ment is also not afraid to take a verdict.

5. Thou Shalt Not Evaluate Each Case As If It Were the Last One in Your Office.
Don’t be Mr. Young Lawyer who demands a million dollars on every case while on his way to building a big reputation. Don’t be Ms. Fall In Love. She loses every case she has and evaluates it at ten times its value.

6. Thou Shalt Know the Law.
Don’t be Mr. Ignorant who hasn’t read an advance sheet in 20 years and doesn’t know the perils of settling with one co-defendant and continuing against another. Rather be Ms. Book. She knows the special requirements of settling the case of an infant, an incompetent or a decedent.

7. Thou Shalt Seek the Counsel of Elders and Experts.
Don’t be Mr. Arrogant. Ask the older law-yers what they think of value and strategy. Bet-ter to be Ms. Humble. She asks economists their expert opinion about structured settle-ments. She asks friends and secretaries what they think of her case and the value of it. Mr. Arrogant is too proud to ask anyone anything.

8. Thou Shalt Keep Abreast of Modern Ways.
Don’t be Ms. Obsolete who won’t consider a structured settlement in any case even for a plaintiff who has no ability to deal with a large lump sum settlement. Ms. Obsolete doesn’t like new ways; she doesn’t understand them. She never sends a bad faith letter. She never considers a brochure or the use of videotape. By not keeping current, she is not serving her clients.

9. Thou Shalt Not Be a Hero.
Don’t be Mr. Olympian who must make a big score and a big headline on every case. Sometimes there are problems. Be Mr. Prudent. He knows his client only has one case, which Mr. Prudent must shepherd carefully.

10. Thou Shalt Think Settlement.
This is the greatest of the commandments since it embraces all the others. It means: be wise. With persistence and imagination, almost all cases can be settled. The wise lawyer knows a secret. The wise lawyer knows that all cases are settled. Lawsuits are like wars; they are al-most all eventually settled by agreement. The only question is how many coffins have first to be filled.

Douglas J. Sylvester, dean of ASU Law; said the center is intended to increase the public’s understanding of justice through ongoing events and displays.

“The Arizona Center for Law and Society has been designed, at every stage, to engage and educate the public about the positive role that law plays in everyday lives,” Sylvester said.

The Arizona Center for Law & Society is lo-cated at 111 E. Taylor St., Phoenix, AZ 85004. Alumni and distinguished guests are currently invited to visit the building site, with tours being offered every other Thursday from 4 to 5 p.m. Registration is required, so please direct inqui ries to Keith Chandler at keith.chandler@asu. edu or call (480) 965-6405.
Commentary

Arizona Summit Law School at 10 years: Different by design

By Donald Lively and Shirley Mays

Arizona Summit Law School graduates Lilia Alvarez personifies the American dream. The daughter of migrant farm workers, Alvarez was the first in her family to graduate from high school. She often expresses her gratitude for the opportunity Summit provided to pursue her dream of becoming a lawyer. While in law school, she was awarded the 40 Hispanic Leaders Under 40 Award, the 2012 Emerging Star award from Emereg Arizonia, and the Summit Mission Pillar Award for Serving the Underserved. Alvarez co-founded Citizens for a Better Arizona — the group responsible for the recall of former Arizona Senate President Russell Pearce — and currently serves as the presiding judge for the Guadalupe Municipal Court in Guadalupe.

Stories like Alvarez’s could never be scripted without an institution dedicated to providing a pathway for bypassing traditional barriers to personal success and societal impact. As Summit marks its first decade of existence, stories like Alvarez’s are part of our legacy. It also includes multiple awards for diversity and curricular innovation, more than 22,000 hours of pro bono service in just a nine-month period, and impressive career placement and ultimate passage rates. Summit ranks in the top third of all law schools in placement of graduates into J.D. advanced jobs, three times has led the state in bar examination results and has one of the nation’s lowest student loan default rates (2.4 percent).

Our most recent bar examination results fell well short of our objective of consistent state leadership, but we have a reliable plan for turnaround. Like any organization or individual, we want to be judged by our entire body of work and potential. An ironic tribute to the quality of Summit’s educational program is that 20 percent of our first-year class transfers to less expensive public institutions, thereby boosting those schools’ bar examination performance (at our expense) and diversity without impairing the transfer fee law school’s ranking.

Summit’s roots probably are the most unique in legal education. It is part of a consortium of three law schools funded by private equity. Its origins are in legal education itself, however, from which the first institution (Florida Coastal School of Law) in the consortium was founded. Private capital (including personal loans, savings, credit cards and retirement funds) became the funding source when no established university could be identified to support a differentiated mission such as ours. Central to this mission is the aim of narrowing the well-documented gap between legal education and the legal profession and impacting the low diversity rate of law school student bodies and the legal profession. We consciously have shunned traditional rankings that are dependent in large part upon stratostrophic LSAT scores. These criteria, which are notoriously weak predictors of professional success, are key indicators of traditionally elite status and reason why many qualified persons (especially from disadvantaged groups) cannot access legal education.

The path we have chosen is different than most law schools. Our mission requires substantial resources and heavier lifting to facilitate success for students who often are in “catch up” mode. It is essential work, however, if a profession with the lowest diversity rate among major professions (i.e., a 12 percent diversity rate as the nation’s non-white population approaches 40 percent) is to become meaningfully diversified. It is private equity that has enabled us to pursue this mission and attract prominent leaders in legal education and the legal profession.

Summit’s students consistently outperform their counterparts with similar entering credentials at more traditionally prestigious schools. Our ultimate bar pass rate approaches 80 percent, which rivals that of more established institutions. This metric reflects the percentage of graduates who pass the bar examination on one or more attempts. Even though we want consistent excellence on a first-time bar pass rate, the ultimate bar pass rate is increasingly becoming recognized as a key quality indicator. It is the most significant benchmark when expanded opportunity is at stake. Hard data and many personal success stories indicate first-time failure does not alter potential for high achievement or the fact that a law degree adds measurable dollar value over the course of a lifetime.

With a 45 percent diversity population, composed primarily of African-American and Hispanic or Latino-American students, we are primary contributors to undoing a yet unbroken legacy of exclusion. From a broader organizational perspective, our schools constitute 1.5 percent of the law school universe but 5 percent of its diversity population.

Unlike public universities, we are taxpayers rather than taxpayer subsidized. Like anything different, we are an object of curiosity and sometimes skepticism. The good news for our mission is that initial skeptics, when they get to know us, almost invariably become supportive of and in some instances part of our journey. Familiarity from our perspective, therefore, breeds not contempt but informed judgment of an institution founded with, and grounded in, a sense of social utility.

Donald Lively is president of Arizona Summit Law School and was its founding dean. Shirley Mays is dean of Arizona Summit Law School.

Q&A

Larry Liability and Ethics

Ethics rules update 2016

By Russell Yurk

Along with each New Year usually come several changes to court rules. This year is no exception and there are a few important changes to the ethics rules that I’d like to briefly discuss.

1. Lateral screening. ER 1.10 was significantly revised in several respects. First, screening is now available in all matters, not just in litigation matters. Second, screening is available to any lawyer other than the lawyer who had “primary responsibility for the matter that causes the disqualification under Rule 1.9.” Previously, screening was unavailable to any lawyer who “had a substantial role” in the matter. Third, ER 1.10(d)(3) was modified to include specific information that must be included in the notice required to be sent “to any affected former client to enable it to ascertain compliance with the provisions of this Rule.” Finally, new ER 1.10(d)(4) was added to require that “the personally disqualified lawyer and the new firm reasonably believe that the steps taken to accomplish the screening of material confidential information will be effective in preventing such information from being disclosed to the new firm and its clients.”

2. Sharing fees. ER 1.5(e) was amended to allow lawyers in different law firms to share legal fees without assuming joint responsibility for the representation if the division of fees is in proportion to the services performed by each lawyer. Previously, fees could be shared only if each lawyer receiving any portion of the fee assumed joint responsibility for the representation. The new ER 1.5(e) also requires that the client agree (in a writing signed by the client) not only to the participation of all the lawyers, but also to “the division of the fees and responsibilities between the lawyers.”

3. Unauthorized practice of law. ER 5.5 was amended to allow non-Arizona-admitted lawyers to practice of the law of another jurisdiction while in Arizona. Lawyers not admitted in Arizona are now precluded from engaging in “the regular practice of Arizona law.” ER 5.5(b)(1). This rule change is intended to focus on ensuring that non-Arizona-admitted lawyers are not providing legal services to Arizona residents regarding Arizona law.

4. Succession planning. Supreme Court Rule 410 was added to require all Arizona lawyers to “protect current and former client interests by planning for the lawyer’s termination of or responsibility in a law practice, either temporarily or permanently.” The rule requires solo practitioners to “arrange for one or more responsible transition counsel agreeable to assuming” responsibility for protecting, transferring and disposing of client files, property or other client-related materials. The rule also requires lawyers in law firms or not in private practice to “have a similar plan reasonable for their practice setting.” Ariz. R. Sup. Ct. 410 cmr. 2.

This column only briefly discusses these four specific new rules. I strongly encourage all lawyers to read the orders amending these rules (http://www.azcourts.gov/rules/Recent-Amendments/Rules-of-the-Supreme-Court) and attend a seminar discussing the changes and other new rules. It is the responsibility of all lawyers to ensure that they fully understand the rules that are now in effect.

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

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

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(List is as of Jan. 12)

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.

Guide to Arizona Statutes of Limitation 2011 (2nd edition)

The one reference every lawyer really needs to meet critical deadlines and avoid malpractice

This 174-page book (softcover, spiral bound), newly updated through 2011, includes most, if not all, statutes where a time limitation is specified. Compiled, updated and edited by the MCBA Young Lawyers Division, the Guide is intended for use as an aid to Arizona attorneys in all areas of practice. Shipping cost is $5.

The Most Frequently Asked Questions in Environmental Law (2nd edition)

The environmental answer book for Arizona businesses and non-specialists

Completely up-to-date and comprehensive, this publication of 16 chapters covers every major area of environmental law of interest to persons and organizations in the Arizona business community. Each chapter has been drafted and updated by experienced local practitioners and provides fully referenced, Arizona-specific information. The content is presented in an informative, non-technical manner for use by non-environmental practitioners and non-lawyers. It is also useful for legal professionals who are experienced in environmental law but need a quick reference and research aid for questions in unfamiliar subject areas. The book has sixteen chapters and 200 double-spaced pages in a three-ring binder. It is written and edited by the MCBA Environmental & Natural Resources Section and can be downloaded online. Shipping cost is $13.

Arizona Litigation Guide 2015

A soup-to-nuts guide on litigation in Arizona, providing an overview of litigation procedure and practice tips (and forms) from experienced attorneys. The book is available in a three-ring binder for easy updating or as a download. Shipping cost is $13.

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The firm has changed its name from Berk & Moskowitz, P.C. in light of the departure of Frank W. Moskowitz to become a Maricopa County Superior Court Judge.

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McBa Litigation Section CLE
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March 22, 2016
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Governor’s Office of Highway Safety approves grant to advance judicial education

The Arizona Supreme Court received a $22,340 grant from the Arizona Governor’s Office of Highway Safety that will be used to train new and veteran court judges on traffic laws, case management, DUl and more.

The program will provide necessary training to limited jurisdiction court judges who collectively adjudicate 1.5 million traffic charges annually — including more than 71,900 DUl charges. The grant will provide training to more than 100 limited jurisdiction hearing officers and judges in areas of DUl trial flow, distracted driving, civil and criminal traffic issues, criminal disposition reporting, forensic evidence in DUl cases, time standards and calendar management, evidence and objections, and commercial driver license issues.

Advancing Justice Together: Courts & Communities is the strategic agenda for Arizona’s judicial branch. Goal four is Enhancing Professionalism within Arizona’s Courts, which states, “The judicial branch must continue the professional development of new and veteran judges to ensure they adhere to the highest standards of competence, conduct, integrity, professionalism, and accountability.” Grant-funded educational sessions will yield additional ongoing benefits as staff and judges in Arizona courts process DUl and traffic cases more efficiently and effectively.

Arizona is the sixth largest state in the U.S. by geographical size and has more than 29,000 miles of roadways. Many of Arizona’s roads reach rural and distant areas of the state, which fall into the jurisdiction of Arizona’s local courts. Funding from the Governor’s Office of Highway Safety will allow for up to 50 judges from rural courts or those outside of the Phoenix area to attend this valuable training.

Ninth Circuit
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had established in a case called Eddings that it is improper to preclude the sentence “from considering, as a mitigating factor, any aspect of a defendant’s character or record.”

Fletcher tacitly conceded that the Arizona court had not actually stated that it refused to consider McKinney’s PTSD in mitigation. Instead, he inferred it from some of the language in its opinion and its citation of a concededly erroneous opinion. In 1989 in State v. Wallace and 1994’s State v. Ross, the Arizona court had held, contrary to Eddings, that evidence of the defendant’s difficult life history was irrelevant to mitigation unless it had a causal nexus to the commission of the crime.

According to Fletcher, during a 15-year span, the Arizona court had consistently followed Wallace and Ross, refusing as a matter of law to consider similar mitigation evidence unless it met this test. In McKinney’s case, the Arizona court had stated that “[a] difficult family background, including childhood abuse, does not necessarily have substantial mitigating weight absent a showing that it significantly affected or impacted a defendant’s ability to perceive, to comprehend, or to control his actions. See State v. Ross.”

Fletcher noted that the Ross citation was to the precise page where the court had “articulated its unconstitutional ‘causal nexus’ test.” Given the Arizona court’s “strong view of stare decisis,” Fletcher concluded that it had followed Ross and applied the causal-nexus test in McKinney’s case. As Fletcher noted, in addition to statutory factors, “Arizona case law applied ... nonstatutory mitigating factors, as a difficult family background or a mental condition not severe enough to qualify as a statutory mitigating factor.”

He discounted the Arizona Supreme Court’s statement that the superior court had given “full consideration” to McKinney’s childhood and PTSD as nonstatutory mitigation. According to Fletcher, this was not truly full consideration. Instead, he concluded, the supreme court had used “the word ‘consideration’ in the sense of considering whether the evidence was, or was not, mitigating,” as it had used it in State v. Dymj, another case that, in his opinion, had violated Eddings. Dymj was not cited in McKinney, and Fletcher did not explain how he had determined that the Arizona court had applied it there.

Fletcher summed up the factors that led him to “conclude that the Arizona Supreme Court held, as a matter of law, that McKinney’s PTSD was not a nonstatutory mitigating factor, and that it therefore gave it no weight,” in violation of Eddings. First, “the factual conclusion by the sentencing judge, which the Arizona Supreme Court accepted, that McKinney’s PTSD did not ‘in any way affect[]’ his conduct in this case.” Second, “the Arizona Supreme Court’s additional factual conclusion that, if anything, McKinney’s PTSD would have influenced him not to commit the crimes.” And third, “the Arizona Supreme Court’s recital of the causal-nexus test for nonstatutory mitigation and its pin cite to the precise page in Eddings where it had previously articulated that test.”

Fletcher concluded that the error required a remedy. Agreeing with the Ninth Circuit’s 2008 decision in Ayers v. Salerno, he held that resentencing was mandated. Joining him were Chief Judge Sidney R. Thomas and Judges Kim McLane Wardlaw, Marsha S. Berzon, Morgan Christen and Jacqueline H. Nguyen.

Judge Carlos T. Bea dissented. He accused the majority of misrepresenting the record, misreading Arizona Supreme Court’s Eddings jurisprudence and failing to give proper deference to that court.

Bea found it perfectly understandable that Judge Sheldon had discounted McKinney’s mitigation evidence because of the lack of a causal connection: McKinney had offered this evidence for statutory mitigation, for which it is appropriate to require a causal connection.

McKinney had also offered the same evidence for nonstatutory mitigation. Judge Sheldon had discussed it together with McKinney’s other nonstatutory matters: “I have considered them at length, and after considering all of the mitigating circumstances ... I have determined that ... the mitigating circumstances simply are not sufficiently substantial to call for a leniency under all of the facts of this case.” Hence, Bea concluded, Sheldon had not required a causal connection for nonstatutory mitigation.

And the supreme court had followed Sheldon’s lead. “At no point,” Bea wrote, “did the Arizona Supreme Court state either that Judge Sheldon had excluded McKinney’s PTSD evidence as a matter of law, or that it would have been permissible to do so, under Arizona’s nonstatutory catchall because the PTSD bore no nexus to the crime.” Neither had the high court itself treated “that evidence as if it had no weight as a matter of law”.

“That should be the end of the matter,” Bea wrote.

Bea called the majority’s “flank attack” on the Arizona court’s opinion, concluding that the result was wrong. The Arizona court had actually stated and applied the Eddings standard: It recognized that “the trial judge must consider any aspect of his character or record and any circumstance of the offense relevant to determining whether a sentence less severe than the death penalty is appropriate.” The majority had ignored the Arizona court’s language, Bea concluded, emphasizing that it had stated that “a difficult family background, including childhood abuse, does not necessarily have substantial mitigating weight” absent a causal connection with the crime.

“All the majority and McKinney do is speculate that, regardless what it stated, the Arizona Supreme Court applied a nexus test to conclude the PTSD evidence was irrelevant under the nonstatutory catchall.” He likened the majority’s action to Wallace v. Woodford, a 2002 opinion in which the Ninth Circuit had overturned a death sentence, ruling that the California Supreme Court had applied the wrong standard in a case raising ineffective assistance of counsel. The California court’s opinion had improperly stated the applicable standard a few times, but it had begun its analysis by twice stating the proper standard.

The U.S. Supreme Court summarily reversed the Ninth Circuit. “The Court chided us for mischaracterizing the California Supreme Court’s decision,” Bea wrote. It had deemed the Ninth Circuit’s “readiness to attribute error ... as ‘inconsistent with the presumption that state courts know and follow the law,’ and ‘incompatible with the [highly deferential standard for evaluating state-court rulings.’ Congress established that standard in AEDPA — the Antiterrorism and Effective Death Penalty Act. AEDPA, the high Court stated, requires ‘that state-court decisions be given the benefit of the doubt.” Bea also chided the majority for relying “on other Arizona Supreme Court cases to conclude” that it was owed no deference in this case.” Even if AEDPA permitted this type of analysis (it doesn’t), and the majority cites no case in support of it), the analysis is based on a false premise,” he wrote. “The Arizona courts did not consistently misapply Eddings.”

He also disagreed with the majority’s conclusion that McKinney was prejudiced. “Had Bea found a similar causal nexus, the decision would have been different.”

The Governor’s Office of Highway Safety receives federal funds to advance the quality of its work. The grant will be used to equip judges with the necessary training to accomplish the Board of Supervisors’ strategic agenda for Arizona’s courts.

Arizona Supreme Court Justice Robert Brutinel swears in Judge Ronee Korbin Steiner during her investiture ceremony on Dec. 11 in downtown Phoenix.

Presiding Judge Janet Barton delivers the oath of office to Commissioner Julie LaFave during her swearing-in ceremony in the Board of Supervisors Auditorium.

Commissioner Wendy Morton was awarded Judicial Officer of the Year from the Arizona family Support Council for her tireless work in collecting delinquent child support during the past five years in Enforcement Court and Accountability Court.

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See Ninth Circuit page 11
In addition, Whiteman is an experienced family law attorney, her B.S. from the University of Washington and her J.D. from Stanford Law School. She was a member of Governor Brewer’s Master of Parks Partnership’s Federal Affairs Committee and storage tank regulation.

Whiteman’s practice is focused in business disputes, construction and commercial litigation, including breach of contract claims, real estate representation, and administrative leasing. Her family law practice primarily involves representing successful business owners and individuals involved in complex asset divorce and community property cases, white-collar and other criminal law.

Formerly a Judge Pro Tem for the Maricopa County Superior Court, Whiteman earned her law degree from the University of Nebraska College of Law in 1985 and graduated from Arizona State University in 1982.

Whiteman represents clients in a wide variety of commercial litigation, including matters involving commercial lending, construction, and real estate litigation. His experience representing entities and individuals in collection matters is extensive. Myers has represented numerous financial institutions and equipment leasing companies in actions to recover equipment and other assets/collateral through the use of pre-judgment Orders of Replevin, coordinating with the U.S. Marshall’s Office and various county sheriff’s offices across Arizona as a result of this representation.


Jennings, Haug & Cunningham is pleased to announce that the firm has added two prominent Arizona lawyers, Blake Whiteman and Brian Myers.

Whiteman and Myers, who both practice in commercial litigation, joined the firm as partners. In addition, Whiteman is an experienced family law and domestic relations lawyer.

**Ninth Circuit**

CourtWatch, continued from page 10

Judge Sheldon not considered the PTSD diagnosis, forcing him to do so would not have altered the result,” Bev wrote. “He would have given the PTSD diagnosis little weight (indeed, he did give it little weight).”

Bea closed by lamenting the far-reaching consequences of the majority’s holding: “If we cannot find the Arizona Supreme Court complied with Edding in this case, where it stated the Edding standard correctly and made explicit findings that illustrate it observed Edding” he wrote, “then I don’t quite see how future cases could come out differently.”

Joining him were Judges Alex Kozinski, Ronald M. Gould, Richard C. Tallman and Cornelius Calabresi.

**Epilogue**

The majority’s citation of Spera v. Schraft is irrelevant to the Ninth Circuit’s evident unwillingness to defer to the Arizona court, and possibly presages how the latter might respond here. Spera held that the Arizona Supreme Court had committed error in its 1993 opinion in State v. Spera, where it had acknowledged that PTSD can be a mitigating factor and stated that it considered Spera’s PTSD. “However,” it wrote, “two doctors who examined [Spera] could not connect [his] condition to his behavior at the time of the conspiracy and murder.”

The Ninth Circuit held that Arizona had unconstitutionally failed to weigh the aggravating and mitigating circumstances: “The court’s use of the conjunctive adverb ‘however,’ following its acknowledgment that such evidence ‘could’ in certain cases constitute mitigation, indicates that [Spera’s case] was not a case” where PTSD could be mitigating, it wrote. It concluded that the Arizona court had not actually considered the evidence, despite that court’s contrary statement.

With the case returned to it, the Arizona court then rejected the Ninth Circuit’s criticism. It announced that “although we again acknowledge Spera’s PTSD and consider it in mitigation, we give it little weight,” therefore concluding, once again, that Spera was not entitled to any mitigating evidence. Chief Justice Rebecca White Berch then scorned the Ninth Circuit’s criticism of her court. “This Court’s earlier opinion,” she wrote, “states that we ‘considered all of the proffered mitigation’.”

Contrary to the Ninth Circuit’s conclusion, she wrote, that statement was not “a clear indication” that this Court violated “constitutional mandates.” She noted ironically that the Ninth Circuit had itself used remarkably similar language in affirming an Arizona ruling in similar circumstances.

This time, the Ninth Circuit affirmed. It did so in Spera v. Ryon, No. 12-16052 (9th Cir. 30, 2015), an opinion authored by Bea and joined Judges Kozinski and Jerome Farris, which was issued only one day after McKinnon v. Ryon. ■

**Promotions**

Riley Carlisle & Applewhite is pleased to announce that Samuel L. Lofland has been elected shareholder.

Lofland works with clients of all sizes, ranging from individuals to industry leaders in renewable and conventional energy, transmission, water development and mining. He focuses on environmental permitting, compliance, due diligence, and environmental and general commercial litigation.

Lofland is an enrolled tribal member of the Wyandotte Nation of Oklahoma and while in law school, he dedicated a significant portion of his studies to understanding the unique issues associated with Federal Indian Law. In connection with his environmental law and litigation work, he has worked on several issues involving Federal Indian Law.

Lofland regularly provides pro bono legal services through organizations such as the Florence Immigrant Refugee Rights Project and the U.S. District Court of Arizona’s pro bono program.

He earned his B.A. from Stanford University and his J.D. from Arizona State University. His degree was conferred with an Indian Legal Certificate.

**NEW HIRES**

Fennemore Craig has announced that Michelle De Blasi has joined the firm as a shareholder in the firm’s natural resources, environment, energy and utilities practice group. De Blasi advises clients on energy and environmental matters, including traditional and renewable energy project development, environmental permitting and compliance, and greenhouse gas emissions. She has worked at federal and state levels on various environmental issues, including hazardous waste, air quality, water quality, environmental health and safety, real property due diligence, utility regulation, natural resource damage issues, asbestos and underground storage tank regulation.

De Blasi currently serves as co-executive director for the Arizona Energy Consortium, co-chair of the Valley Partnership’s Federal Affairs Committee and was a member of Governor Brewer’s Master Energy Plan Task Force. She earned her J.D. from the University of Washington and her B.S. from Arizona State University.

Whiteman's practice is focused in business disputes, construction and commercial litigation, including breach of contract claims, reputation management and commercial leases. His family law practice primarily involves representing successful business owners and individuals involved in complex asset divorce and community property cases, white-collar and other criminal law.

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Early Bird registration ends five days prior to the program date. Late registration is an additional $15. For example, registration for a Sept. 17 program must be paid by Sept. 12 in order to receive early bird pricing.

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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.

**FEB. 4 • NOON TO 1 P.M.**
(Lunch included)
Profiting From Your Paralegal: How to Effectively Leverage Your Paralegal in Your Personal Injury Practice
SPONSORED BY: Paralegal Division
1 CLE: credit hour available
Please join John Torgenson and his paralegal, Valerie Ramirez, for a seminar that will provide:
• An overview of the definition of a paralegal,
• Common misconceptions and the evolution of the paralegal’s role,
• Ways to save time and money by using a paralegal in your practice, specifically personal injury
• Maintaining the attorney/paralegal relationship and understanding expectations,
• Useful apps and technology for attorneys and paralegals.

PRESENTERS: John Torgenson, Esq., Torgenson Law; Valerie Ramirez, Legal Administrator, Torgenson Law
COST: MCBA members: $50/$65
Bring your paralegal/legal assistant
(Provide their name and email): $30
MCBA Paralegal & Public Lawyer Division members: $35/$50
MCBA student members: $15/$30
Non-members: $80/$95
LIMITED SEATING—RESERVE NOW!
Early bird pricing ends 2.16

**FEB. 10 • 11:30 A.M. TO 1 P.M.**
(Lunch included)
Resolving Joint Ownership Disputes Through Partition, Receivership and Special Master/Commissioner Appointments
1.5 CLE: credit hour available
Voluntary Division of Property/Statutory Division of Property— ARS § 12-1211
• Partition in Kind
• Partition by Sale
• Partnership Agreements
• Enforceability
• Challenging Enforceability
• Special Commissioner Appointments
• Standard Orders
• Customized Order Provisions
• Maximizing Value
• Reporting
• Contract Negotiations
• Receivership Appointments
• Acquiring Operational and Financial Information to Assist with Operations/Valuation
• Producing Financial Statements Based on Actual Operations
• Valuation
• Operational Expertise/Continuity
• Financial Forensics
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• Sale of Businesses and Assets in Receivership

PRESENTERS: Beth Jo Zeitzer, Esq., ROI Properties; Stockton Banfield, Esq., Dyer & Ferris, LLC
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(Provide their name and email): $30
MCBA Paralegal & Public Lawyer Division members: $45/$60
MCBA student members: $15/$30
Non-members: $107.50/$122.50
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**FEB. 11 • 7:30 TO 9 A.M.**
(Breakfast included)
How to Effectively Utilize a Paralegal in Probate Administration and Estate Planning
SPONSORED BY: Estate Planning, Probate and Trust Section
1.5 CLE: credit hour available
Please join Phoebe Moffatt and her paralegal, Cami Barnella, for a seminar on how to effectively utilize the experience of your paralegal in your estate planning law practice. More specifically:
• Information gathering
• Form creations
• Drawlelines/calendaring
• Creation of checklists
• And more…

PRESENTERS: Phoebe Moffatt, Esq. and Cami Barnella, CP, Sacks Tierney, PA
COST: MCBA members: $67.50/$82.50
Bring your paralegal/legal assistant
(Provide their name and email): $30
MCBA EPP: Section Members: $60/$75 (use promo code PARA)
MCBA Paralegal & Public Lawyer Division members: $45/$60
MCBA student members: $15/$30
Non-members: $107.50/$122.50
LIMITED SEATING—RESERVE NOW!
Early bird pricing ends 2.10.16

**FEB. 16 • NOON TO 1 P.M.**
(Lunch included)
In-House Counsel Ethics
1 CLE: credit hour available
Please join Scott Brown for an ethics CLE specifically designed for in-house counsel. Topics will focus on:
• Who is the client?
• Protecting the privilege
• Filing false statements
• Duty of competence regarding e-discovery

PRESENTERS: Scott Brown, Esq., Partner, Lewis Roca Rothgaber
COST: MCBA members: $50/$65
Bring your paralegal/legal assistant
(Provide their name and email): $30
MCBA Paralegal & Public Lawyer Division members: $45/$60
MCBA student members: $15/$30
Non-members: $107.50/$122.50
LIMITED SEATING—RESERVE NOW!
Early bird pricing ends 2.10.16
Division members: $35/$50
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Non-members: $80/$95
LIMITED SEATING—RESERVE NOW!
Early bird pricing ends 2.16.16

FEB. 17  ▪ 11:30 A.M. TO 1 P.M.
(Lunch included)
Increasing Your Chances for Getting Paid—Protect Your Fee and Collect Your Fee or Work for Free
1.5 CLE credit hours available
This seminar will focus on how to manage an attorney-client relationship to decrease the risk of not getting paid and learning techniques to increase the chance of collection. Are you in a situation where you need to collect from a former client or are you tasked with collecting from a third-party source? This seminar will provide information that will assist in these situations.
PRESENTERS: Michael Zdancewicz, Esq., Windtheg & Zdancewicz, PLC
COST: MCBA members: $67.50/$82.50
Bring your paralegal/legal assistant (Please provide your name and email) $30
MCBA Paralegal & Public Lawyer Division members: $45/$60
MCBA student members: $15/$30
Non-members: $107.50/$122.50
LIMITED SEATING—RESERVE NOW!
Early bird pricing ends 2.10.16

FEB. 18  ▪ NOON TO 1:30 P.M.
The Rules of Evidence and Family Law
SPONSORED BY: MCBA Family Law Section
1.5 CLE credit hours available
Please join Russell Wenk and Charles Trullinger for a seminar on Rules of Evidence. This seminar will focus on:
- Relevance and reliability
- Hearsay refresher
- What rules still apply when not invoked
- Common objections
- What rules apply when invoked
- Practice tips
- Expert testimony in light of rule 702
- Trial objections
- Getting documents admitted under the rules
- Use of depo transcripts
- Recording phone calls
PRESENTERS: Russell Wenk, Esq., and Charles Trullinger, Esq., Trullinger and Wenk, PC
COST: MCBA members: $67.50/$82.50
Bring your paralegal/legal assistant (Please provide your name and email) $30
MCBA Family Law Section Members: $60/$75 (use promo code RULES)
MCBA Paralegal & Public Lawyer Division members: $45/$60
MCBA student members: $15/$30
Non-members: $107.50/$122.50
LIMITED SEATING—RESERVE NOW!
Early bird pricing ends 2.11.16

FEB. 23  ▪ NOON TO 2 P.M.
(Lunch included)
Life Care Planning and the Personal Injury Case
2 CLE credit hours available
Please join Lois Hawkins, RN, CLCP for a seminar focusing on life care planning and what you should consider when handling a personal injury case that may involve life care planning. More specifically:
- What type of cases to involve a Life Care Planner
- Benefits of using a Life Care Planner
- When to involve a Life Care Planner
- What to look for when searching for a Life Care Planner
- The role collateral resources and The Affordable Care Act play in a life care plan
- Life Care Planning methodology
- Standard of practice
PRESENTER: Lois Hawkins, RN, CLCP
COST: MCBA members: $85/$100
Bring your paralegal/legal assistant (Please provide your name and email) $30
MCBA Personal Injury Section Members: $60/$75 (use promo code LIFE)
MCBA Paralegal & Public Lawyer Division members: $55/$70
MCBA student members: $15/$30
Non-members: $135/$150
LIMITED SEATING—RESERVE NOW!
Early bird pricing ends 2.16.16

MARCH 9  ▪ NOON TO 1 P.M.
(Lunch included)
Responding to Government Information Requests—Recent Trends and Cases
1 CLE credit hour available
This seminar will discuss government information requests, the forms of the request and the potential responses, as well as general considerations in responding to subpoenas. We will also review recent Department of Justice guidance focusing on individual accountability, recent cases and Fifth Amendment issues for collective entities.
PRESENTERS: Joe Roth, Esq and Jana Sutton, Esq., Osborn, Malcolm & Smith
COST: MCBA members: $50/$65
Bring your paralegal/legal assistant (Please provide your name and email) $30
MCBA Criminal Law Section members: $45/$60 (use promo code INFO)
MCBA Paralegal & Public Lawyer Division members: $35/$50
MCBA student members: $15/$30
Non-members: $80/$95
LIMITED SEATING—RESERVE NOW!
Early bird pricing ends 3.4.16

MARCH 16  ▪ 11:30 A.M. TO 1 P.M.
(Lunch included)
15 Tips to Prevent Fraud
1.5 CLE credit hours available
This seminar will focus on how fraud happens, provide real-life examples and horror stories, and provide 15 simple tips that every business can use to prevent fraud.
PRESENTER: G. Ross Dietrich, CPA/CFF/ABV, CFE, CVA, President of Epps Forensic Consulting
COST: MCBA members: $67.50/$82.50
Bring your paralegal/legal assistant (Please provide your name and email) $30
MCBA Criminal Law Section members: $60/$75 (use promo code RULES)
MCBA Paralegal & Public Lawyer Division members: $45/$60
MCBA student members: $15/$30
Non-members: $107.50/$122.50
LIMITED SEATING—RESERVE NOW!
Early bird pricing ends 3.19.16

MARCH 20  ▪ NOON TO 1 P.M.
(Lunch included)
So You’re The Arbitrator
1 CLE credit hour available, including 3.5 ethics credits
The superior court appoints attorneys as arbitrators in qualifying civil cases, regardless of the appointed attorney’s background or experience. This seminar will provide a step-by-step guide for anyone in Maricopa County who gets appointed as an arbitrator pursuant to Arizona Rule of Civil Procedure 73. The seminar will provide a review of the process—from receipt of the notice of appointment, conducting the arbitration hearing and issuing the arbitration award. This program is ideal for new attorneys, first-time arbitrators and anyone who wants to
be well prepared and confident in tackling arbitra-
ion. Participants will also leave with appropriate forms and a checklist of key timeframes and deadlines. There will be a brief interactive segment to the seminar, providing insight on the decision-making processes that take place in arbitration.
PRESENTERS: Jennifer Cranston, Gallagher & Kennedy, PA; Nina Targovnik, Community Legal Services
COST: MCBA members: $50/$65
Bring your paralegal/legal assistant (Please provide your name and email) $30
MCBA Paralegal & Public Lawyer Division members: $35/$50
MCBA student members: $15/$30
Non-members: $80/$95
LIMITED SEATING—RESERVE NOW!
Early bird pricing ends 3.18.16

MARCH 24  ▪ 11:30 A.M. TO 1 P.M.
(Lunch included)
Economic Damages—A Foundational Approach
SPONSORED BY: MCBA Litigation Section
1.5 CLE credit hours available
Please join Joe Epps, Michael Haugen and David Sutherland for a seminar on the key to a successful “Daubert Challenge,” or defense of a challenge that is the foundation for the expert opinions. This session will focus on methods to analyze the foundation of the expert relating to different types of damages.
PRESENTERS: Joe Epps, CPA/CFF/ABV, CFE, CVA, President of Epps Forensic Consulting; Michael Haugen, CPA/CFF/CFE; David Sutherland, CPA/CFF, CFE, CLEA
COST: MCBA members: $67.50/$82.50
MCBA Litigation Section members: $60/$75 (use promo code ECO)
MCBA Paralegal & Public Lawyer Division members: $45/$60
MCBA student members: $15/$30
Non-members: $107.50/$122.50
LIMITED SEATING—RESERVE NOW!
Early bird pricing ends 3.19.16

MARCH 30  ▪ 11:30 A.M. TO 1 P.M.
(Lunch included)
The Telephone Consumer Protection Act (TCPA): Counseling Clients on Compliance and Litigating Claims
1.5 CLE credit hours available
There have been significant changes in the TCPA over the last several years, challenging the Federal Communications Commission’s policies. This program will discuss how businesses can comply with the law, the vulnerabilities that lead to claims, address the defenses, available insurance and case strategy.
PRESENTERS: Sarah Anchors, Esq. and John Grajzer, Esq., Quarles and Brady, LLP; Marshall Meyers, Esq. Weisberg & Meyers, LLC
COST: MCBA members: $67.50/$82.50
Bring your paralegal/legal assistant (Please provide your name and email) $30
MCBA Paralegal & Public Lawyer Division members: $45/$60
MCBA student members: $15/$30
Non-members: $107.50/$122.50
LIMITED SEATING—RESERVE NOW!
Early bird pricing ends 3.25.16

APRIL 12  ▪ 11:30 A.M. TO 1 P.M.
(Lunch included)
Third Party Litigation Financing: Legal, Ethical and Financial Impact on Corporations
SPONSORED BY: the Corporate Counsel Division
1.5 CLE credit hours available
Third party litigation financing 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 defend-
ants’ 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 fund-
ing
- 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, Esq., Gordon & Rees, LLP
COST: MCBA members: $67.50/$82.50
Bring your paralegal/legal assistant (Please provide your name and email) $30
MCBA Corporate Counsel Division members: $60/$75 (use promo code FINANCE)
MCBA Paralegal & Public Lawyer Division members: $45/$60
MCBA student members: $15/$30
Non-members: $107.50/$122.50
LIMITED SEATING—RESERVE NOW!
Early bird pricing ends 4.10.16

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Saturday, March 5, 2016
CAMELBACK INN RESORT & SPA, 5402 E. Lincoln Dr., Scottsdale, AZ 85253
COCKTAILS & SILENT AUCTION ■ 6:00 p.m.
DINNER AND DANCING ■ 7:30 p.m.
Black Tie Preferred

Beneficiary of the 2016 Ball
Maricopa County Bar Foundation

Reservations
Tables gets premium seating, recognition

EARLY BIRD REGISTRATION (ends Jan. 15) ■ Table of Ten: $1,450
Individual Ticket: $150 ■ Two Tickets (purchased at once): $275

REGULAR REGISTRATION ■ Table of Ten: $1,675
Individual: $175 ■ Two Tickets (purchased at once): $325

How to Register
Please register online at www.maricopabar.org or call Laurie Williams at (602) 682-8585

About the Maricopa County Bar Foundation
The Maricopa County Bar Foundation, a 501(c)(3) charitable organization, supports many causes and community-based programs, including:

The Legal Assistance to Women & Shelters (LAWS) program runs legal clinics for women and men in domestic violence situations and the homeless population by offering advice on family law and other civil legal issues.

The Maricopa County Justice Museum and Learning Center. The museum, located on the 6th floor of the historic Old Courthouse in downtown Phoenix, hosts exhibits on some of Arizona’s greatest legal cases, including cases that have changed the American justice system.

Justice Michael D. Ryan Scholarships are need-based scholarships offered to law students from diverse backgrounds at the ASU Sandra Day O’Connor College of Law, the U of A James E. Roger School of Law and the Arizona Summit Law School. The scholarships are designed to help students afford their dream of service to the community through law.
VLP ATTORNEY OF THE MONTH

Attorney recognized for 12 years of pro bono service

By Peggi Cornelius, VLP Programs Coordinator

She’d been aware of the Volunteer Lawyers Program (VLP), but attorney Lynne Adams says the ongoing and expanding commitment she’s made to VLP began while she was employed at Lewis and Roca in 2004. “I had some great role models there who were very committed to the VLP,” she says. “Their examples reminded me of the importance of doing pro bono work.” For her outstanding and diverse participation in VLP, Adams has been recognized as her organization’s Attorney of the Month.

For information about ways to help, please contact Pat Gerrich at VLP at (602) 254-4714 or pgerrich@clszs.org.

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