When a convicted defendant is sentenced to probation, one of the standard probation conditions requires him to submit to warrantless searches of his residence. The Arizona Supreme Court recently clarified the standards that apply to searches conducted under that condition.


Having been convicted of solicitation to possess crack cocaine for sale, Christian Adair was sentenced to probation with the standard consent-to-search condition. He also agreed to standard prohibitions against possessing or using any firearms, ammunition or illegal drugs.

Within a year of Adair’s sentencing, an informant told police that he believed that Adair was selling crack. Over a period of months, the informant contacted the police several times, providing information that he continued to sell crack and that his young child accompanied him on some of the sales. The informant did not wish to be mentioned by name in the police reports, but he did give the officers his name, address and birth date. Police periodically watched Adair’s residence but detected no criminal activity.

Armed with this information, the probation office decided to search Adair’s home. The search, on which police officers accompanied probation officers, occurred when Adair was at home. It turned up crack, scales, packaging materials, over $400 in cash, a gun and ammunition. The state charged him with felony possession of drugs for sale, possession of drug paraphernalia and misconduct involving weapons. The probation office also petitioned the court to revoke his probation.

Adair moved to suppress the evidence gathered in the search. The superior court denied the motion, but Adair asked it to reconsider, arguing that the officers needed reasonable suspicion before they could search his home. The court then held that the search had to be supported by a reasonable suspicion that Adair had violated his probation terms or was engaging in criminal activity. Ruling that the state had not met that standard, the court granted the motion to suppress.

The court of appeals reversed. It rejected the superior court’s standard, holding instead that “reasonableness under the totality of the circumstances satisfies the Fourth Amendment when analyzing the probation officer’s warrantless search of a probationer’s residence.”

See Probationer’s warrantless search page 13.
What makes you relevant?

Over the last 10 years as a member of the MCBA, I have often reflected on what drew me to participating in a voluntary bar association. The concept I keep returning to is relevance. The idea of relevance has been a frequent topic of discussion among the board and members, and that concept has become even more frequently discussed as the MCBA transitions to a new executive director and welcomes new staff. I decided to focus my first article to reflect on the ways in which the MCBA has been relevant to its members, and ways in which our 2017 programming and offerings will help strengthen that relevance in our members’ practices and lives.

The MCBA is relevant to members with its programs and publications. Among the majority of our committees and divisions have scheduled CLEs and other offerings throughout the year, and the MCBA is hosting programs in a variety of practice areas, at all skill levels, that are not available elsewhere. Our focus is on quality programming and we are collaborating with skilled experts in their respective fields to share their knowledge and experience with our membership. We are finalizing a new edition of the Civil Litigation Guide, a comprehensive guide to litigating civil cases from start to finish. For our law students and young lawyer members, we are rolling out new practice management offerings throughout the year.

The MCBA is relevant for business and relationship development. The Lawyer Referral Service matches potential clients and attorneys and fields calls from over 10,000 Arizona residents in need of legal services. LRS’s phone number is stamped on every civil complaint filed in Maricopa County Superior Court, and LRS is the first call for many litigants. The MCBA also hosts frequent networking, social and charitable events aimed at finding ways to bring together attorneys, the public, and other stakeholders in the legal process. The MCBA is relevant for advocating for its members. This year, the MCBA is committed to being relevant by focusing on the issues that impact its members. As a voluntary bar, the MCBA is agile and is able to be immediately responsive to its members’ concerns about current events impacting the legal community. The MCBA has put in place an ad hoc legislative/rules committee, which monitors legislation, develops and publishes rule changes to the Association’s Rulebook, and raises awareness about current events that may impact members. The MCBA also has recently implemented a process by which the association can take public positions on topics of importance to its members and the community. The MCBA is dedicated to being a meaningful voice for its members.

The MCBA is relevant to those in need of legal services, to free forums on top-of-the-morning topics of importance to its members and the public, and raises awareness about current events that impact its members. As a voluntary bar, the MCBA is agile and is able to be immediately relevant for one member is not necessarily the relevance. The idea of relevance has been a concept I keep returning to is relevance. The concept of relevance has been a concept I keep returning to is relevance. The concept of relevance has been a concept I keep returning to is relevance.

Get to know Norma Izzo

Q: What was your first job and what did you like about it?
A: I worked as a babysitter for my parent’s friends. One year, I was lucky enough to spend the summer in Vail, Colorado, with the family. Free trip to Vail and a job hourly on top of that? Yes, please. Other memorable jobs as a teenager include being a hostess at an Italian restaurant, sales rep at Godiva Chocolatier and a cashier at Trader Joe’s.

Q: What made you decide to pursue a career in law?
A: I worked as a babysitter for my parents’ friends. One year, I was lucky enough to spend the summer in Vail, Colorado, with the family. Free trip to Vail and a job hourly on top of that? Yes, please. Other memorable jobs as a teenager include being a hostess at an Italian restaurant, sales rep at Godiva Chocolatier and a cashier at Trader Joe’s.

Q: What would it be like to be an attorney?
A: I love the arts. I would look to acting, comedy or music.

Q: What are some of your interests and hobbies?
A: I spend a lot of time traveling. I also like to challenge myself by training for and running marathons.

Q: Tell us something about yourself that you want everyone to know.
A: I am excited to work with our new executive director and the new MCBA staff, and assist them in reaching our goals for our association. I am also excited to implement and launch our Lawyer Wellness Program.

Get a Small Donation Makes a Big Difference

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

It’s Easy to Contribute
The court has made it easy to contribute with a convenient “pro bono” check-off box located at the bottom of the Invoice in Support of Request for Warrant, a form provided in your arbitration packet. For more information, go to maricopabar.org and click on “About Us” on the top menu bar then “Maricopa County Bar Foundation.”

THANK YOU FOR MAKING A DIFFERENCE!
2017, here we come!

I am extremely honored to serve as the president of the MCBA's Young Lawyer Division (YLD) for 2017. Many great leaders have come before me and I know I have very big shoes to fill! To Krystal, thank you for setting me up for success and leaving the YLD in such a fantastic position for us to move forward. I am very excited for the coming year full of successful events and community outreach for the YLD.

The YLD is a division of the MCBA and all MCBA members who have been licensed to practice for five years or less, or who are 36 years of age or younger (whichever occurs later), are automatically members of the YLD. The term “young lawyer” is not always about one’s age; if you know me well then you know I am not a “young” lawyer by age, but am in my first five years of practice. I want to encourage all MCBA members who are in their first five years of practice, regardless of your age, to become involved in the YLD! You will gain much more from your participation than I could ever write in this short column and will cement relationships that are priceless, both personally and professionally.

I am excited to say that the YLD will be completely female led this year! Our president-elect is Nicole True (Lewis Roca Rothgerber Christie), secretary is Rachel Phillips (Bryan Cave), treasurer is Jennifer Elias (Farley, Seletos and Choate) and the immediate past-president is Krystal Ahart (Law Office of James F. Kahn, PC). The YLD executive board holds monthly meetings on the first Wednesday of every month at the MCBA office. Anyone is welcome to attend the board meetings and we love having guests! At each meeting, the board discusses plans for and organizes the many fantastic events that are held throughout the year. The YLD events are open to all MCBA members, and to the general public, in many instances. Each event is aimed at serving the underserved members of the community in some manner. The following events are currently scheduled for 2017:

Barristers’ Ball: This is the YLD’s biggest event of the year and will be held on March 4, 2017, beginning at 6 p.m. at the JW Marriott Desert Ridge Resort & Spa. This is the 25th anniversary of the ball and we are hoping to make it one for the record books! This black-tie preferred event is a charity gala benefitting the Maricopa County Bar Foundation, which is the charitable arm of the MCBA. As part of its mission, the foundation strives to aid law school students from diverse backgrounds with the student loan debt associated with obtaining a law degree, as well as supports the justice-related public service and educational activities of the MCBA and other organizations, and local pro bono legal service providers that serve low income residents of Maricopa County. Each ticket includes a fantastic three-course dinner, wine, beer, drink ticket, live music, dancing, photography and chips for playing at the casino tables. This year we are pleased to offer entertainment from Urban Electra and DJ Keri.

Race Judicata: The YLD hosts a 5K run/1-mile walk to raise money for the YLD Necessities Drive that is held in October of every year. Historically, the race has always been held in October; however, there is a good possibility that the race will be held in May this year! Stay tuned for more information to come very soon.

Necessities Drive: The YLD collects and organizes necessities (toiletries such as feminine products, shampoo, conditioner, lotion, toothpaste, diapers, etc.) on an annual basis for donation to local domestic violence shelters in the Phoenix area. The YLD board members collect donations from each of their firms during the months of August and September. A portion of the proceeds from the Race Judicata is used to purchase additional necessities. Board members then meet over a weekend in October to organize the donations and pack the goods into boxes to be delivered to the shelters. A very big thank you to Two Men and a Truck for their gracious assistance each year in delivering the necessities free of charge! The 2016 drive was an enormous success thanks to the many sponsors and participants who took part in the October 2016 race!

Mock interviews: Each year, the YLD provides volunteers to pose as potential employers in an effort to give law students an opportunity to practice their interviewing skills prior to graduating and beginning their job search. Mock interviews typically take place at ASU and Arizona Summit Law School, twice a year, in the spring and the fall.

If you are interested in receiving more information about the YLD and our events, or would like to become involved and join an event committee, please do not hesitate to reach me at krd@udallshumway.com. Last, but not least, I want to extend a HUGE thank you to MCBA Development Director Lori Katzareff. In her short time with the MCBA, her support to the YLD and our events has been nothing short of amazing and we look forward to the upcoming year and the great events ahead!

YLD Necessities Drive

YLD members packed up the necessities from the YLD Necessities Drive in November 2016. Proceeds from the Race Judicata event held in October 2016 were used to purchase the necessities for two domestic violence shelters in the Phoenix area. Thank you to all of the sponsors and participants of the 2016 race who helped make this drive a huge success! (As you can see, we recruit them young in the YLD!)

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2016 Family Law Judicial Reception

The Family Law Judicial Reception was held on Dec. 6 at the Phoenix Country Club. A special thank you to the sponsors of the event: Cavanagh Law Firm, Arizona Me-

2016 holiday party continued from page 1
Tips for writing concisely

I tried something new in my legal writing classes this year. Specifically, I required the students to write some assignments using a page limit and other assignments using a word count limit. We then talked about the advantages and challenges of each approach. I was (pleasantly) surprised that the conversation focused on tips for writing concisely. Here are the top four tips, straight from the classroom:

1. Use simple prepositions. Legal writers are lulled into writing complex sentences because many older legal documents and cases are full of legalese and other complex structures, including complex prepositions. My rule of thumb is to replace a complex prepositional phrase with one word, if possible, due to the fact that it is easier to read. Students are often able to identify the preposition word so(

2. Use pronouns and pro-verbs, as long as their use is not ambiguous. Most legal writers already know how to use pronouns well, but I am guessing that most of us have never heard of pro-verbs before. I recently learned about pro-verbs from my colleague Wayne Schiess’s legal writing blog. A pro-verb is a verb that takes the place of a longer verb. The most common examples are “do’s” and “do so.”

The user customized and downloaded the same software that other users did. We can buy the package to customize the software, and we should do so.

In many instances, you can drop the second verb altogether. We can buy the package to customize the software, and we should.

3. Use short conclusions: Many new legal writers recap their reasoning in the conclusion by adding a long “because” clause: “The Court should grant the motion for summary judgment because.” I suggest taking out the “because” clause. Many seasoned writers already do this step: “Pursuant to the above arguments, the Court should grant the motion for summary judgment.”

But I suggest taking off the beginning phrase too. A simple sentence of subject/verb/object is all the reader needs to understand the point.

4. Take out “that” if it is not necessary. The easiest way to do this is to search for all instances of “that” in your document. Then, read the sentence without the word “that.” If the sentence makes sense and is not confusing or ambiguous, then you can get rid of “that.”

A simple sentence is all that the reader needs to understand the point. (take out, not needed)

I hope that you are able to attend. (take out, not needed)

That box of treats is for sharing. (leave)

CLE Review

Using the Internet to Assist During Trial Preparation

By Tina M. Ziegler, ACP

On Dec. 2, 2016, the MCBA Paralegal Division hosted a CLE presented by Scott Greene of Evidence Solutions, Inc. titled, “Using the Internet to Assist During Trial Preparation.” Greene is a well-known computer, electronic and digital evidence expert with over 30 years experience in both plaintiff and defense work. He has testified in superior court, federal court and even international court.

Greene’s presentation focused on ways parties can utilize the Internet to search for information that will assist with their case, whether it be the location of a witness or something that can contradict the other side’s case. He also discussed how data can be retrieved and admitted into evidence. The following is just some of the valuable information provided:

Internet statistics

For those who are either interested in statistics or need statistical information for a case, www.internetlivestats.com is a website which provides live statistics on Internet and social media usage.

Deactivating vs. deleting a Facebook account

When a new client meets with counsel, Greene suggests that the attorney instruct them to deactivate their Facebook account to avoid inappropriate posts when litigation is pending, especially in personal injury cases where a plaintiff may be inclined to boast about a possible settlement. Greene noted the difference between deactivating and deleting an account. Deactivating an account will hide the account yet preserve evidence in the event the client receives a subpoena requesting they turn over their social media information. Accounts that are deactivated can be reactivated once the case is over. Deleting an account is permanent and will most likely lead to a spoliation accusation if a subpoena is issued and the recipient cannot produce the information. This could also require both the client and the attorney to pay sanctions. Similarly, asking a client to “clean up” a social media account could lead to sanctions.

Utilizing Facebook to locate a witness

Facebook can be a great location tool. If a witness has a common last name or uses an alias, you may be able to locate them by going through a friend or family member’s Facebook page. Do not send a friend request to a potential witness to obtain information.

Other discoverable sites

In addition to Facebook, there are other sites that are discoverable, very public and free to those who are trying to obtain information to bolster their case. These include Google, LinkedIn, Pinterest, Twitter, YouTube and MySpace. Privacy issues are rare in these circumstances, especially when the information can be linked to a party or witness. Better yet, if you can get a witness to admit the information through discovery, it will increase the chances of getting it into evidence at trial.

Data captures

Data can be captured by experts such as Greene, and through screen printouts and

Scott Greene from Evidence Solutions, Inc. and Tina Ziegler

PDFs. PDFs are a popular way to get information. Greene mentioned that the utilization of a live hash (a digital fingerprint of evidence) can show if data has been altered. This serves as a way to authenticate that data was not modified once downloaded.

Information located online, whether admissible in court or not, can be valuable in settlement negotiations and eliminate the need for trial. Greene mentioned that many Internet users have a Google account either voluntarily or through their cell phone provider. When someone is logged into a Google account, including Gmail, Google collects and stores everything they have ever done. This includes the use of social media accounts and Internet searches. A party can get a complete “dump” of information with a subpoena or utilizing someone like Greene. If a party purposely discards a cell phone in an effort to avoid a subpoena, the data may be retrieved from other sources such as phone records, iCloud and Google.

Facebook “dumps”

Clients and anyone who has a Facebook account can do a complete “dump” of information by going through the general account settings of their Facebook account and requesting a download of their data, including posts, photos, videos, messages, chats and more. This will usually include hidden items, but not the deleted ones. Greene suggested if someone posts something derogatory to your Facebook page that you want removed, you should do so by deleting it rather than hiding it because it could still show up. He also suggested going through your privacy settings to make sure you are protecting your information and limiting it to those you want to have it. These settings might be important in a case.

Getting information admitted

In order for Internet data to be admitted in court, there must be some foundation. A printout of someone’s Facebook page may not be enough, especially if the other side objects. A party may need an affidavit detailing how the information was collected. Additionally, if you need metadata from Facebook or Google, such as an IP address, this information is not included in the Facebook “dump” process. Therefore, a subpoena is necessary to retrieve such data. This could include the date and time a post was made, where it was posted (location and whether it was done from a cell phone or computer), and what browser the person was using to access the site.

Additional resources

Rule of Evidence 901 pertains to the admission of evidence. Additionally, Greene personally recommends the book Data and Goliath by Bruce Schneier, which gives an eye-opening view of how much data is being collected.

The MCBA would like to thank Scott Greene for sharing his knowledge with our attendees and for sponsoring the breakfast portion of this CLE.
How the MCBA Lawyer Referral Service helps my business

By Briana Chua

As a certified specialist in workers’ compensation by the State Bar of Arizona, I know how important it is to refer people to the right attorney for their specific legal matter. Rarely will a day go by when I do not receive a call or inquiry on a matter that is outside the scope of my focused practice area. Usually I know someone who can help, but for certain types of law or cases, I may not have a name to give. In those situations, I tell the caller to call a number every attorney in Maricopa County should have memorized: (602) 257-4434, the Maricopa County Bar Association Lawyer Referral Service.

The Lawyer Referral Service (LRS) program was established in 1964. For a nominal charge of $40 (or free for some practice areas), a caller will be provided with the name of an attorney in the needed practice area who will provide a 30-minute consultation. It provides a trusted resource for the general public to receive a referral to the right kind of attorney who is already screened to be in good standing.

From the attorney’s perspective, the LRS is a source of potential new business for a very low investment. If there are several lawyers in the same practice area, referrals are provided on a rotating basis by geographic area and type of case. An MCBA member can join the program for $50 per year, and non-members can join for $250.

In my practice, I appreciate not only the low upfront cost but also that the potential clients are invested in the process, which results in a higher conversion and call back rate. It is one way of receiving potential clients leads without huge upfront costs, contracts or advertising expenses. We all know that lead generation calls or online leads take up staff time, lawyer time, and often result in dead end calls, wrong phone numbers or a poor conversion rate because the potential client has contacted several law firms or lead generation websites with the same issue. The Lawyer Referral Service’s screening process eliminates most of those problems, thereby allowing you to spend your time on quality cases that you actually want. The service also makes tracking cases easy by sending the lawyer simple quarterly status report requests by email.

The LRS is a great service to the public and a great option for lawyers who want quality leads within their practice area. It is helpful for a new lawyer who may not yet have a wide personal network of lawyers in different practice areas. It is also a helpful option when you need to refer a caller to another attorney but you do not personally know someone in that practice area. It is an easy “catch-all” referral number for difficult callers or callers who have several unrelated matters. Moreover, even if the consult does not generate a viable client, it offers the public affordable (or free) access to information without calling on the attorney for an extensive commitment.

The LRS receives over 10,000 calls each year and they are the only referral service in Maricopa County that is authorized by the Arizona Supreme Court.

The program is currently in need of attorneys in the following practice areas: elder law, family law (specifically dependency cases), immigration, intellectual property, labor/employment law, tribal law and attorneys who can take Spanish-speaking clients.

Briana Chua is the managing member of Arizona Injury Law Group, PLLC. She is a certified specialist in workers’ compensation by the State Bar of Arizona.

Welcome, Sustaining Members!
The MCBA is proud to welcome the following attorneys who have joined the association as Sustaining Members for 2017:

Ms. Crystal M. Ahart
Dr. Bruce L. Bauman
Ms. Barbara R. Berman
Mr. Garvey M. Biggers
Mr. Bryan J. Blem
Ms. Laura K. Chapman
Comm. Terri L. Clarke
Mr. James C. Dutson
Ms. Kina Harding
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The MCBA will provide FREE basic office supplies.
- Use of copier at $.03 for B&W and $.05 for color, per copy.
- Private offices and private work space can be reserved for FREE in two-hour blocks. A members lounge is always available.
- Services offered during MCBA normal business hours 8:30 a.m.-5 p.m.
- Arrangements can be made for evening and weekend meetings at a cost.
- The MCBA also has a board room and CLE room available to rent!

For more information or to make reservations, contact Stephanie Ricardes at 602-257-4200 or sricardes@maricopabar.org

Daniella Chua has been recertified as a family law specialist by the State Bar of Arizona.

Daniel J. Siegel
Certified Specialist In Family Law
State Bar Of Arizona

Daniel J. Siegel, P.C. Attorney At Law
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How to Register
Register online at www.maricopabar.org/events or contact Lori Katzaroff at (602) 682-8590 or lkatzaroff@maricopabar.org

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. Rogers 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.

Sponsorships
Multiple Sponsorship Opportunities Available starting at $1,000 (hospitality, publicity and entertainment). Includes signage at event, program ad and website recognition.

Contact Lori Katzaroff at (602) 682-8590 or lkatzaroff@maricopabar.org

Beneficiary of the 2017 Ball
Maricopa County Bar Foundation

Entertainment
Provided by Urban Electra and DJ Keri
What made you renew your MCBA membership for 2017?
We think all attorneys in Maricopa County should be members! The Maricopa Lawyer is informative, the CLEs are beneficial and the MCBA’s work deserves to be supported.

What do you like most about being in the legal field?
In my area of practice and with my own firm, I get the opportunity to mentor young, promising attorneys, which I greatly enjoy, as well as clients who are going through a significant life transition. There really is a strategy around how you think, talk and act during your divorce that can dramatically change your divorce experience and your life going forward. My passion to help educate clients about this is what inspired me to write my book The Wiser Divorce — Positive Strategies for your Next Best Life — although that ship sailed many years ago.

What are your hobbies or interests?
Traveling to new places and discovering different cultures, hiking, party planning and great wine paired with great food.

What’s the craziest job you’ve had?
Detasseling corn in the summers in the fields of Nebraska, where I grew up. It might have smacked of child labor but at the time, $3.25 an hour seemed worth getting on a dirty bus early in the morning and being dumped in rows of corn.

If you were a character in a movie or TV show, which character would you be?
I would be in a CSI or NCIS show as the lead detective. I would interrogate the bad guys, be deft with my firearm and always solve the crime.

ANGELA HALLIER
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The firm has changed its name from Berk & Maskowitz, P.C. in light of the departure of Frank W. Maskowitz to become a Maricopa County Superior Court Judge.
New Year’s resolutions

By Russell Yurk

As we ring in the New Year, most of us make New Year’s resolutions. But how many of us make resolutions about our ethical practice of law? In this article, I hope to give everyone a few ideas of how to make 2017 a more ethical (and productive) year than 2016.

Organize and respond to emails

One of the most common complaints that clients have is their lawyer’s failure to timely respond to emails and phone calls. Most lawyers that I know receive dozens, and some hundreds, of emails every day. If you had nothing else to do, it would be easy to sit in front of your computer all day and respond to those myriad emails. But, reality is different. Lawyers have multiple cases, filing deadlines, depositions, client meetings and out-of-town travel.

Those other obligations make responding to emails (and voicemails) a challenge. For 2017, I challenge everyone to work on a system of organizing emails that need responses and a system of responding to each email that requires a response. Even when you don’t have the time for a thorough response, it likely makes sense to send a short acknowledgment, which can be sent remotely from a phone, tablet or laptop. For those emails requiring a later response, utilize your email program’s “flag” system or place those emails in a folder that you review at the beginning or end of a day. A system that works for you is a system worth developing.

Attend useful CLE seminars

Many lawyers try to fill their CLE requirements however they can. Far too many lawyers wait until the last minute and scramble for self-study or webinar programs. Instead of looking at CLE as a chore, look at it as a way to improve your practice. Sure, you should attend one or two seminars a year in your field of practice to stay up-to-date on the law. But maybe you should consider branching out and taking a writing seminar or a seminar on marketing, negotiation, ADR or eDiscovery. Be sure to check www.maricopabar.org to see the latest CLEs being offered by the MCBA. They have several CLEs every month, ranging in topics to interest every lawyer. There are so many tools in the toolbox of a lawyer that remain stagnant. Try to develop your competence in other areas of the practice of law.

Enter your time regularly

Like it or not, the practice of law requires most lawyers to track their time in six-minute increments. This can be a chore, and takes away precious time from your other obligations. But tracking your time contemporaneously with your work yields several benefits. First, it is far more accurate. Studies have shown that lawyers who do not keep time contemporaneously forget many of their billing activities and end up “losing” substantial chunks of time when they try to recreate their billing at the end of the week or the month. Second, it ends up saving you time. It takes far less time to record a task at or near the time you do it, than it takes to remember what you did at a later date. And third, it’s the ethical thing to do. You’re ethically obligated to accurately bill your time to clients. The longer you wait before recording your time, the more likely it is that the time you bill is inaccurate.

Slow down

Many lawyers have Type-A personalities and are workaholics. They are driven and ambitious. They quickly move from case to case and from project to project. That type of personality is prone to move too quickly, which can cause mistakes. It can also lead to sleep deprivation and stress, which also limit mental alertness and can cause mistakes. For 2017, try to get more sleep, eat better and take an extra second before you send that email to make sure it says what you intended and is sent to the proper recipient (not a “reply all”). Try to treat people better and be more professional to colleagues, opposing counsel, the court and your litigation assistant. In the end, it will improve your practice, make you more efficient and make you a better person.

Happy New Year to everyone.

Russell Yurk

Russell Yurk is a partner with Jennings, Haug & Cunningham, LLP, in Phoenix. He serves as the Immediate Past Chair of DRI’s Lawyers’ Professionalism and Ethics Committee and served 12 years on the State Bar of Arizona’s Committee on the Rules of Professional Conduct. He currently is a member of the Arizona Supreme Court’s Judicial Ethical Advice Committee. If you have a question about ethics or lawyer liability that you would like addressed in future columns, please email rry@jhc-law.com.
Governor announces two appointments to the Arizona Supreme Court

Gov. Doug Ducey announced the appointment of Arizona Court of Appeals Judge Andrew W. Gould and Arizona Solicitor General John R. Lopez, IV to the Supreme Court of Arizona.

Gould has a wealth of experience in Arizona law and has been a judge on the Arizona Court of Appeals, Division One, since 2012. Previously, he was a Yuma County Superior Court judge for 10 years.

Before joining the bench, Gould was a deputy county attorney and chief civil deputy for the Yuma County Attorney’s Office. He also practiced commercial litigation with the law firms of Snell & Wilmer, Gallagher & Kennedy, and Kern & Wooley.

Gould continues to serve today as a judge pro tem for the Yuma County Superior Court. He has also served as president, treasurer, and rural representative of the Arizona Judges Association.

Gould graduated from the University of Montana with highest honors in 1986. He received his law degree from the Northwestern University School of Law in 1990.

Lopez is solicitor general for the state of Arizona, in the Office of Attorney General Mark Brnovich. In this role, Lopez represents the state of Arizona in civil lawsuits and appeals, and in criminal appeals, including capital cases.

Previously, Lopez worked in the U.S. Attorney’s Office for over 12 years where he served in various roles, including as executive assistant U.S. attorney, chief assistant of the Phoenix office, chief of the Financial Crimes and Public Integrity section, and deputy appellate chief. Before joining the U.S. Attorney’s Office, Lopez practiced at Bryan Cave and clerked for Justice Charles Jones of the Arizona Supreme Court.

Lopez served for six months in Iraq as a legal advisor with the Regime Crimes Liaison Office, the Department of Justice-led group tasked with assisting the Iraqi government with the prosecution of Saddam Hussein and his top officials for war crimes and crimes against humanity.

Lopez graduated from the University of Texas at Austin in 1992. In 1998, he graduated cum laude from Arizona State University College of Law, where he was the articles editor for the Arizona State Law Journal.

Governor’s Office of Highway Safety approves grant to advance judicial education

The Arizona Supreme Court received a $31,343 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, DUI and more. New this year is funding to send a judge to a national DUI traffic conference in this upcoming fiscal year.

The program will provide necessary training to limited jurisdiction court judges who collectively adjudicate 1.5 million traffic charges annually – including more than 62,000 DUI charges. The grant will provide training to more than 100 limited jurisdiction hearing officers and judges in areas of DUI trial flow, distracted driving, civil and criminal traffic issues, criminal disposition reporting, forensic evidence in DUI 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 DUI 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 the Phoenix area to attend this valuable training.

Maricopa County hosts largest adoption event in the nation

On Nov. 19, as part of Maricopa County’s 17th Annual National Adoption Day, the superior court finalized 263 adoptions. The event was the ninth consecutive year that the Maricopa County Superior Court finalized more adoptions than any other courthouse in the country.

National Adoption Day is a collective national effort to raise awareness of the more than 100,000 children in foster care waiting to find permanent, loving families.

Some of the children, who range in age from newborns to teenagers, are victims of abandonment, neglect and abuse.

The festive atmosphere was heightened by face painting, inflatable bouncy houses, superhero characters, games for kids, cake and photos of the newly created families.

Volunteers for the event included 34 judicial officers, court employees and members of the public.

Juvenile department receives award

The superior court received the 2016 Sally Campbell Award from the Infant Toddler Mental Health Coalition of Arizona. They were recognized for outstanding service and leadership in the field of infant mental health.

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Collar Exemptions

The Department of Labor’s new overtime rules and White Collar Exemptions could make millions of previously ineligible Americans eligible for overtime pay. This could affect Dec. 1, 2016. These potential changes announced major changes to the Fair Labor Standards Act. In May 2016, the U.S. Department of Labor indicated hours of professional responsibility (ethics), if applicable.

Most CLEs are available for simultaneous webcast through West LegalEd or later viewing through the MCBA CLE Self-Study Page.

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Early bird pricing ends Jan. 7

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Jan. 13 for Sessions I and II
Jan. 14 for Session III and Jan. 20 for Session IV

SESSION I
FRIDAY • JAN. 6
Where There Isn’t a Will, There’s a Way
A quiet revolution is happening in estate planning. Non-probate will substitutes are occupying the field, so that probate often is not necessary, and even wills often are not necessary. In this seminar, you will examine the competing philosophies of probate vs. non-probate transfers, explore the various alternatives to wills, and discuss the importance of coordinating probate and non-probate “governmental instruments” for your clients.

PRESENTER: Mark Moritz, Blake and Pulsifer, PLC

SESSION II
FRIDAY • JAN. 13
Estate Planning - The Fundamentals
The presentation will include an overview of estate planning vehicles including wills, trust, powers of attorney and living wills, as well as discussion regarding applicable Arizona law, information needed from clients, client interaction, family considerations, community property, funding of trusts and basic tax considerations. The materials include several forms, including a form engagement letter, client questionnaire, trust funding letter and powers of attorneys. This course is designed for new attorneys and attorneys who want to become more knowledgeable in this area.

PRESENTER: Hillary Gagnon, Jennings, Haug & Cunningham, LLP

SESSION III
FRIDAY • JAN. 20
Introduction to Probate
In this program you will learn which assets pass via informal and formal probate proceedings as well as via small estate property affidavits. We will also discuss common problems in estate administration, including getting attorney’s fees paid, dealing with creditors of the estate and dealing with disputes among beneficiaries. This CLE is geared toward new attorneys and attorneys who want a refresher on probate procedures.

PRESENTER: Judie M. Rettelle, Law Offices of Judie Rettelle

SESSION VI
FRIDAY • JAN. 27
Adult Guardianships and Conservatorships
This program will cover guardianships and conservatorships of adults from intake through the first year, as well as common mistakes in guardianships and conservatorships. A great primer for beginners or refresher for more experienced practitioners in this area.

PRESENTER: Michael J. Doyle, Baumann, Doyle, Paytas & Bernstein, PLLC

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

For example, registrations for a Sept. 17 program must be paid by Sept. 12 in order to receive early bird pricing.

WALK-INS: 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 $25 fee, will be issued only if the MCBA receives your cancellation, in writing by mail, fax at (602) 257-4200, or email mcmccle@maricopabar.org at least two business days prior to the program.

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

The State Bar of Arizona does not approve or accredit CLE activities for the Mandatory Continuing Legal Education requirement. The activities offered by the MCBA may qualify for the indicated number of hours toward your annual CLE requirement for the State Bar of Arizona, including the indicated hours of professional responsibility (ethics), if applicable.

EARLY BIRD PRICING ENDS JAN. 6, 2017
EARLY BIRD PRICING ENDS JAN. 7, 2017
EARLY BIRD PRICING ENDS JAN. 12, 2017
Probationer’s warrantless search

CourtWatch, continued from page 1

er’s residence undertaken pursuant to the Probation Conditions.” State v. Adair, 238 Ariz. 193 (App. 2015). It remanded the case to the superior court to again reconsider the motion to suppress applying the correct standard.

Adair petitioned the supreme court to review the court of appeals’ decision. The supreme court granted his petition but did not give him the result he desired. In a unanimous opinion by Vice Chief Justice John Pelander, the court went further than the court of appeals and upheld the search.

Pelander first announced the limits of his opinion, stating the issues that were not being decided. “This case does not involve a random or suspicionless search,” he wrote, and “thus we do not decide today whether a probation officer’s warrantless search of a probationer’s residence may be valid absent any suspicion whatsoever of illegal activity or other probation violation.” He also did not address whether Adair had consented to a search by agreeing to the probation terms.

Furthemore, the case did not involve a pretextual search. Pelander noted that Adair was not challenging the superior court’s ruling that the search “was not a mere pretext for conducting a criminal investigation by the police.” Neither did Adair challenge the standard search provision itself, which the police “were entitled to use.” Pelander did not address whether Adair had consented to the search “by agreeing to the probation terms.”

Pelander noted that Adair agreed to obey all laws and not to engage in criminal activity. The court remanded the case to the superior court to revisit Adair’s motion to suppress.

Rather, “the record, even when viewed in a light most favorable to upholding the ruling below, establishes that the search was reasonable.”

Applying the correct standard, the superior court had incorrectly demanded greater information from the officer than was required. Pelander noted that “probation searches conducted pursuant to clear, specific probation conditions are materially different from other types of searches that require reasonable suspicion.”

The respective interests of the government and the persons subjected to searches in non-probation cases are not fairly comparable to the parties’ respective interests here,” Pelander wrote. “A search of a convicted felon/probationer’s home, conducted by probation officers pursuant to valid probation conditions, is categorically different than searches of ordinary citizens’ homes.

Pelander therefore adopted the court of appeals’ standard, holding that a warrantless search of a probationer’s residence is legitimate if it is “reasonable under the totality of the circumstances.” But, in disagreement with the appellate court, he found “no need to remand for the trial court to revisit Adair’s motion to suppress.” Rather, “the record, even when viewed in a light most favorable to upholding the ruling below, establishes that the search was reasonable.”

In requiring reasonable suspicion, the superior court had relied on cases finding that reasonable suspicion was sufficient. But, Pelander pointed out, those cases did not involve a pretextual search. Pelander noted that Adair “was not challenging the superior court’s ruling that the search ‘was not a mere pretext for conducting a criminal investigation by the police’.”

Neither did Adair challenge the standard search provision itself, which the police were entitled to use. Pelander did not address whether Adair had consented to the search “by agreeing to the probation terms.”

Griffin v. Wisconsin, the Supreme Court had recognized that while the Fourth Amendment applies to probationers’ homes, the level of protection is lower than that accorded to other people’s homes. According to Pelander, this principle arose from the “special needs of a state’s probation system, a probationer’s conditional liberty interests, and society’s interests in rehabilitation and public safety,” which together “justify departures from the usual probable-cause and warrant requirements.”

Griffin had upheld a warrantless search of a probationer’s residence, finding it “reasonable under the Fourth Amendment,” because it had been conducted under a valid regulation that allowed such searches on “reasonable grounds.” The court recognized that a probationer needs rehabilitation “and is more likely than the ordinary citizen to violate the law.” Thus, in Griffin, the search was justified based on information establishing nothing more than a likelihood that the probationer might have done something illegal.

In another probation case, United States v. Knight, the Supreme Court had concluded that the standard search provision resulted in a significant diminution of the probationer’s reasonable expectation of privacy. And the state’s interest in apprehending criminals and protecting potential victims may, in Pelander’s words, “justify treating probationers differently than ordinary citizens.” This combination of factors had led the Supreme Court to conclude that such searches require “no more than reasonable suspicion.” But the Court had declined to decide whether the diminution of the probationer’s expectation of privacy was so great that a search could be conducted “without any individualized suspicion.”

This led to the third case, Samson v. California, which addressed the standard applicable to parolees, as opposed to probationers. It held that “the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee.” It noted “parolees are on the ‘continuum’ of state-imposed punishments” and “have fewer expectations of privacy than probationers.” This was because “parole is more akin to imprisonment than probation is to imprisonment.”

The Fourth Amendment does not involve a warrantless search of a parolee’s residence undertaken pursuant to the condition allowing warrantless searches of parolees’ homes. According to Pelander, this combination of factors had led the state to conclude that such searches were reasonable under the Fourth Amendment.” Peland noted that “probationary searches conducted pursuant to clear, specific probation conditions are materially different from other types of searches that require reasonable suspicion.”

The respective interests of the government and the persons subjected to searches in non-probation cases are not fairly comparable to the parties’ respective interests here,” Pelander wrote. “A search of a convicted felon/probationer’s home, conducted by probation officers pursuant to valid probation conditions, is categorically different than searches of ordinary citizens’ homes.

Pelander therefore adopted the court of appeals’ standard, holding that a warrantless search of a probationer’s residence is legitimate if it is “reasonable under the totality of the circumstances.” But, in disagreement with the appellate court, he found “no need to remand for the trial court to revisit Adair’s motion to suppress.” Rather, “the record, even when viewed in a light most favorable to upholding the ruling below, establishes that the search was reasonable.”

Applying the correct standard, the superior court had incorrectly demanded greater information from the officer than was required. Pelander noted that “probation searches conducted pursuant to clear, specific probation conditions are materially different from other types of searches that require reasonable suspicion.”

The three pertinent factors that the court of appeals identified indisputably support the State,” he added. As that court had recognized, as a probationer Adair was subject to a valid condition requiring him to submit to warrantless searches, and the probation officers had properly conducted the search, which was not arbitrary, capricious or harassing. Furthermore, the convictions that had landed Adair on probation were for “crimes that were similar if not identical to the suspected offenses that led to the probationary search.” Finally, the search was “directly related to the further conditions under which Adair agreed to obey all laws and not possess illegal drugs.”

“Considering the totality of the circumstances, Pelander concluded, “we hold that the search conducted here was reasonable and thus constitutional.” Joining him in reversing the superior court’s order were Chief Justice Scott Bales and Justices Robert M. Brutinel, Ann A. Scott Timmer and Clint Bolick.

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MARICOPA LAWYER • JANUARY 2017 • 13
VLP ATTORNEY OF THE MONTH
Attorney with 40 years’ pro bono experience honored

By Peggi Cornelius, VLP Programs Coordinator

Even an abbreviated version of his biography would reveal a host of professional achievements and prestigious awards, but attorney Richard Goldsmith takes none of it for granted. Rather, he seems to live in the awareness of his good fortune, continuing each day to seek knowledge, share his expertise and, in his words, “give back to the profession.” Because Goldsmith gives back and also pays it forward through his pro bono assistance to people in need, he is being honored as “Attorney of the Month” by the Volunteer Lawyers Program (VLP).

At the time of his birth, Goldsmith’s parents were living in Corning, New York. World War II and a Ph.D. in geochemistry had led to his father’s employment there in the glass industry. When the war ended, the family returned to his parents’ home of choice, Hyde Park, in Chicago. Among his favorite childhood memories was the view from the 40th floor of the Prudential Building in downtown Chicago. His uncle was a patent attorney who practiced in the building and enjoyed treating his nephew to lunch there. Naturally, for young Goldsmith, the law and the lunch took a back seat to the view. A few years later, as an undergraduate at Lawrence College in Appleton, Wisconsin, Goldsmith joined a fraternity. His first experience with community service was the fraternity’s monthly commitment visiting with residents at a local retirement home. It was then that a passion for community service took hold. By the time Goldsmith completed a degree in political science, he’d decided to join the Peace Corps, which took him to Africa. In Erritera, Africa, Goldsmith taught English and history to middle school students. On his return home, he attended graduate school at the University of Chicago. His experience in the Peace Corps undoubtedly provided an additional dimension to his studies, as he worked toward a master’s degree in international relations. During that time, he recalls a friendship with a law student who was active with Chicago’s Legal Aid Society. “Long story, short, needless to say, the judge was furious when he learned that, instructing the deputy to bring the sheriff to the court in 30 minutes or they would both spend the night in jail. It was an unprecedented introduction to the practice of law, and the predecessor to the VLP program. I decided to continue VLP work, figuring it would never be as difficult as that day had been.”

His commitment to pro bono work led Goldsmith to chair his firm’s pro bono committee for many years. In 2004, he received the firm’s John P. Frank recognition award. In 2007, the Arizona Foundation for Legal Services and Education named him among the Top 50 pro bono attorneys in Arizona. Mediation is the primary focus of Goldsmith’s present VLP endeavors. “Matters I have handled for VLP have been incredibly rewarding,” he says, commenting on the exceptional gratitude his pro bono clients have always shown. “Successful outcome or not, every one of my VLP clients has expressed appreciation for my efforts. Emphatically, I’ve occasionally been compelled to accept small gifts of thanks. I aim to eating the candy and still wear one of the ties.”

With a good-natured smile, he adds, “I’ve learned when you accept a VLP case, you may have a client for life! That’s OK, too.”
January Calendar

All events at MCBA office, unless otherwise specified.

6 CLE: Estate Planning Fundamentals Session 1: Where There Isn’t a Will, There’s a Way
Noon-1:30 PM
Phoenix Country Club

11 CLE: Department of Labor’s New Overtime Rules and White Collar Exemptions
8-10 AM

12 CLE: Best Practices for Preparing Conservatorship Accounts
7:30-9 AM
Phoenix Country Club

13 Board of Directors’ Retreat
9 AM-Noon
Phoenix Country Club
Leadership Lunch
Noon-2 PM
Phoenix Country Club

20 CLE: Estate Planning Fundamentals Session III: Introduction to Probate
Noon-1:30 PM
Phoenix Country Club

25 Quarterly Membership Lunch
11:30 AM-1 PM
Phoenix Country Club

27 CLE: Estate Planning Fundamentals Session IV: Adult Guardianships and Conservatorships
Noon-1:30 PM

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

ANNOUNCEMENTS

The U.S. Supreme Court will hear an Arizona case, Howell v. Howell, which is of national importance because it could impact the finality of a division of military retirement benefits after a veteran and spouse divorce.

In Howell v. Howell, the court will decide whether a state family law court can order a military veteran to compensate an ex-spouse for a reduction in the spouse’s share of military retirement pay caused by the veteran’s election to receive veteran’s disability benefits.

In 2015, the Arizona Supreme Court decided that an ex-wife of a retired Air Force serviceman, who was awarded one-half of his military retirement benefits when they divorced, had a vested interest in those benefits. She was therefore entitled to payment from her ex-husband when he reduced the amount of his retirement pay by voluntarily applying for and receiving disability benefits after they divorced.

The issue now before the Supreme Court is whether federal law, the Uniformed Services Former Spouse’s Protection Act, pre-empts a state court’s enforcement or modification of a divorce decree to compensate a spouse for the reduction of retirement pay caused by the other spouse.

The case is expected to be argued in March 2017. Sandra Howell is represented by Charles W. Wirken of Gust Rosenfeld, PLC. Wirken is a past-president of the State Bar of Arizona, a fellow of the American Academy of Appellate Lawyers and a member of the Maricopa County Bar Hall of Fame.

The U.S. Supreme Court case no. is 15-1031.

HONORS & AWARDS

The law firm of Quarles & Brady, LLP, announced that Phoenix office managing partner Nicole Stanton has been appointed to the board of visitors of the James E. Rogers College of Law. Members of the board work to serve as both advisors to, and ambassadors for, the college, meeting once a year to discuss how to best prepare their law students to enter and adapt to the profession. As a board member, Stanton will have the opportunity to influence the development of the law with fellow attorneys and academics by spreading awareness of the college’s innovative scholarships, courses and degrees.

In addition to her position as office manager and partner at Quarles & Brady, Stanton is a member of the firm’s Litigation and Dispute Resolution group. Her experience includes defense of local and national law firms in legal malpractice actions and other business litigation disputes. Stanton is also an elected member of the American Law Institute and sits on the board of directors for the Arizona Equal Justice Foundation.

In the Phoenix community, Stanton serves as a founding board member and past president of the Women’s Metropolitan Arts Council of the Phoenix Art Museum, as well as a member of Charter 100 Women. She has also served as an adjunct professor at Arizona State University’s Sandra Day O’Connor College of Law and as a member of the Business Court Advisory Committee, appointed by Chief Justice Scott Bales. A graduate of Valley Leadership Class XXIX, Stanton is a recent recipient of the “Philanthropic Leader of the Year” at the 8th Annual Positively Powerful Woman Award and is a past YWCA of Maricopa County’s Tribute to Women honoree, in the Business Leader category.
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