In what might be described as an anti-federal government fervor, the Arizona Legislature some years back enacted various laws designed to bring the state into the business of regulating illegal immigration. Some of those provisions have been thwarted, with courts looking for the most part that the area is reserved exclusively to the federal government. But the Ninth Circuit recently held that a couple of Arizona’s laws do not necessarily founder, despite the Arizona Legislature’s evident intent to enter into this field reserved to the feds. Puente Arizotans v. Arpaio, No. 15-15213, (9th Cir., May 2, 2016).

In 2007, the Legislature enacted H.B. 2779, the Legal Arizona Workers Act, one of whose provisions amended A.R.S. § 13-2009, the aggravated-identity-theft statute. The amendment prohibits using the identity of another person — real or fictitious — in an attempt to gain employment. The next year, it enacted H.B. 2745, the Employment of Unauthorized Aliens Act, which expanded A.R.S. § 13-2008, the general identity-theft statute, to reach employment-related identity theft. According to Judge Richard C. Tallman’s opinion, “These bills were passed, at least in part, in an effort to solve some of Arizona’s problems stemming from illegal immigration.” He explained that their titles and legislative history “show an intent on the part of Arizona legislators to prevent unauthorized aliens from coming to and remaining in the state.”

In what might be seen as an understatement, Tallman wrote that after their enactment, “Arizona” — read, Sheriff Joe Arpaio — “has been aggressively enforcing employment-related identity theft.” In response to the numerous prosecutions, the human rights group Puente Arizona and others sued various government officials seeking to enjoin enforcement of these provisions. It argued that the statutes violate the Supreme Clause of the United States Constitution because they are preempted by federal law, specifically IRAA — the Immigration Reform and Control Act.

Contending that IRAA comprehensively governs the area of unauthorized aliens’ employment, Puente argued that Arizona’s employment-related identity-theft laws are preempted on their face. The district court, having found that Puente was likely to succeed on the merits of its facial challenge to the statutes. Tallman set a high bar, noting that the court had to prove that the statutes were invalid in all conceivable circumstances. It was there that Puente’s arguments foundered. Not only were there conceivable circumstances in which the statutes were okay, the record established that they had actually been enforced in circumstances not implicating IRAA. As Tallman put it, “the identity theft laws are not facially preempted because they have obvious constitutional applications.”

The statutes are textually neutral, he noted, applying to persons other than immigrants. Both prohibit “any person” from stealing an identity in order to obtain employment. They thus “apply to unauthorized aliens, authorized aliens, and U.S. citizens alike.” He illustrated the point by referring to hypotheticals that had been raised at oral argument. “These See Arizona identity-theft statutes ... page 15
The MCBA website is at www.maricopabar.org and the Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, AZ 85004-1532. Letters and opinion pieces should be mailed to:

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Law Day at the MCBA
Law Day 2016 celebrated the 50th anniversary of Miranda v. Arizona. To commemorate this landmark case, a free panel discussion was held on May 4 at the MCBA building to discuss the role of the Miranda Warnings in our history and actual practice.

Prior articles in this publication have addressed Miranda v. Arizona, 384 U.S. 436 (1966), which officially turns 50 on June 12, 2016. On May 4, the MCBA presented a panel discussion elaborating on the impact of Miranda on present-day criminal proceedings in conjunction with Law Day 2016. Arizona Supreme Court Chief Justice Rebecca Berch (ret.) kicked off the evening, providing opening remarks and introducing our esteemed panel. Robert McWhirter (ASU Alumni Law Group) set the historical stage with a brief, yet entertaining, historical presentation reaching as far back as the Fourth Century A.D. addressing the religious, cultural and other pressures that led to the inclusion of the Fifth and Sixth Amendments into the Bill of Rights. McWhirter then explained a bit of the societal and political environment that influenced several important pre- and post-Miranda decisions before handing the presentation over to our panel moderator, Arizona Court of Appeals (Div. 1) Judge Patricia K. Norris.

Norris appropriately sprinkled levity into this serious topic, supported by panelists quips. Her questions provoked insightful discussion that centered on present efforts to ensure criminal suspects and defendants receive a fair criminal process.

I was encouraged to hear Jeffrey Williams from the Office of the Federal Public Defender concur with other panelists that certain law enforcement agencies have become increasingly transparent in their criminal investigation techniques. For example, Williams expressed that in his experience the FBI routinely records its interrogations, thereby enabling defenders, prosecutors, judges and, perhaps most importantly, juries the opportunity to observe the defendant during police questioning.

A Small Donation Makes a BigDifference
Arbitration Fee Donations Help
Partnering with the Maricopa County Superior Court, the Maricopa County Bar Foundation (MCBF) is once again encouraging attorneys assigned to arbitrate 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.”

THANK YOU FOR MAKING A DIFFERENCE!

Maricopa County Attorney Bill Montgomery explained that his office evaluates the totality of a criminal file, considering an admission as only one factor in determining whether to pursue a prosecution. By using this type of holistic approach, his office focuses on pursuing those cases that truly warrant a conviction.

Maricopa County Superior Court Judge Paul McMurdie, who spent several years on the criminal bench after his career as a criminal lawyer, offered perspectives on vulnerable defendants — such as juveniles — to demonstrate that the system is much improved but remains imperfect. These imperfections create a challenging landscape to decide whether ambiguous language properly invokes a protection right.

Assistant Chief for the City of Phoenix Police Department Michael Kurtenbach stressed the amount, quality and style of training given to city of Phoenix police officers, all of which is designed to help law enforcement find the truth during the course of a criminal investigation. He acknowledged the vast challenges our officers face during their inquiries, including language barriers and cultural hurdles, that prevent officers from receiving the benefit of a free flow of information from suspects and witnesses — all while facing the threat of physical harm that always looms when officers don their uniforms. He also nicely tied the concept of law enforcement transparency by briefly discussing, from his perspective, how officers evolved to their current general support of the use of body cameras.

Among many other takeaways, I recognize our panelists as models in our community. Their recognized role in criminal justice system continues to require improvements, but they all work tirelessly to ensure that they perform their specific role in a manner that protects citizens. The Miranda Warning is part of the fabric of our everyday existence, saturated nearly to the point of complete dilution through repetition in television shows and movies. Some perceive this overuse as a negative, preventing those who most need the Miranda Warning’s protection from comprehending how, when or whether to invoke. Through Law Day 2016 activities, your bar association is actively informing (or reminding) our community about the constitutional amendments protected by Miranda.

Personally, and on behalf of the Maricopa County Bar Association, I wish to express my thanks to the panelists and presenters who delivered a fantastic experience to the audience; and to those whose behind-the-scenes efforts (including, but not limited to: Cari Gerchick, Lauren Currie and the entire MCBA staff) made this wonderful event possible.

The MCBA continues to find ways to add value for its members and the community — and our Law Say 2016 panel is one of many examples. As you likely know, June 20 marks the end of the year for obtaining the Continuing Legal Education credits required for Arizona licensed attorneys. We have a variety of live and online CLE-eligible programs that you can find by visiting www.maricopabar.org.

In addition, please let us know how you’d like to become more involved, such as (for illustrative purposes only) proposing future CLE topics that are interesting to you. Without your feedback, we can only hope to achieve what you want your MCBA to be; with your participation, we build lawyers into leaders because our community needs us to lead.
Pro bono service comes in all forms

Serving the underserved is something I strive to do regularly. I do it because I believe having a law license is a great privilege, and that we all have a duty to give back. I do it because it feels good. I do it because it was a pillar of my law school. Perhaps, most importantly, I do it because there are so many deserving people in need of assistance they simply cannot afford.

The good news: There are numerous opportunities to serve the underserved! Here are a few of my favorites, many of them courtesy of the Volunteer Lawyers Program (VLP) — a joint project of Community Legal Services and the Maricopa County Bar Association:

1. The Financial Distress Clinic provides advice to individuals and families seeking counsel about debt management or defense/settlement of creditors’ claims, both in and out of court. Often times the individuals seeking guidance are judgment proof and living on strict and modest income from only Social Security; they merely need assistance in understanding their rights. VLP sponsors this clinic, which takes place on weekday evenings, typically at the Maricopa County Bar Association. Occasionally, a bankruptcy filing is imminent and the clinic gives the attorney and VLP a better opportunity to screen for those with the greatest need so they can be placed with a volunteer attorney. Experienced attorneys, including founding volunteers David Engelman, Esq., and Cody Jess, Esq., are present to ensure everything runs smoothly, but less experienced attorneys are also encouraged to participate. As an added bonus, this clinic is a great way to be a mentee for an evening and see what it’s all about.

2. The Self-Help Center at the U.S. Bankruptcy Court provides assistance to those who cannot afford to pay for legal services. Individuals can meet with knowledgeable bankruptcy attorneys for 20 minutes, free of charge. At the Self-Help Center, individuals can get legal advice and information as well as the forms they need to file. Before meeting with a volunteer attorney, individuals must watch an informative video with general information about bankruptcy and complete an online questionnaire. The center is also staffed with regular employees who cannot provide legal advice, but they can answer general questions about forms and procedures.

3. The Friend of the Court Reaffirmation Program allows lawyers with at least five years of experience in consumer bankruptcy law to mentor law students and serve with them in the U.S. Bankruptcy Court. The lawyer/student team helps unrepresented petitioners understand their options and address the court to assist the judge in understanding the petitioner’s current circumstances (see my article in the March 2016 issue of Maricopa Lawyer for more information about this program).

4. Another VLP program is the Family Law Assistance Project (FLAP), where family law attorneys with at least five years of practice in Arizona provide advice and brief services to unrepresented litigants in family law cases. The program offers educational events and 30-minute consultations free of charge to those who meet financial eligibility requirements (a $40 fee applies otherwise), but does not include document preparation services or representation in court.

Serving on nonprofit boards can be yet another way to serve the underserved. The MCBA’s Young Lawyers Division, in addition to numerous other volunteer programs and opportunities, sponsors a number of clinics and legal counseling opportunities for those with the greatest need so they can be placed with a Volunteer Attorney. Experienced attorneys, including founding volunteers David Engelman, Esq., and Cody Jess, Esq., are present to ensure everything runs smoothly, but less experienced attorneys are also encouraged to participate. As an added bonus, this clinic is a great way to be a mentee for an evening and see what it’s all about.

Lastly, a few random suggestions: St. Mary’s Food Bank (www.firstfoodbank.org) is always in need of volunteers to pack boxes of food for families in need. Circle the City (www.circlethecity.org) distributes Kindness Kits to homeless persons to raise awareness regarding medical services offered and for The Parsons Family Health Center. They accept items to include in the Kindness Kits, such as water bottles, granola bars, lip balms, toothbrushes, toothpaste, sunscreen, etc., or you can host a Kindness Kit making party and donate the completed kits. Finally, the Welcome to America Project (www.wtap.org) provides a broad array of volunteer options, including organizing storage units, sorting and packing boxes for delivery, and delivering furniture and household items to new refugee families.

Although I have discussed a number of volunteer opportunities above, I do recognize they are mostly focused on bankruptcy and other financial issues (because that is my area of practice). Rest assured, VLP and the YLD have numerous other programs and community services you can get involved with that are more aligned with your particular area of practice, including some that are not focused on any particular area of practice.

If you want more information about any of the above, or about the Young Lawyers Division, feel free to email krystal.ahart@bankruptcylegalcenteraz.com.
The dynamic of the ideal attorney-paralegal team

As a paralegal who has worked with the same attorney for over 17 years, I speak from experience when I tell you about the importance of the bond paralegals form with their attorneys. While this coupling can sometimes seem like a marriage, with both good and bad moments, it is important for paralegals and attorneys alike to understand what constitutes the ideal attorney-paralegal team and to strive for that connection in a work partnership.

First and foremost, there has to be chemistry between the attorney and paralegal. Without this, there is no foundation on which to build the relationship. They should be in sync stylistically and in how they approach things legally. Younger attorneys should look for more experienced paralegals who are familiar with Arizona law, the ins- and-outs of the court system, and the local rules. Attorneys with more experience can look for someone who can be trained and molded into their personal style.

Attorneys and paralegals should also be on the same page when it comes to the law. It is OK, however, for them to have differing opinions outside of their work relationship. Having a sense of humor adds to the bond and allows them to have a good rapport. They should be able to see the funny side of things that may happen in the course of their caseload.

While the partnership should be more positive than negative, it isn’t necessary for them to agree on everything. A paralegal shouldn’t be afraid to voice his or her opinion, especially if it will affect the outcome of a case. Attorneys should look for a paralegal who possesses those talents and strengths which they may lack as this will enhance the relationship. Communication is key and there should be a continuous dialogue between the two to maintain the relationship. A paralegal should be an extension of the supervising attorney when dealing with clients and opposing counsel. Paralegals should constantly remind (or, as my boss says, “nag”) their attorney about upcoming events and deadlines and get any questions answered early to avoid the stress of a last-minute project, which can undermine the relationship.

There should be a mutual respect between the two, with the paralegal supporting the attorney’s professional endeavors and achievements, and the attorney, in turn, supporting the paralegal’s desire to increase their knowledge of the law and join legal professional associations. Not every attorney-paralegal team will be this strong and harmonious, especially in the beginning. It can take years to develop such a bond and, often times, people move on to other firms before this process can solidify. But if you are lucky enough to find someone who wants to be with you for the long haul, whether you are the attorney or the paralegal in the relationship, treasure that bond and do what you can to preserve it as you will never find a better champion for your cause than your attorney or paralegal counterpart.

The Paralegal Division is conducting a summer backpack drive to benefit the Real Gift Foundation, which assists more than 18,000 homeless children attending schools throughout Maricopa County.

To these children, your donation is more than just a backpack — it’s their closet. Please feel free to get your family, friends, neighbors and co-workers to team up and donate to this worthy cause.

Backpacks will be collected at the Maricopa County Bar Association, located at 303 E. Palm Lane in Phoenix from June 1, 2016 to July 29, 2016.

If you have any questions or wish to schedule the pick-up of a large donation, please contact Tina Ziegler at either (602) 881-4902 or tina@hammerman-hultgren.com.

Food bank pack and sort event

St. Mary’s Food Bank is the world’s first food bank. Founded in 1967 by John van Hengel, it provided 250,000 meals during its opening year. Today, it serves that number of meals per day. On Saturday, April 23, the Paralegal Division jointly hosted a pack and sort event with the Young Lawyers Division at St. Mary’s Food Bank. We had over 20 volunteers join us as we processed 65 bins of cabbage and placed over 14,500 pieces of cabbage in boxes that will be given to approximately 1,650 families in need. Special thanks to Jennifer, Erica and Danny at St. Mary’s Food Bank, who worked with our group.

2016 PARALEGAL DIVISION CALENDAR

June 1-July 29
Summer Backpack Drive (MCBA office)

June 13
June Board Meeting (MCBA office)

June 21
Paralegal Happy Hour – Yard House (Westgate City Center)

October 14
17th Annual Arizona Paralegal Conference (Desert Willow Conference Center)
What is that public lawyer doing in our court?

Public lawyers on the benches
If you’ve appeared before a judge in the superior court in Maricopa County, the odds are pretty good that she or he worked for a public agency at some point in their career. Superior court judges have been: city, county, state and federal prosecutors; public defenders; executive and legislative branch staff; professors; law clerks; staff attorneys to public agencies and courts; public interest nonprofit lawyers; tribal prosecutors; administrative law judges; Judge Advocates General; and elected and appointed officials. Their practices in city, county, state and federal agencies include broad practice areas like criminal, civil, juvenile, elections and other legal specialties.

Not counting the dozens of commissioners and attorneys who practice in superior court as judges pro tem, 71 of the 97 judges on the court’s website list some form of public service legal experience in their work histories. Some judges worked exclusively in the public sector but the careers of most have also included the private sector before their appointment to the bench. This diversity of practice and experiences enhances the bench’s connection to the lawyers and litigants who interact with our court every day. For more information on judges, commissioners and their specific requirements or preferences in their divisions, see the court’s website at http://www.supercourt.maricopa.gov/JudicialBiographies/Index.asp.

Public lawyers in the trenches
Public lawyers were among the earliest adopters of e-filing and continue to have the highest volume of electronic filings in superior court. Eleven years ago in 2005, the clerk’s office launched its criminal e-filing pilot program in the DUI courts and in one trial division. The Maricopa County Attorney’s Office built an electronic filing interface that allowed them to submit documents directly to clerk staff for review and processing.

The county attorney’s first e-filing system required extensive building, programming, and testing for this new way of doing business. The superior court issued an administrative order establishing the pilot program, defining terminology, establishing the format for electronic signatures and authorizing the electronic image as the official record. Paper case files were still maintained in 2005 and e-filing-eligible cases had a green “e-file” stamp on the outside of the folder to alert customers that the case contained both paper and electronic records. In 2007, the Arizona Supreme Court designated the digital image of records as the official record of the superior court in Maricopa County, effective retroactively to cases that were scanned between 1/1/2002 and 1/1/2007.

In calendar year 2015, the county attorney’s office e-filed more than 87,000 criminal case documents. The clerk’s office and superior court combined to e-file more than 150,000 administrative notices, orders and process in criminal cases. The repository of electronic court records now contains more than 52 million documents across all case types.

At a time when the clerk’s office was in danger of running out of space to store paper, public lawyers were on the front lines of creating and coordinating the systems, processes and authority that would allow the digital abilities in place today. Public lawyers practiced, tested and adapted to new technology in the early days. Some of those lawyers were later appointed to the bench, where they inspired practitioners and judges alike to adopt the new frontier of legal practice. So, regarding the title of this article, the question isn’t what are public lawyers doing in the courts — it’s what haven’t they done? ■

Some directions on directions
Occasionally, I run across a grammar or style issue when I least expect it. I was recently writing an article about an attorney who had moved south from Alaska. And I was stumped. Should I capitalize the word “south”? Is she now a “southwesterner” or a “Southwesterner”? As an environmental law practitioner, I wrote about directions all the time. But now I was questioning whether I was really directionless and just capitalizing terms when they looked right to me. Following are the most common rules about capitalizing the words north, east, south and west.

1. When using the word as a direction, keep the word lowercase. This rule means my capitalization of the word “south” in the second sentence above is correct (where).

2. When using the word to indicate a region or area, capitalize the word. One test to check if the usage is a region, try putting the word “the” in front of the direction word: the Southwest.

3. When using the word to describe a person, there is no uniform rule. Some style guides say to capitalize the word, while others say to leave it lowercase. My advice is to be consistent throughout the document. I have also found it helpful to know what my audience expects by first seeing if that audience follows a certain style manual. If not, I try to read prior documents, if available, and take their lead on how to capitalize words.

There are two other related capitalization rules that are worth mentioning here too. First, common region names are usually capitalized: Valley of the Sun, Twin Cities and Sunshine State. Second, season names (spring, summer, fall and autumn) are used in lowercase unless those words are used as part of a proper noun, such as the Rio Summer Olympics. The trick is to remember that if the word is just an adjective, but not part of a proper noun, to keep the word lowercase: summer sports, spring break and fall schedule. ■

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LAWYER LIABILITY AND ETHICS

Three quick reminders

By Russell Yurk

This month’s column focuses on a few issues on which I recently advised other lawyers. It made me realize that it may be time for a few quick reminders regarding clients, engagement letters and related conflicts issues. The practice of law is busy and sometimes lawyers lose sight of these ethics issues. That’s why law firm policies and procedures are so important.

Identifying the client

My columns repeatedly discuss this issue because it is so fundamental and relates to almost every ethical dilemma. The point that I want to make this month is to make sure that you properly identify your clients. A prospective client (ER 1.18) needs to understand that you cannot engage in an attorney-client representation before clearing conflicts, but that information you learn from them generally is confidential (except for disclosures allowed by ERs 1.6 and 1.9). Once you form an actual attorney-client relationship, it is vital that you provide an engagement letter pursuant to ER 1.5. Remember, the scope of representation and the basis/rate of fees must be communicated to the client in writing. If you decide to not represent a potential or prospective client, you should send a declination letter. Finally, when a representation ends, you should send a letter advising the client that you no longer represent them and remind them about your file-retention policies.

Third-party payers (insurance defense)

A conflict of interest exists every time that they have different interests or objectives of their clients. Will they testify differently on material facts? Do they have different interests or objectives of representation? Second, remember that joint representations require both clients’ informed consent. Obviously, you cannot represent any client that does not consent to the jointly represented clients. You cannot waive the attorney-client privilege or confidentiality between the clients. Fifth, if a conflict develops during the representation, you must receive the client’s authorization to any settlement (see ER 1.2) regardless of any contract between the client and the third-party payer. Finally, remember to send an engagement letter that includes discussion of the third-party payer relationship and will verify the client’s informed consent, to the actual client on every case. It’s required.

Multiple-client (or joint) representations

Multiple-client (or joint) representations raise significant conflict of interest issues that the lawyer must fully analyze and then discuss with each client before finalizing the representation. See ER 1.7 cmts. 28-32. I discussed this topic in a two-part article in fall 2014, but I want to reiterate seven of the most important points again. First, you need to consider potential conflicts between the clients. Will they testify differently on material facts? Do they have different interests or objectives of representation? Second, remember that jointly-represented clients are both clients. That may sound obvious, but oftentimes lawyers fall into the trap of favoring one client over the other if one client is a long-term client or is paying the legal fees. Third, there is no privilege or confidentiality between the clients. You have equal duties of communication to all jointly represented clients. Fourth, each client can waive the attorney-client privilege or confidentiality as to everyone. Fifth, if a conflict develops during the representation, you may be required to withdraw as to all clients, even if one of the clients is a long-term client of yours. Sixth, aggregate settlements involving multiple clients require the informed consent of each client, in a writing signed by the client. Client differences regarding settlement offers can lead to difficulties for the lawyer. Finally, these issues must be discussed with each client in enough detail to allow them to give informed consent to the joint representation before the representation begins. I strongly recommend that you include most of these issues (and the client’s informed consent) in your engagement letters to the jointly represented clients. You cannot represent a client that does not consent to the joint representation.

CLE review: The Rules of Evidence and Family Law

By Jason A. Houston

The Feb. 18 CLE titled “The Rules of Evidence and Family Law” was presented by Charles Trulinger and Russell Wenk and focused on significant facets of rules of evidence and important recent changes in family law practice. Among the broader topics covered:

- Relevance and reliability. Testimony and evidence have to be relevant. All relevant evidence is admissible, however, the court must exclude any evidence whose probative value is outweighed by unfair prejudice, confusion, delay, lack of reliability or failure to timely disclose.
- Expert testimony. New Rules 702-706 went into effect in 2012 and provide tighter oversight with respect to testimony from expert witnesses. The biggest change is the requirement that the expert testify as to the principles and technologies used to arrive at their opinion, and that those are recognized in their fields as reliable.
- Common objections. Typically, objections at depositions are limited to form, foundation and privilege. There are other forms of objections, but they are limited to specialty cases, usually medical malpractice.
- Getting documents admitted under the rules. Timely disclose all documents you intend to offer at trial. If you bring in new documents at the last minute, don’t count on them being admitted. Consider all possible objections well in advance of trial, so that you can either reach an agreement with opposing counsel or prepare for objections ahead of time. Asking for a pre-trial ruling on the admissibility of any documents that involve complex issues will give the judge time to consider those matters prior to trial.
- Use of deposition transcripts. At a trial or hearing, any or all of a deposition may be used against any party who was present or represented at the taking of the deposition, and who had an opportunity to develop the testimony by direct, cross or redirect examination. Once a deposition is deemed admissible, specific portions may still be found inadmissible on grounds applied as though the witness were present and testifying. The transcript itself is not admitted, but testimony from the transcript is admitted by reading the non-objectionable portions into the record. The opposing party may designate additional portions that ought to be considered together with the parts introduced.
- Applicable rules of family law procedure. Notwithstanding the procedures outlined above, family law is also conditionally governed by the Arizona Rules of Civil Procedure. You have equal duties of communication with the opposing party who was present at the deposition, and who had an opportunity to develop the testimony by direct, cross or redirect examination. Once a deposition is deemed admissible, specific portions may still be found inadmissible on grounds applied as though the witness were present and testifying. The transcript itself is not admitted, but testimony from the transcript is admitted by reading the non-objectionable portions into the record. The opposing party may designate additional portions that ought to be considered together with the parts introduced.

A warm thank you to the MCBA Family Law Section and to the presenters for this highly informative seminar.

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.
Throughout its history, Maricopa County has been blessed with extraordinary lawyers dedicated to the improvement of the legal profession and the lives of its citizens. Many of these attorneys have also served in leadership roles in the Maricopa County Bar Association.

The MCBA created the Maricopa County Bar Hall of Fame in 2008 to recognize and thank in some small way these true giants of our profession. To date, 125 attorneys have been inducted. In 2016, we again seek nominations to represent the broad diversity of the legal profession in Maricopa County.

**HALL OF FAME CRITERIA**

The Maricopa County Bar Hall of Fame will recognize Maricopa County attorneys who have **practiced for at least 10 years** and who have:

- Played prominent and important roles that have had an impact on the history and development of our local bar and the legal profession;
- Made significant or unique contributions to the law or the administration of justice; and/or
- Demonstrated significant leadership, advocacy and accomplishments in service to the community or the profession.

You are invited to re-submit a nominee from a previous year with complete information as noted below.

**SUBMISSION REQUIREMENTS**

- Full name of nominee, including date of birth (and death, if applicable)
- A brief statement or summary of nominee’s significant qualifications and achievements and specifically how they meet the Hall of Fame Criteria. (About 100 words or less.)
- A detailed biographical description of nominee. The committee relies on the information supplied by the nominator(s), so comprehensive information is important.
- A photograph (preferably in color), submitted in electronic jpeg format as an attachment to email, if available.

**WHERE TO SUBMIT NOMINATIONS**

Please submit your nomination by mail or email to the address below. Complete information is also available on the website at www.maricopabar.org/halloffame.

Deadline for submission is **July 12, 2016**.

Submit nomination forms to: Laurie Williams, Hall of Fame, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, AZ 85004-1532.

Phone: (602) 257-4200 Email: lwilliams@maricopabar.org

Incomplete applications will not be considered.

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In order for nomination to be considered, this form must be filled out.

**NAME OF NOMINEE**

(include birth date and date of death, if applicable):

1. Please attach a detailed biographical description of nominee
2. Please write a brief statement or summary of nominee’s significant qualifications and achievements (100 words or less) here, or attach it to this form as a separate document:

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**FIRM/EMPLOYER**

Address: ______________ State: ______________ Zip: ______________

Telephone: ______________ E-mail: ______________

**DEADLINE FOR SUBMISSION IS JULY 12, 2016**
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.

Advertise in the Maricopa Lawyer and reach more than 3,500 attorneys and other legal professionals. Call (602) 257-4200.

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Advertise in the Maricopa Lawyer and reach more than 3,500 attorneys and other legal professionals. Call (602) 257-4200.
What do you like most about being in the legal field?

In the area of divorce and family law, one has to enjoy working with clients on a very personal level. On many occasions it can be very rewarding, especially when you have helped your client obtain a result that is in the best interests of the children, and/or obtain a result that will help your client make the transition to the next phase of their life. If a very professional attorney is on the other side, it can be very rewarding to work together toward a mutually beneficial result. The most enjoyable part of the job is when I can help settle a case without substantial litigation.

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

I would probably have completed school in international business, and hopefully would have started a business that involved substantial travel, living in various countries and getting to know many different cultures. My most recent vacations have included a 10-day scuba trip off the Galapagos Islands and to Western Europe. This summer will include Argentina, where my daughter will be attending the university for a semester.

What’s the craziest job you’ve had?

Before college, I can’t even begin to count the odd jobs that I had. Hoeing onions in the fields, working in a cement factory, a trailer factory, gas station attendant, planting trees for BLM, helping on the ranch, changing irrigation pipes, washing dishes … the list goes on. My father did not believe in summer vacations. The craziest job, and probably the most rewarding, was working with emotionally disturbed adolescents while I was in college in a group-home setting and as a part-time special-education teacher for the children at their school. The kids I worked with were dealing with a lot of difficult issues and could go through dramatic behavioral changes in an instant. The emotions were so raw, and the children were so genuine. There is no end to the stories that came from that job.

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

I would pick one of the characters from “The Breakfast Club.” I have always wanted to leave the law at the office and not let the job identify me. The characters from the movie were in the process of learning that they could break away from their environment, sport, clique, etc., and just be themselves.

Community Legal Services is a non-profit Arizona law firm that strives to assure fairness in the justice system no matter how much money you have but provides direct services to individuals falling below 125% of the federal poverty level. We were incorporated in 1952 as a legal aid program organized to promote “equal access to justice for all.”

Community Legal Services is committed to eliminating poverty-based inequities in the civil justice system by providing high-quality legal advice, advocacy and assistance to low-income Arizonans.
Judge Klein honored with James A. Walsh Outstanding Jurist award

The Board of Governors for the State Bar of Arizona selected Probate Court Presiding Judge Andrew Klein as the recipient of the 2016 James A. Walsh Outstanding Jurist Award.

Each year, the award is presented to a judge whose career exemplifies the highest standards of judicial conduct for integrity and independence; who is knowledgeable of the law and faithful to it; who is unswayed by partisan interests, public clamor or fear of criticism; who is patient, dignified and courteous to all who appear before him or her; and who endeavors to improve the administration of justice and public understanding of, and respect for, the role of law in society.

He will accept the award at the State Bar’s Annual Luncheon on June 17.

Klein was appointed to the bench in 2001. He has presided over many calendars, including juvenile, criminal, civil, family and probate court.

Meet the Judges reception

The Estate Planning, Probate and Trust section hosted an annual reception on April 14 at the MCBA building. Attendees first gathered to hear from judicial officers from the probate/mental health department of the Maricopa County Superior Court before mingling at the reception.

Panelists included judicial officers from the probate/mental health department of the Maricopa County Superior Court.
Unlocking venture capital and private equity in Arizona

By Sarah Strunk and Aaron Cain

In March, Gov. Ducey signed SB 1005 into law, enabling greater availability of venture capital and other private equity in Arizona. Private equity and venture capital provide crucial sources of financing for businesses in Arizona, fueling economic growth, increasing the tax base and producing the needed jobs for our growing state. For many years now, the absence of significant venture capital and private equity in Arizona has frustrated the local business community and persisted despite various efforts by political leaders, industry groups and other stakeholders.

The newly signed law did not involve any expenditure of state funds or allocation of tax credits. Rather, it simply removed an outdated regulatory barrier that has generally made it prohibitively burdensome for venture capital funds and many other private equity funds to be located in Arizona.

The applicable regulatory regime is complex and not well understood by many within the state. In very simple terms, Arizona’s regulatory regime subjected the managers of venture capital funds and various other private equity funds to the same licensing requirements applicable to the stockbrokers who buy and sell stock for clients on public exchanges like the New York Stock Exchange. For example, to obtain the requisite licensing to operate in Arizona, the manager of a venture capital fund was required to pass a broad-ranging written examination requirement (i.e. the Series 63 exam or the Series 66 and Series 65 exams), complete a written application, provide financial reports, be fingerprinted and pay annual licensing fees. Other states with thriving venture capital industries, even ones generally considered to have burdensome regulatory regimes subjected the managers of venture capital funds and many other private equity funds to the same licensing requirements, investor eligibility requirements, etc. when raising money for their funds. However, SB 1005 also includes a special feature not found in the NASAA model rule, allowing the investors in certain funds with a small number of sophisticated investors to annually opt out of a potentially costly requirement to engage an outside auditor that might otherwise apply.

To be clear, the enactment of SB 1005 will not itself cause venture capital or private equity funds to form in, or come to, Arizona. However, it constitutes a critical step by removing an impediment that we know has previously prevented various venture capital funds from coming to Arizona, and other potential local funds from forming here. This type of legislative action does not generally make headlines, but reflects the type of common-sense governance our state needs.

Our legislature, SB 1005’s sponsor (Sen. David Farnsworth) and the governor should be commended for taking this important step forward.

Sarah Strunk is the chair of the board of directors of Fenimore Craig. She practices in the area of business and finance law, including an emphasis on board governance and fiduciary duties of officers and directors, merger and acquisitions, securities compliance and public-private partnerships. Aaron Cain’s expertise spans a wide range of corporate transactions, including corporate start-ups, venture capital transactions, commercial transactions, corporate governance, strategic acquisitions, investment and partnerships, and large-scale business transactions.

The Maricopa Lawyer invites members to send news of moves, promotions, honors and special events to post in this space. Photos are welcome. Send your news to mhashkins@maricopabar.org.

HONORS & AWARDS

Chief Presiding Judge of the Phoenix Municipal Court Roxanne K. Song Ong (retired) was honored with the 2016 Public Service Award by the UA Law College Association and the UA Alumni Association at the 42nd Annual LCA Appreciation Dinner. Song Ong also received the 2015 National Chinese American Citizens Alliance “Spirit of America Award” for demonstrating exemplary leadership and accomplishment as a unique role model for citizens of the United States, especially Chinese Americans. Song Ong was also the 2015 recipient of the Arizona Asian Chamber of Commerce “Wing F. Ong Legacy Award” for lifetime achievement.

BULLETIN BOARD POLICY

If you are an MCBA member and you’ve moved, been promoted, hired an associate, taken on a partner, or received a promotion or award, we’d like to hear from you. Talks, speeches (unless they are of national stature), CLE presentations and political announcements are not accepted. In addition, the Maricopa Lawyer will not print notices of honors determined by other publications (e.g., Super Lawyer, Best Lawyers, etc.). Notices are printed at no cost, must be submitted in writing and are subject to editing. Items are printed as space is available. News releases regarding lawyers who are not MCBA members in good standing will not be printed.

Speed networking with family law judges

On April 13, Family Law section members gathered at the MCBA building for a fun and casual way to get to know family law judges better. A big thank you to event sponsor ProperComm!

Judge Howard Sukenic (far right) at a speed networking table.

Judge Howard Sukenic (far right) at a speed networking table.

Oksana Holder, Annette Cox, Amy Duenas and Kellie Wells.

The Scottsdale Bar Association recently elected new officers and directors for the 2016-2017 year. Officers are Ryan Lorenz, President; Lance Davidson, Vice President; Perry Goorman, Secretary; Charles Berry, Treasurer. Directors are: Donald Alvarez, Gail Barsky, Dean Dinner, Carolyn Goldman, Steve Gutrell, Monica Lindstrom, Cody Hayes, Denise Blommel, Coni Rae Good, Steve Kupiszewski, Callie P. Maxwell, James Padish, Paige Martin and Kevin Estevez (Immediate Past-President). The Scottsdale Bar Association hosts CLE luncheons on the second Tuesday of each month at Gainey Ranch Golf Club and features notable and interesting speakers. Check us out at Scottsdalebar.com.

ANNOUNCEMENTS

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THREE WAYS TO REGISTER

ONLINE
Register online at: www.maricopabar.org Click on "CLE/Events" at the top menu and then "CLE Calendar."

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

PHONE
Call Kelly at (602) 682-8588

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

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

LATE REGISTRATION: Early Bird registration ends five days prior to the program date. Late registration is an additional $15.

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

CANCELLATIONS/REFUNDS: Refunds, less a $10 fee, will be issued only if the MCBA receives your cancellation, in writing by mail, fax at (602) 682-8601, or email Kelly at kbraniger@maricopabar.org at least two business days prior to the program.

NO SHOWS: If you register and pay, but could not attend, you may request that materials be sent to you, free of charge (allow 3-4 weeks). If audio media is available, registrations may be converted to a self-study package for an additional $15 change.

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 post-annual CLE requirement for the State Bar of Arizona, including the indicated hours of professional responsibility (ethics), if applicable.

JUNE 3 • NOON TO 3 P.M.
(Lunch included)

Real World Ethics
3 CLE: credit hours available, including 3 ethics credits
This seminar will cover topics relative to:
• Ethical Rules regarding communication, confidentiality, conflicts of interest, contact with represented and unrepresented parties, withdrawal, and how to navigate the court and professional misconduct
• Appearance of impropriety regarding conflict of interest issues
• Ex Parte Communications
• Select provisions of the Judicial Ethical Canons and Ethics Code for Judicial Employees
• Social media issues
• Selected ethics advisory opinions for attorneys and judges

PRESENTERS: Anna Unterberger, Esq. and Professor Keith Swisher, Esq.

COST:
• MCBA members: $135/$150
• Bring your paralegal/legal assistant (Please provide their name and email): $50
• MCBA Paralegal & Public Lawyer Division members: $90/$105
• MCBA student members: $15/$30
• Non-members: $200/$225

LIMITED SEATING—RESERVE NOW!
Early bird pricing ends 5/27/16.

JUNE 9 • 7:30 a.m. TO 10:30 A.M.
(Breakfast included)
Ethical Issues in Your Estate Planning, Probate and Trust Practice
2.5 CLE: credit hours available
Please join Lynda Shely and Russell Yark for an ethics seminar on:
• Conflicts of interest
• Who is the client
• Attorney-client privilege and confidentiality, including fiduciary and testamentary exceptions
• Dealing with clients with diminished capacity
• Special issues in representing the fiduciary client
• Duties to report abuse, neglect and exploitation
• Recent ethics developments, and more!

PRESENTERS: Lynda Shely, The Shely Firm, PC; Russell Yark, Jennings, Haug and Cunningham

COST:
• MCBA members: $125/$150
• Bring your paralegal/legal assistant (Please provide their name and email): $50
• MCBA Paralegal & Public Lawyer Division members: $90/$105
• MCBA student members: $15/$30
• Non-members: $210/$235

LIMITED SEATING—RESERVE NOW!
Early bird pricing ends 5/20/16.

JUNE 21 • 1:30 TO 4:30 P.M.
Department of Child Safety: Law v. Reality - What Should You Really Do?

2.5 CLE: credit hours available, including 1 hour of ethics
This seminar will cover:
• Ethics: Avoiding pitfalls that may affect your clients for the next 25 years.
• The DCS Investigation: Demystifying the DCS investigation process.
• Discovery: How to obtain DCS records and obtain testimony of DCS caseworkers.
• Procedure: Learn the basics of the juvenile court functions, email, checking in, obtaining docket information.
• Accountability: How DCS is accountable and what do when you can’t.

PRESENTERS: Jennifer L. Kupiszewski; Daniel S. Riley; Lynda R. Vescio

COST:
• MCBA members: $115/$130
• Bring your paralegal/legal assistant (Please provide their name and email): $50
• MCBA Family Law Section members: $102.50/$117.50 (use promo code DCS)
• MCBA Paralegal & Public Lawyer Division members: $77.50/$92.50
• MCBA student members: $15/$30
• Non-members: $177.50/$192.50

LIMITED SEATING—RESERVE NOW!
Early bird pricing ends 6/15/16.

AUGUST 24 • NOON TO 1:30 P.M.
(Lunch included)
Help Me, Help You!

This CLE will provide lawyers and their office staff insight into the things we do that tend to drive judges and their court staff crazy! This CLE is geared to help create a better understanding of how to interact with judges and their court staff in order to streamline the litigation process and to create a more pleasant relationship between the bar and the bench.

PRESENTERS: Diane Hilty, Judge Poll’s Judicial Assistant; Shelby Demassari, Judge Green’s Judicial Assistant (formerly Judge Rottan’s Judicial Assistant); and Eileen Clevenger, Judge Jennifer Ryan-Touhoul’s Judicial Assistant (formerly Judge Padilla’s Judicial Assistant)

COST:
• MCBA members: $75/$90
• Bring your paralegal/legal assistant (Please provide their name and email): $30/$45
• MCBA Family Law Section members: $67.50/$82.50
• MCBA Paralegal & Public Lawyer Division members: $52.50/$67.50
• MCBA student members: $15/$30
• Non-members: $112.50/$127.50

LIMITED SEATING—RESERVE NOW!
Early bird pricing ends 8/17/16.

Trial Tuesdays Luncheon Series
Sponsored by the Litigation Section
Each session offers 1.5 CLE credit hours

PROGRAM
11:30 a.m. to 1 p.m. (Lunch provided)
LOCATION
303 E. Palm Lane, Phoenix, AZ 85004

SESSION III • JUNE 28
Opening/Closing Statements
This practical session will focus on the first and last opportunities to persuade a jury to follow your path out of the "jungle" that is a trial — opening and closing statements. Join us as we learn to practice these techniques with seasoned litigators who have successfully led several juries out of the jungle.

PRESENTERS: James Burr Shields at Milligan Lawless, PC; Susie Ingold from Burch & Czaiczko, PA

INDIVIDUAL SESSION PRICES:
MCBA Litigation Section members
Non-members: $112.50/$127.50

MCBA Family Law Section members: $67.50/$82.50
Non-members: $107.50/$122.50

MCBA Student members: $15/$30

MCBA Paralegal & Public Lawyer Division members: $52.50/$67.50

MCBA Student members: $15/$30

MCBA Paralegal & Public Lawyer Division members: $77.50/$92.50

MCBA student members: $15/$30

MCBA Paralegal & Public Lawyer Division members: $112.50/$127.50

MCBA members: $135/$150

Early bird pricing effective until 5 days prior to the series or session date.

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

Most CLEs are available for simultaneous webcast through West LegalEd or later viewing through the MCBA CLE Self-Study Page.
Sanctions for sexist remarks
Don’t overlook obnoxious, demeaning behavior

By Averil Budge Rothrock

In 1952, when no private firm would interview top Stanford Law graduate San-
dray Day O’Connor for an attorney posi-
tion, few lawyers might have imagined
use of the professional rules to sanction
an attorney for a display of sexism or gen-
bias. Today, thankfully, model rules are
serving such a purpose.

And these rules should be used by attor-
eys and judges to stop gender-focused
criticism of our profession.

In a Puerto Rican conference room in
2015, a full complement of 16 attorneys
was on hand to depose an employee of
a class action lawsuit. As anyone familiar
with the underrepresen-
tation of women in what the profession
might guess, there were 12 male attorneys
and only 4 female. The deponent paused
to make some calculations in response
to a question. One male attorney appeared
to question whether the air conditioning
was on hand to depose an employee of
the professional rules to sanction
attorneys contributes to the underrepresen-
tation of women in lead trial attorney roles.
He concluded that behavior like Mr. Salas’s
is “palpably adverse to the goals of justice
and the legal profession.” Judge Besosa
thus concluded that the behavior violated
the rules of professional conduct raised by
Ms. Monserrate. This is all very true. It also
points to what we are all know: to make
the remark was wrong.

Judge Besosa sanctioned Mr. Salas, re-
quiring him to pay the attorney fees for
holding the sanctions to impose,
and to complete a continuing legal education
course on professionalism. The court
found as mitigating circumstances that the
incident was isolated, that Mr. Salas imme-
diately and subsequently apologized and
acknowledged on the record that his com-
ment was improper. Mr. Salas demon-
strated regret to the Court.

In weighing what sanction to impose,
the judge considered other author-
ities which sanctions were imposed for sexist or
demeaning behavior on the basis of
gender, including the following.


In this 1992 trial court decision from
New York, an attorney was sanctioned for
making repeated remarks during a deposi-
tion in front of numerous attorneys, the
witness, and the court reporter, including:
"I don’t have to talk to you, little lady"; “Tell
that little mouse over there to pipe down";
“What do you know, young girl"; “Be quiet,
little girl"; “Go away, little girl." The com-
ments were accompanied by disparaging gestures “dismissively flicking his fingers
and waving a back hand….” The sanction-
ing court said, “It takes no great scrutiny
to determine that the remarks made … are
improper.” (Id. at 185). The court described
the words as “a paradigm of rudeness,”
reasoning that the words “condescend, dis-
parage, and degrade a colleague upon the
basis that she is female.” (Id. at 184).

In concluding that the remarks were
sanctionable, the court told told told told that
"condemnation of such improper remarks
springs from the growing recognition of the
seriousness of gender bias and that bias of
any kind cannot be permitted to find a safe
haven in the practice of law in violation of the
ing rights of the courts and the judiciary." (Id.
at 185). The court cited many articles and
studies demonstrating that gender bias is a
persuasive problem in the legal profession,
and that such discriminatory conduct is im-
proper. The court relied on a standard of "a
reasonable attorney" by which to measure
the conduct, and concluded that given the
rules applicable to professional conduct,
the conduct was sanctionable because “any
reasonable attorney would be held to be
well aware of the need for civility, to avoid
abusive and discriminatory conduct, to
conduct proper depositions, to eschew ob-
structionist tactics, and to generally abide
by the norms of accepted practice.”

These standards provide a model for
court considering sanctions for disparag-
ning remarks based on gender, or any other
category of bias defined by Washington’s
professional rules.

**Mullaney v. Aude** (126 Md. App. 639, 644-45, 659, 730
A.2d 749 (1999))

The salient parts of this disturbing read
include an attorney disparaging the plaint-
iff, who was suing her former boyfriend
for inflicting her with herpes, when she
left her deposition to retrieve a document
from her lawyer. Defendant’s attorney
(Harris) remarked that she was going to
meet “another boyfriend” at the car. Both
of plaintiff’s counsel (Mr. Bernstein and
Ms. Green) told him comment was in
poor taste and asked him to refrain from
further derogatory comments. The court,
in an exchange where the defendant’s attor-
ney found a new target in plaintiff’s female
counsel, as follows at 644-45:

Mr. Mullaney (the defendant): It’s going to
be a fun trial.

Mr. Harris: It must have been in poor
taste if Miss Green says it was in poor
taste. It must have really been in poor
taste.

Ms. Green: You got a problem with me?

Mr. Harris: No, I don’t have any prob-
lem with you, babe.

Ms. Green: Babe? You called me babe?

What generation are you from?

Mr. Harris: At least I didn’t call you
bimbo.

Ms. Lipitz (counsel to Mr. Harris): Cut it
out.

Ms. Green: The committee will enjoy
hearing about that.

Mr. Bernstein: Alan, you ought to stay out
do the gutter.

On appeal of the sanctions imposed
by the trial court for the deposition con-
duct, the appellate court concluded it
“unequivocally rejects” the sanctioned
attorney’s assertion that the behavior was
not sexist or disruptive to the discovery
process. The court declared that underm-
ing attorneys through use of gender is an
impossible problem strategy sometimes termed
“sexual tactical war.”

As seen in the Puerto Rico case, the
attorney in Mullaney attempted to defend his
behavior with an ad hoc excuse. Mr. Harris
argued that she was not derogatory but a
“sign of approbation” in reference to
Babe Ruth and Babe Didrikson, a talent-
female athlete. Attorneys willing to demon-
strate poor judgment and unrestrained sex-
ism during a deposition where no refutes
of authority is present appear to become
less cavalier when their behavior is docu-
mented in court files and censure or sanc-
tion hangs above them. Fortunately for the
profession, in these cases their fabricated
justifications landed nowhere. Addition-
ally, in this case the offending attorney’s
Retired public defender finds new passion in tenant law

By Peggi Cornelius, VLP Programs Coordinator

Attorney Peggy LeMoine remarks on the likelihood that her mother would be proud of the pro bono work she’s chosen to do since becoming a member of the Volunteer Lawyers Program (VLP) a year ago.

“My mother was a Chicago Cubs fan; she always rooted for the underdog,” she says. “Like my grandmother, who gave offerings from her pantry to neighbors in need, my mother tried to help people.”

Clearly, LeMoine emulates the women who raised her. For the compassionate counsel and outstanding advocacy LeMoine provides to troubled tenants, she has been named VLP’s “Attorney of the Month.”

Every Monday, LeMoine begins her week with a 9 a.m. tenant advice clinic at VLP. Tenants come to her with problems involving unhabitable conditions such as roach, mice or bed bug infestations. Unlawful lockouts and conversion of property are frequent problems, too. Evictions subsequent to a tenant’s calls for police protection during instances of domestic violence are particularly egregious.

In some cases, the circumstances may have no legal remedy. Regardless, LeMoine finds it gratifying to educate tenants about their rights and responsibilities under Arizona law. She says, “As a retired public defender, civil law is a new area for me. I enjoy learning at the same time as I’m providing legal advice and offering tenants the knowledge they need to request repairs, resolve disputes, avoid eviction or obtain deposit refunds.”

Within a week of her orientation as a new volunteer, LeMoine agreed to appear in court on behalf of a tenant whose physical disabilities made it difficult for her to appear in person. LeMoine collaborated with other attorneys to prepare for the forcible entry and detainer proceeding and used her years of experience to obtain concessions, which avoided a judgment against the client and provided additional time for relocation.

Shortly thereafter, a legal aid organization in Colorado referred a tenant for assistance with a collection matter stemming from a previous lease agreement in Arizona. Debt to a former landlord not only creates financial hardship for a tenant of limited income, but there was evidence for the tenant living in Colorado to dispute the debt in Arizona.

LeMoine was born in New York and raised in Connecticut. She did not complete the college education she began at the University of Connecticut — nor did she resume her formal education or attend law school until a number of years had passed — so LeMoine describes herself as “a very late bloomer.” In 1966, she accepted a job offer in Arizona, met and married her husband two years later, but did not apply to law school at Arizona State University until 1987.

However lengthy LeMoine may consider her “blooming” years to have been, they were definitely not wasted. The life experience she acquired developed in her a great capacity to understand and advocate for the interests of society and individuals.

“When I was 14, I picked tobacco in Connecticut. I’ve been a cab dispatcher, waitress, bookkeeper, computer operator, programmer and vice president of finance,” she says. “I served as a clerk for the Hon. Thomas Klein-schmidt in the Court of Appeals. As an attorney, I began my career as a public defender, became a state prosecutor and eventually resumed my work as a public defender because it was the most rewarding job I ever had.”

Now in retirement, LeMoine says, “Working at VLP gives me an opportunity to help people who really have nowhere else to turn. I believe I get more benefits from VLP than our clients do; I feel useful, which is not always easy for us seniors when we retire. I enjoy the people I work with and the clients I meet.”

**PRO BONO SPOTLIGHT ON CURRENT NEED**

Experienced family law attorneys are needed to provide legal advice and brief help to unrepresented family law litigants at VLP’s Family Lawyers Assistance Project (FLAP) at Superior Court locations.

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

Welcome, Sustaining Members!

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

- Krystal Ahat
- Bruce L. Bauman
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Sanctions for sexist remarks
continued from page 13

partner urged the attorney to “cut it out,”
unlike in the Puerto Rico case, where all
observers remained silent during the
exchange at issue.

The Maryland court explained the in-
appropriate advantage gained by attorneys
who demeaned or coaxed opposing counsel
and also bristled at the suggestion that such
communications are within the bounds of
acceptable “hardball” litigation. Finally, in
affirming the sanctions the court applauded Mr. Eckerstrom’s motion, stating: “Seemingly
sanctions from this court is not a display of
an inability to overlook obnoxious conduct,
but an indication of a commitment to ba-
sic concepts of justice and respect for the
mores of the profession of law. The mov-
ant has turned to the court to give force to
a basic professional tenet.” (126 Md. App.
at 659). This endorsement of the motion
and its role in respecting and protecting the
profession is important. As a profession,
we must support and approve the efforts of
our colleagues to expose and correct abuses.
We should not expect or desire that fellow
attorneys stay quiet or address such important issues in the hallway or not at all.

Laddcap Value Partners, LP v.
Lowenstein Sandler P.C.
(18 Misc 3d 1130, 2007 NY Slip Op
52538, 2007 WL 4910555 *2–7 (N.Y.
Sup. Ct. Dec. 5, 2007))

The case arose from repeated inappropriate
remarks by a more experienced male attorney toward an inexperienced female attorney taking her first deposition. These
remarks over three days included an in-
quiry about the female attorney’s looks and
why she is not wearing a wedding ring, stating that she has “a cute little thing go-
ing on,” stating that his defense of the
deposition is “nothing personal, dear,” con-
necting her to Atilia the Hun, and stating that she was a “sorriy girl” if she tries the
case, all while making impermissi-
ble speaking objections and testifying for
the witness. During the deposition, the wit-
ess supported his attorney’s demeaning
counseling by badgering her. In a New York
trial court, citing Principle vs. Array Partners,
supra, granted the female attorney’s motion
requiring that all future depositions take
place at the courthouse before a referee.

Attorneys should be armed with the knowledge that they need not feel forced to continue depositions in such degrading circumstances. No female attorney should ever suffer through such an intolerable test of
compromise. The cost of the behavior was not only a personal exaction on her tar-
get, but disrupted this attorney’s concentra-
tion and her ability to gather evidence
for her client. The sanctionable behavior
undermined the process of litigation and gained unfair advantage. We must educate ourselves and our colleagues so that we
all know in advance that recourse to the
courts is the best antidote to such viola-
tions of the professional rules. Continue
the deposition, order the transcript, and seek that assistance.

In re Plaza Hotel Corp. (111 B.R. 882 (E. Dist. Cal 1990))

In this bankruptcy matter, the bank-
ruptcy judge affirmed disqualification of
the debtor’s counsel based on a conflict of
interest and made a point to condemn the
counter discrimination witnessed by the
disqualified attorney against the female at-
torney for the United States Trustee. Ap-
parently, in defending his right to continue
as counsel, the attorney thought it would
help if he referred to the attorney for the
United States Trustee as “officer.” Even
“even when he knew that she was a law-
year and knew that she had presided over
the section 341 meeting.” The attorney
explained to the court that he did not respond
to Mr. Eckerstrom’s full disclosure of his ap-
parent conflict of interest because “she
declared that she knew more than the court
and that her job title was not sufficiently
explained” (111 B.R. at 892). The bankruptcy
to vacate the preliminary injunction, thus satisfying the robbery statutes.

Aztec Arizona’s identity-theft statutes
CourtWatch continued from page 1

Arizona’s identity-theft statutes

what matters is whether the legislature suc-
cceeded in carrying out that purpose.”

But the essence of Tallman’s opinion
was the statutes’ applicability to situations
unrelated to immigration. “Just because Ari-
izona could (and perhaps had) taken a differ-
ent strategy with respect to IRCA,” he wrote, “it does not mean the laws
should be struck down in their entirety.
Arizona retains the power to enforce the
laws in ways that do not implicate federal immigra-
tion concerns.”

He therefore ruled that the district court
had erred in enjoining the statutes’ enforce-
ment in all situations. But he iterated and
reiterated that this ruling applied only to
Puente’s facial challenge to the Arizona sta-
tutes. The same arguments that were unsuccess-
ful in its facial challenge might neverthe-
less rule the day in its as-applied challenge.

Along with Great Judge Barry G. Sil-
verman and Judge Robert S. Lasnik of the
Western District of Washington, Judge Besosa
did vacate the preliminary injunction and remanded the
case “with instructions to evaluate the merits of Puente’s remaining
claims, including the as-applied preemption challenge.”

Did she or didn’t she? A case of double jeopardy ambiguity

In the case of Angel Pete Ruiz, the ques-
tion was whether the trial judge actually
granted his motion for judgment of acquit-
27, 2016).

Ruiz was arrested after an incident at a truck stop. A Homeland Security officer had been conducting undercover surveillance of a semi truck in connection with an investiga-
tion of a plot to transport marijuana. After a group of men had moved marijuana bales out of the semi into a car and then left, a civilian approached the officer to report that he had witnessed the incident.

As the officer and civilian talked at the
semi’s open trailer, the group returned and
tasked the civilian at gunpoint. They frisked
both men and took $380 from the civilian.
Ruiz was later identified as one of the as-
sailants. He was charged and tried on two
counts each of aggravated and armed rob-
bery, kidnapping and aggravated assault
(along with the possession of burglary and mari-
juana possession).

When the evidence showed that the as-
sailants had taken money from only the ci-
villian, the judge suggested that she would
dismiss the robbery charges related to the
Homeland Security incident. This prompted
Ruiz to move under Rule 20 for a judgment of acquittal on those counts. The prosecu-
tor responded that although the money be-
longed to the civilian, it had been taken from him by members of the gang of the officer,
thus satisfying the robbery statute.

The judge evidently disagreed and then
spoke the words at the heart of the appeal:
“I am going to dismiss Counts Two and
Four.”

The question two was whether Ruiz had
been acquitted before the judge allowed the
state to amend the indictment.

The judge’s statement that she was “go-
ing to grant” the Rule 20 motion was am-
biguous. “Generally, ‘going to,’ as used here,
refers to a plan or intention that some-
thing will happen (usually soon), or mak[e]
a prediction that something will happen,
based on present events or circumstances,”
Miller wrote, quoting an online dictionary.
It could mean that she planned to do so in the future or that she had already made up her
mind to do it.

The ambiguity was resolved in this case
by the minute entry for that day’s trial events:
“IT IS ORDERED State’s motion for amend-
ment of Counts 2 and 4 GRANTED; the
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