Freedom of Contract Reaffirmed by Arizona Supreme Court

The Arizona Supreme Court has recently reaffirmed Arizonans’ freedom of contract, rejecting an argument that a company could not validly limit its liability in its contract with the client. In 1800 Ocotillo, LLC v. The WLB Group, Inc., No. CV-08-0057-PR (Ariz. Nov. 3, 2008), the court held a surveying company’s standard contract provision limiting its liability to the amount of its earned fees violated neither the public policy nor the Constitution of this state.

1800 Ocotillo hired WLB for surveying services in connection with a condominium project that it was developing near a canal. WLB’s duties included identifying boundary lines and rights of way. WLB’s survey did not accurately reflect an additional engineering service. WLB moved for partial summary judgment, arguing that its liability was limited by a standard contract provision stipulating: “[T]he liability of WLB . . . in connection with services hereunder to the Client and to all persons having contractual relationships with them, resulting from any negligent acts, errors and/or omissions, of WLB . . . is limited to the total fees actually paid by the Client to WLB for services rendered by WLB hereunder.”

The trial court agreed that the provision limited WLB’s liability to the $14,242 that 1800 Ocotillo had paid under the contract. It rejected 1800 Ocotillo’s contention that public policy precluded WLB from enforcing the provision. 1800 Ocotillo appealed. Division One of the Court of Appeals affirmed the trial court’s ruling that the provision was not void as against public policy. But—addressing an argument that 1800 Ocotillo raised for the first time—the court held a surveying company’s provision that the client’s claims were limited to fees actually paid did not void the contract as against public policy.

YLD Necessities Drive Helps Women at Four Local Shelters

Over the past few months, the Domestic Violence Committee of the MCBA Young Lawyer’s Division has been collecting and purchasing much-needed supplies to help victims of domestic violence residing at four local domestic violence shelters: Chicanos Por La Causa, Sojourner Center, Chrysalis, and Elim House.

The Committee solicited monetary and in-kind contributions from the legal community. After receiving input from the shelters, the committee either collected or used the monetary contributions to buy supplies such as diapers and wipes, deodorant, soaps and shampoos, conditioners, cosmetics, journals, stamps, and underclothing.

Each shelter resident also received a "Survivor’s Guide," a pamphlet drafted by the committee that contains important information about legal issues affecting victims of domestic violence.

The necessities were delivered through a contribution from Two Men and A Truck, a local moving company.

Save by Renewing Your Membership for 2009—It’s a Fact

Dues statements were mailed to most MCBA members last month, if not before, and we look forward to your renewal.

In these tough economic times, you might wonder if your MCBA membership dues are dollars wisely spent. The numbers say “yes,” and to make our case, we’ll do the math for you.

As you undoubtedly know, you are required by the State Bar to earn 15 hours of CLE credit each year. As an MCBA member, your cost for each hour of CLE is a discounted $30 ($25 if you’re a member of the section sponsoring the program). That means that your total cost for CLE from MCBA is $450.

The highest dues rate at MCBA is $161 and that’s for attorneys in private practice for more than three years (it’s $92 for three years or less). So as an MCBA member, assuming you make our case, we’ll do the math for you.

To help you plan for your financial future, Wyer will explain how the program works and how your MCBA membership will save you in premium costs.

Probable not. On Friday, Dec. 12, Breakfast at the Bar will tell you how to be more secure through individual disability income insurance, available at a discount to MCBA members through the Principal Financial Group.

Breakfast at the Bar starts at 7:30 a.m. and is completely free of charge. Enjoy food, networking, the program, and maybe win a prize, and be back in the office around 9 a.m. It’s another benefit of MCBA membership.

See Membership page 10

Can You Live Without Your Income?

Probably not. On Friday, Dec. 12, Breakfast at the Bar will tell you how to be more secure through individual disability income insurance, available at a discount to MCBA members through the Principal Financial Group.

Principal’s Michael Abbate and Ian Wyer will explain how the program works and how your MCBA membership will save you in premium costs.

And, if you’re interested, they’ll also be available to create for you a “Personal Strategies Analysis” document that will help you plan for your financial future.

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There’s no obligation, of course.

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There’s no obligation, of course.
Bidding the Year a Restless Farewell

Judge Glenn Davis
MCBA President

And the corner sign
Says it’s closing time,
So I’ll bid farewell and be down the road.

Restless Farewell, Bob Dylan

As I bid farewell to my year as president of the Maricopa County Bar Association, I realize how enjoyable and rewarding it has been to serve as president of this organization over the past months. It has been a pleasure and privilege to work with members of our Board and the many others who serve in leadership positions and put in the hours to make this organization successful.

The MCBA is the voice and face of the legal profession in one of America’s largest metropolitan areas. It is truly a remarkable organization, for which I take very little credit. What makes this organization effective is the enormous amount of time and energy volunteered by our members, coupled with the hard work, excellence and dedication of our association staff.

We have plenty to be proud of this year. Our organization is financially sound and it continues to provide outstanding value and opportunities for our members. We have in the last year substantially increased the number and quality of our CLE programs. Through our combined efforts, the MCBA provided an impressive variety of programs and services that serve the greater community, our public education efforts, the Volunteer Lawyers Program and Maricopa County Bar Foundation, our Law Week projects, the Lawyer Referral Service and much more.

This year we modified our Lawyer Referral Service to set up a case-based system that will provide increased funding for our efforts to provide greater access to justice. Under the new system, attorneys who receive referrals through LRS agree to pay a percentage of the fees generated by certain types of cases to the MCBA.

This new revenue will be used to increase public awareness of the Lawyer Referral Program and 25 percent of the proceeds will go directly to the Volunteer Lawyers Program. This fee-based system is not only up and running, but has already generated a significant amount of revenue for the LRS and the Volunteer Lawyers Program.

We also met our goal of increasing understanding and appreciation of our roots and contributions as a profession in this county. Through the efforts of a very devoted Hall of Fame committee, we created the Maricopa County Bar Hall of Fame and selected the first inductees. I want to particularly thank Stan Watts for serving as the historian of the committee and assisting in identifying the early pioneers of the legal profession in this county.

Our first “Hall of Famers” were celebrated at an Annual Meeting/Hall of Fame luncheon that was one of our best-attended events in a number of years. We received a good deal of positive feedback after the event.

Inductee Ken Sherk called the luncheon “a spectacular affair” that was much appreciated. Michael Kennedy also commended the MCBA on the event and said he had been “privileged and blessed to have practiced law with some of the ‘legends’ in the finest community in America.” Judge Harriet Chavez wrote to thank the MCBA for honoring her mother, Anita Lewis, one of our Pioneer Inductees, and described the Induction Luncheon “a fantastic meeting and celebration.”

It is my hope as this Hall of Fame will grow and continue to serve as a source of pride and unity for this organization in the years to come. The plaques honoring these individuals will be proudly displayed at the MCBA office and we hope they will eventually be a centerpiece of a permanent exhibit at the Maricopa County Justice Museum and Learning Center.

Speaking of which, the MCBA has continued to encourage support for the Maricopa County Justice Museum and Learning Center. We created a committee to help raise funds for the project.

See Bidding page 9

OPINION: Point Security at the Courthouse

By Jack Levine

It is widely believed that the Maricopa County Bar Association represents the interests of its members. If this is true, what has our president or Board of Directors done to gain the admission of lawyers to the county’s courthouses without having to go through demeaning searches of their person and property at the security check points?

Judges, judicial staff, clerical employees, deputy county attorneys, and public defenders are all presently exempt from existing security procedures. Why then are lawyers, who must demonstrate their emotional stability and good character in order to be admitted to the bar, treated differently?

Judges are 100,000 times more likely to be injured or killed in an automobile accident or in a slip and fall at home, than to be assaulted by a lawyer at the courthouse. In fact, in the history of Maricopa County going back to territorial days, there has never been an instance where a lawyer, or anyone, has ever assaulted a judge, including a period of over 90 years when there were no security measures whatsoever, other than a sign at the entrance that firearms were prohibited.

Before the appointment of the present Superior Court administration, lawyers in good standing could apply for security badges and thus bypass the security check points. This system appeared to work reasonably well, but was discontinued for reasons that remain obscure to this day.

At the request of our judges, lawyers have always generously given of their time and talents whenever merit selection has been under attack in the legislature, and for this, lawyers should receive some consideration from the judges on the security issue. As our representatives, our Maricopa County Bar Association president and Board of Directors have a responsibility to begin an active dialogue with our judges on this issue.

Counterpoint

Superior Court Response to Security at the Courthouse

On Nov. 6, 2008, the East Court Building was locked down for 20 minutes after a gun was found in an attorney’s briefcase. The incident caused unnecessary delays for both attorneys and court customers.

Fortunately the matter was resolved without incident after an investigation by the Sheriff’s office. However, this is not the first time this has happened. We have had other incidents as well, including a death threat made by an attorney against a judge.

On average, Court security prevents more than 55 handguns from entering court buildings each year. Of those guns found, 15 percent belong to attorneys entering the court.

This is why it is extremely important for the Court to secure the buildings and have the court users feel protected and safe.

While security is of utmost importance to the Court, Presiding Judge Barbara Rodriguez Mundell issued an administrative order in 2006 (2006-078) which balances security with accessibility. This administrative order was issued to provide expedited access to court buildings to active members of the bar.

If you are a member of the bar in good standing and interested in applying for express screening privileges, please follow the steps below:

Submit an FBI background check, signed application and payment fee of $25 to the Court Security Department, 201 W. Jefferson, Phoenix, 85003.

Pay the background check cost and administrative costs of processing the application and issuance of the attorney express card.

Utilize the express screening privilege card only at designated entrances, where each attorney is subject to go through metal detection, with inspection of briefcases, boxes and hand-carried items.

Notify the court administrator of any pending court or disciplinary case.

Accept suspension of express privileges in the event of a pending family or criminal court case, order of protection, injunction against harassment, eviction or disciplinary proceeding following a State Bar complaint.

Revocation of express privileges is absolute if suspended or disabled from the practice of law.

Judge Mundell takes pride in providing a safe and secure environment for all of our Judges, staff and court customers.
A Sea of Change

While change is inevitable, “change” as a political theme was worn thin during the national elections. The Clerk’s Office and the Superior Court in Maricopa County saw many changes in 2008 and many more will occur in 2009. Change brings some new innovations and can also reduce previous expectations.

In 2008, eFiling expanded to more civil, criminal and family court cases and the Clerk’s Office demonstrated its eFiling system to more than 200 local attorneys, legal support staff, government agencies and interested individuals. The Clerk’s Office reached a milestone by receiving the highest number of civil eFilings in one month in October 2008 at 3,330 civil eFilings.

While the number of eFilings continues to grow, they still represent approximately five percent of the total number of filings in Superior Court.

Budget cuts at all levels of government in 2008 forced change to planning, service levels, and projects in the Clerk’s Office. Because of budget cuts and changing priorities, expanding electronic processes and improving on the old paper processes is necessary for continuing operations in the Clerk’s Office.

In 2009, the Clerk’s Office expects to increase the number of attorneys receiving minute entries electronically and to reduce or eliminate paper processes and procedures that can be done more efficiently.

Employees in the Clerk’s Office know that the biggest room in the world is room for improvement. With shrinking budgets, hiring restraints and unending demand for services, the Clerk’s Office is committed to adapting to change while maintaining the highest levels of quality.

When financial times improve, the office expects to return to a staffing level of employees who can perform the court’s business at the service levels its customers have come to expect. In the meantime, the office will continue to improve everywhere possible and will continue to provide expert assistance from its knowledgeable staff of dedicated employees.

Supreme Court Moves eFiling Forward

Chief Justice Ruth McGregor signed Administrative Order 2008-89, thus adding to existing eFiling pilot programs and allowing attorneys and self-represented parties to electronically file certain documents in civil court cases in the Superior Court in Maricopa County, effective Dec. 1, 2008.

It was previously thought that family court would be involved in the first phase of the permissive eFiling pilot; however, permissive eFiling will only be expanded to civil court cases in this phase of the pilot program.

Documents that may not be electronically filed and must still be filed in paper are listed in the Electronic Filing Guidelines (eFiling Guidelines), maintained by the Clerk’s Office at http://eefiling.clerkofcourt.maricopa.gov/efilingguidelines. The new pilot expanding electronic filing is a ‘permissive’ eFiling initiative as, according to the Administrative Order and the eFiling Guidelines, attorneys and self-represented parties may choose to electronically file, but may also choose to file in paper or use a combination of electronic and paper filing methods.

Documents filed in the courtroom will continue being filed on paper and the Clerk’s Office will scan the image of those documents, making them available in the electronic court record. Civil court judges are prepared to accept electronic filings from attorneys and parties who choose to file in cases under the terms of the permissive eFiling pilot.

In the permissive eFiling pilot program, authorized documents may be filed electronically with the Clerk’s eFiling Online website or through the third-party vendor, WiZenet. Some law firms have made the administrative decision to electronically file exclusively through the one provider, but both are available. More information on eFiling providers is available online at http://clerkofcourt.maricopa.gov/eefiling/default.asp.

Permissive eFiling under Administrative Order 2008-89 and the eFiling Guidelines will not be available in the following case types: family, probate, mental health, tax, juvenile matters, special actions, transfers of jurisdiction or lower court appeals cases. In addition, mandatory eFiling continues in limited civil case type divisions where general and complex civil cases are designated for eFiling by individual minute entries. To verify a judicial division’s participation in eFiling, contact the division directly.

Interview with Judges Margaret Downie and Peter Swann

Former Maricopa County Superior Court Judges Margaret Downie and Peter Swann took some time to talk about their experiences in Superior Court with the Maricopa Lawyer’s Aaron Nash, as they prepared for the Nov. 5 start of their appointments to the Court of Appeals, Division One.

Maricopa Lawyer (ML): You’ve been judges in some capacity (pro tem, hearing officer, etc.) for 13 and eight years respectively — why be a judge?

Judge Downie (JD): I left private practice in 1988 to pursue public service and have never regretted it. The rotations and the legal content in Superior Court requires constant learning. It’s like going to school every day — in a good way.

Judge Swann (JS): I genuinely believe in service to our constitutional system. Being a judge is a noble calling. Arizona’s judges and its judicial system are among the best in the country and I was honored to have the opportunity to participate.

ML: How has public perception, immediate internet publicity and blogs, and the phrase “activist judges” changed what it means to be a judge?

JD: From a decision-making standpoint, you simply cannot consider whether a decision will be popular or not. Clear reasoning in a ruling is key — you can’t control how headlines are written. It helps to explain decisions in layman’s terms so everyone who reads the decision can understand how you got to it.

JS: You can’t bend to the blogs in decision making, but at the same time, the public has a legitimate concern with accountability. Those who actually observe the courts or take part in a case generally rate our system very favorably. The survey tools the court uses consistently reflect a high satisfaction rating from people who actually use the courts — even though half of them leave the court without getting what they wanted initially.

ML: Describe the process for getting appointed to the bench.

JD: [The Commission on Appointments] have done their homework. It takes a commitment to put yourself through the process. It takes a lot of time outside of work and often people are not appointed on their first or second attempt. The merit process is grueling and comprehensive. It’s thorough at all levels, up to the Governor. I was surprised when the Governor asked me about what I thought were small details in what was a massive application packet. There are also lots of factors you can’t control, like who else is applying.

JS: It really is a commitment. The public interviews are packed with observers, the applications are available on the web for public scrutiny and the 16 commission members ask very substantive questions. For up to four months, each applicant is subject to intense scrutiny. I think when you compare the rigorous vetting of applicants by merit selection to a raw partisan election with no background checks or other hurdles, the public is very well-served by our process.

ML: What do you think will be the best part of serving on the Court of Appeals?

JD: Having law clerks and research assistance plus two other judges will really help ensure we are reaching the best result in every case.

JS: Superior Court at times can be a little solitary. The opportunity to work through cases with colleagues is a great way of assuring quality and pace of Superior Court is a valuable experience.

ML: What will you miss most about Superior Court?

JD: Eleven years of daily interactions results in making good friends with the other judges and court staff. I’ll miss all of them most.

JS: I agree with that and I’ll miss the frequent interaction with the lawyers and the public.

ML: Judge Downie, what advantages are there to being appointed to the Court of Appeals from the Superior Court?

JD: Having trial experience on the Superior Court bench will enhance the professional diversity of the makeup in the Court of Appeals. Having experience as a trial judge is helpful in knowing how the record was developed in Superior Court and the 60-day rule helps you get used to moving quickly in reaching decisions.

ML: Judge Swann, you were a leading supporter of electronic filing in Superior Court — how has it improved the law and court?

JS: It’s all about communication. The

See Interview page 6
involved in activities throughout the year, so be sure to check the website regularly for announcements about upcoming events (www.maricopabar.org, and click on the “For Paralegals” link). The monthly meetings of the Board of Directors are open to all Division members so please feel free to join us. Current board meetings are held on the second Monday of each month at the MCBA offices, but be sure to check our calendar for the schedule of meetings in 2009. I hope to see you at our End of the Year Celebration on Tuesday, Dec. 16 at the MCBA at 5:30 p.m. This year, we have invited our vendors and sponsors who gave us such wonderful support this year for the 2008 Arizona Paralegal Conference, so I hope you’ll come out and help us thank them for helping us have such a successful conference. We will also be collecting donations for our annual toy drive to benefit a local charity. Additional details are posted on the website.

COURTWATCH
continued from page 1

time on appeal—the court held that the provision was subject to Article 5, § 18 of the Arizona Constitution, which makes assumption of risk a jury question in all cases. It remanded the case to the Superior Court to allow the jury to decide whether and to what extent to enforce the limitation-of-liability provision. 1800 Ocotillo, LLC v. WLB Group, Inc., 217 Ariz., 465, 176 P.3d 33 (App. 2008).

WLB petitioned the Supreme Court for review and 1800 Ocotillo cross- petitioned. The Supreme Court granted both petitions.

Writing for a unanimous court, Justice W. Scott Bales first addressed the public-policy argument. He noted that contract provisions are unenforceable if they violate public policy found within constitutional provisions, legislation, and other sources of law. Courts must balance the competing interests and determine possible injury to the public welfare, but they are generally reluctant to invalidate contracts on grounds of public policy. “Our law generally presumes, especially in commercial contexts, that private parties are best able to determine if particular contractual terms serve their interests,” Bales wrote.

Furthermore, “[s]ociety . . . broadly benefits from the prospect that bargaining struck between competent partners will be enforced.” Thus, he continued, “courts should rely on public policy to displace the private ordering of relationships only when the term is contrary to an otherwise identifiable public policy that clearly outweighs any interests in the term’s enforcement.”

With that in mind, Bales rejected 1800 Ocotillo’s reliance on Arizona statutes that prohibit indemnity provisions in certain professional contracts. “Anti-indemnification statutes,” he explained, “are primarily intended to prevent parties from eliminating their incentive to exercise due care. “Because an indemnity provision eliminates all liability for damages,” he continued, “it also eliminates much of the incentive to exercise due care.” The standard contract provision, he pointed out, did not eliminate WLB’s liability but only limited it. Bales acknowledged that a liability-limitation provision could reduce potential liability so much that it would effectively destroy the contracting party’s incentive to act with due care. But WLB’s provision did not fall into that category.

“WLB remains liable for the fees it earns,” Bales noted. Because “[t]he fees undoubtedly were WLB’s main reason for undertaking the work,” he wrote, “WLB retains a substantial interest in exercising due care because it stands to lose the very thing that induced it to enter into the contract in the first place.”

He concluded that the provision “substantially preserves WLB’s interest in exercising due care,” and thus was enforceable.

Bales also rejected 1800 Ocotillo’s reliance on various statutes regulating the liability of members of professional corporations. These statutes did not preclude contractual limitations of liability, but only restricted the ability of professionals to limit their personal liability for professional services. He also declined to invalidate liability-limitation provisions based on any judicially identified public policy.

“Such clauses may desirably allow the parties to allocate as between themselves the risks of damage in excess of the agreed-upon cap, which could preserve incentives for one party to take due care while assigning the risk of greater damage to another party that might be better able to mitigate or insure against them,” he wrote.

Other doctrines of contract law are available to prevent such provisions from arising out of coercion or other improper bargaining techniques.

See CourtWatch page 13
Playing the Persuasion Game with Punctuation

When legal writers think about emphasizing information for persuading their readers, they typically think to underline, boldface, or italicize the information. There is another way to emphasize information that may be even more effective than altering typeface, though: using strategic punctuation.

Simply put, a writer can use colons and dashes to force the reader to pause on important information. This punctuation “pause” also appears in the document’s design as extra white space, which further emphasizes the information.

Most legal writers know to use colons to introduce lists and quotations, but writers can also use colons to elaborate or highlight information about the subject that precedes the colon.

The key to using a colon for persuasive effect is (1) to make sure that the sentence preceding the colon is a complete sentence on its own, although the information after the colon does not have to be a complete sentence, and (2) to make the information after the colon as short as possible so the emphatic point of the information is strong. After two days of extensive searching through rough terrain, the investigator finally found a clue that the victim had been in the area: his blue and white tennis shoe.

Similarly, legal writers can use the dash effectively for emphasizing information by interrupting the sentence to highlight or elaborate a point. A dash is longer than a hyphen and is created by leaving a space, then typing two hyphens together, then leaving another space.

Authorities sought to re-question Gary and Reva — who were straight-A students at the time of the alleged crime and had never even received a detention — despite the fact that their stories matched during an earlier interview.

There is only one caveat to using punctuation for persuasive effect: use it sparingly. Too many dashes make the writing appear too informal. Too many colons make the writing choppy and take away from the colon’s persuasive effect.

By Joan Dalton

Report analyzes prisoner escapes

The U.S. Sentencing Commission has issued a report on federal prisoner escape cases to determine whether the crime of escape qualifies as a “violent felony” for sentencing purposes. Under the Armed Career Criminal Act, an offender having three or more prior convictions for “violent offenses” must be sentenced to at least 15 years in prison. The Commission report analyzes federal escape cases to determine what factors contribute to conduct that qualifies as a violent felony.

The Commission found that of the 414 escape cases studied for the report, 3.4 percent involved the use or the threat of force either at the time of escape or attempted escape, or both. Another 7.2 percent of escape cases studied involved a weapon, and 2.9 percent involved injury at some point.

The report was prompted by a suggestion from a Court of Appeals decision.

ABA proposes action plan for President-elect

In October, the American Bar Association issued a memo urging the president-elect to begin work on six pressing justice matters as part of his administration’s transition process, and then take executive action on the issues right after inauguration. The ABA would like to see President-elect Obama take action on the following six justice initiatives in the first 30 days of his administration:

Judicial selection and nomination
Immigration
Attorney-client privilege
Interrogation practices for detainees
The International Criminal Court
Presidential signing statements

The initiatives are based on ABA policies and seek to improve the justice system, promote the rule of law and ensure the country’s national security while continuing to protect civil liberties.

Kyl says he will filibuster liberal judicial nominees

Sen. Jon Kyl told a gathering of Federalist Society members that he intends to filibuster Obama U.S. Supreme Court nominees that he considers too liberal. Obama is expected to nominate two U.S. Supreme Court Justices during his term; however, 15 federal appellate court and 37 district court vacancies are anticipated by the time the President-elect is sworn in.

Some pundits believe Obama can name enough judges in his first term to give Democrats a majority on nine of the 13 U.S. Circuit Court of Appeals. Presently, the Ninth Circuit is the only court of appeals having a Democratic majority.

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Looking Back with Pride and Looking Forward with Excitement

As I write this, my final column, I cannot help but feel mixed emotions: relief, on the one hand, that this year turned out to be as successful as we had hoped; and excitement, on the other, about the focused enthusiasm the Young Lawyers’ Division carries into 2009 under the leadership of LaShawn Jenkins and with the newly elected Board members.

Specifically, I congratulate our newest board members: Allison Carter, associate with Quarles & Brady, LLP; Sarah Anchors, associate with Quarles & Brady, LLP; Megan Hardman, associate with Snell & Wilmer, LLP; Nicole Holt, general counsel for Arizona Credit Union System; and Jennifer Rebholz, associate with Burrell & Seletos.

You have accepted a great responsibility for which you will be rewarded.

I also want to express my sincere and personal thanks to everyone who applied for a Board position. You do not have to be a Board member to be active in the YLD, so please volunteer and assist with one of our various committees or with one of our worthwhile events. Your input also helps us focus the direction of the YLD so it more accurately benefits our membership.

Next, I want to congratulate our incoming Executive Committee: President LaShawn Jenkins, associate at Quarles & Brady, LLP; President-elect Richard Siever, associate at Snell & Wilmer, LLP; Treasurer Matthew Mansfield, associate at Ballard Spahr Andrews & Ingersoll, LLP; and Secretary Stefan Palys, associate with Lewis and Roca, LLP. I am confident that this group of leaders will carry on the spirit and tradition of selfless dedication and social benefit that the YLD seeks to promote through its activities.

Finally, I want to send a personal letter of thanks to the men and women who have gone before me, mentored me, and assisted me this year and in all my previous years of work with the Young Lawyers Division.

Andy Everroad first encouraged me to volunteer with the YLD. Lori Higuera and Susan Wissink guided me through my first few years as a young board member. Jennifer Green and Julie LaFave encouraged me to run for an executive position when I would have otherwise been happy to remain part of the rank and file.

During my term, Allen Kimbrough and Laurie Williams gave selflessly to help me make the YLD’s wishes and dreams realities. Of course, my fellow board members, who put “rubber to the road” and pull off our numerous events, deserve unending praise. And last, but certainly not least, Jennifer Ratcliff, who extended me unending patience in answering questions and assisting me as the immediate past president this year.

Without the assistance of each and every one of these individuals, this year would never have been as successful. I consider each and every one of you my good friends.

Thank you.

Arizona Appellate Courts Performance Measurements

The Arizona appellate courts have undertaken a project to assess their performance. A Supreme Court committee, Appellate CourtTools, has been working for approximately four months to evaluate and recommend measures to track and improve appellate performance.

Consistent with Goal 4 of the Court’s 2005-2010 Good to Great Strategic Agenda, the project will increase the accountability of the appellate court system. Many are familiar with CourtTools, which has been implemented in most of the trial courts to measure their performance. Taking a similar approach, the Appellate CourtTools committee has identified six areas important to assessing performance.

The first measure involves surveying those with the most frequent contact with appellate courts: Superior Court judges and attorneys involved with appellate cases. Those responding will be asked to rate each court’s performance in areas common to all appellate courts and, in addition, to rate areas unique to each court.

Within the next several weeks, Chief Justice Ruth V. McGregor will send a pre-announcement e-mail to Superior Court judges and appellate attorneys. Respondents will receive the survey, which will use the Internet application SurveyMonkey.com, in late January 2009. Responses will be anonymous.

For more information, please contact Carol Mitchell, the Appellate CourtTools project manager, at (602) 452-3965 or via e-mail at cmitc@courts.az.gov.

INTERVIEW

In addition to the application process, many people would be surprised to know the volume of cases the Court of Appeals reviews. Each panel has 6-10 cases a week to dispose of in a complete and polished fashion and there are five panels operating at any given time.

ML: How do you define success?

JD: There are a lot of intangibles that go into that. I was given a lot of opportunities academically and professionally and to me, giving back to the community is one way to define success. Building on your own unique skills and abilities is also success. Milestones are nice, but they don’t define success.

JS: I would say having a positive effect on the world around you.
Plain-English Drafting for the ‘Age of Statutes’

By Douglas E. Abrams

A generation ago, Professor Guido Calabresi chronicled the “statutorification” of American law. Within a few decades, he explained, the nation had moved “from a legal system dominated by the common law to one in which statutes, enacted by legislatures, have become the primary source of law.”

A quick visit to a law library confirms the dominance of legislation today. Annual compilations of the United States Statutes at Large and the Arizona Session Laws now dwarf their slim counterparts for any 19th-century year, and the United States Code and the Arizona Revised Statutes now consume entire shelves.

The volumes’ hefty indices underscore the sheer breadth of subjects that federal and state legislation address, a spectrum wider today than ever before. Adding to this heap are the codes, charters and ordinances enacted by city councils, boards of supervisors or commissioners, and similar local legislative bodies from coast to coast.

We live (as Calabresi put it) in the “Age of Statutes,” when legislative drafting intimately affects our public and private lives.

Because citizens with law degrees hold no monopoly on the statute books in our nation based on consent of the governed, lawmakers should strive to express themselves in Plain English from initial drafting through enactment.

The British and Scottish Law Commissions state the core aspiration: “[A] statute should be drafted so that it ‘can be understood as readily as its subject matter allows, by all affected by it.’”

“Baby Talk?”

Some critics scoff at calls to draft legislation in Plain English. The gist of the critique is that statutes speak not to lay readers, but to lawyers and judges whose law school training equips them to grasp legal nuance and technicality.

“The language of our legislation,” says one critic, “cannot be reduced to baby talk for consumption by the masses.”

I recognize that statutes make bad bedtime reading and do not deliver the sort of entertainment we normally expect from the books and articles we choose to read. I recognize, too, that intricate legal doctrine sometimes resists expression in Plain English. Tradition may also thwart Plain English. T

The Arizona Legislative Council has it right: “The goal of good bill drafting is to make legislation as short, simple and readable as possible while not sacrificing clarity or precision.”

These essentials acknowledge that legislative drafters, like other writers, do not speak in isolation: they speak to an audience. A statute’s audience typically includes both lawyers and non-lawyers, and the second group sometimes outnumbers the first. Plain English enhances clarity and understanding for both groups.

The Legislature’s Audience of Lawyers

Legislative drafters write for judges who interpret statutes, lawyers who counsel and advocate their clients’ causes, public sector lawyers who administer the laws, and lawyers who are regulated in their businesses or other affairs. Lawmakers advance the sound administration of justice when, to the extent possible, they enact standards comprehensible to this diverse legally trained audience.

Some imprecision is inescapable in the legislative process, and some may even be deliberate.

“Anything that is written may present a problem of meaning,” Justice Felix Frankfurter observed, because words “seldom attain[] more than approximate precision.”

But there is more. Even a bill drafted with reasonable clarity may be cobbled by many hands during the give-and-take of committee hearings and floor debate along the tortuous path to enactment.

Reflecting on his eight years in Congress, Judge Abner J. Mikva explained that “it is not easy to get 535 prima donnas to agree on anything. To get two separate majorities to agree separately on a single set of words can be a very difficult assignment.”

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### MCBA Calendar

**All events are held at the MCBA headquarters at 303 E. Palm Lane, Phoenix, unless otherwise noted. Also check www.maricopabar.org or call (602) 257-4200.**

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<td>Family Law Section Annual Judicial Reception 5 p.m. – MCBA Office</td>
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<td>4</td>
<td>Construction Law Section Board 12 p.m.</td>
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<td>5</td>
<td>Estate Planning, Probate &amp; Trust Section Board 8 a.m.</td>
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<tr>
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<td>Diversity Committee Retreat 12:30 p.m.</td>
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<td>6</td>
<td>YLD Board Retreat 7:30 a.m.</td>
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<td>8</td>
<td>YLD Board 12 p.m.</td>
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<td></td>
<td>Environmental &amp; Natural Resources Section Holiday Party</td>
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<tr>
<td></td>
<td>Guest speaker: Lawrence Odle, Dir. of Maricopa County Air Quality Dept. 5:30 p.m.</td>
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<td>Irish Cultural Center</td>
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<td>Paralegal Division Board 6:30 p.m.</td>
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<td>9</td>
<td>CLE: View from the Bankruptcy Bench: Practical Advice for Young Lawyers 8 a.m.</td>
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<td>Public lawyers Division Holiday Lunch 12 p.m.</td>
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<td>Open House Reception: Corporate Counsel Division, Employment Law, and Real Estate sections 5:30 p.m.</td>
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<td>Environmental &amp; Natural Resources Section Board 12 p.m.</td>
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<td>11</td>
<td>Arizona Black Bar 5:45 p.m.</td>
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<td>12</td>
<td>Breakfast @ the Bar 7:30 a.m.</td>
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<td>15</td>
<td>Family Law Section Board 12 p.m.</td>
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<td>Paralegal Division End of Year Party 5 p.m.</td>
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<td>Employment Law Section Board 12 p.m.</td>
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<td>Lawyer Referral Committee 12 p.m.</td>
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<td></td>
<td>CLE: Construction Law Section (Holiday Party to follow) 5 p.m.</td>
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<td>18</td>
<td>MCBA Board of Directors 4:30 p.m.</td>
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<td>19</td>
<td>Maricopa County Bar Foundation Board 8:30 a.m.</td>
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<td>MCBA Closes at 12 p.m.</td>
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<td>MCBA closed for Christmas Holiday</td>
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<td>26</td>
<td>MCBA closed for Christmas Holiday</td>
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### Latest Court Opinions Available Online

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ADA Amendments Act of 2008 Broadens Definition of ‘Disability’

By Andrea Lisenee & Charliie Hartig

In September 2008, the Senate and House passed the ADA Amendments Act of 2008 ("ADA Amendments") and President Bush signed the bill into law, which will take effect Jan. 1, 2009.

The legislation was passed in response to a series of Supreme Court decisions that have narrowed the definition of disability under the ADA.

For example, in Sutton v. United Air Lines, 527 U.S. 471 (1999), the court held that the determination of whether an individual is disabled should be made with reference to measures that mitigate the individual’s impairments. Id. at 474. Under the rationale of Sutton, individuals whose impairments are corrected by medication or other devices would not be considered “disabled” under the ADA. Id. at 486.

In Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002), another case in which the court narrowed the protections of the ADA, the court concluded that the term “substantial” in the phrase “substantially limits” and “major” in the phrase “major life activities” must “be interpreted strictly to create a demanding standard for qualifying as disabled.” Id. at 197. The court held that if an individual is substantially limited, an individual’s impairment must prevent or severely restrict the individual “from doing activities that are of central importance to most people’s daily lives.” Id. at 198.

Because many individuals were excluded from the definition of “disability” following Sutton, Toyota Motor and other recent decisions, the ADA Amendments were passed to reinstate “a broad scope of protection” under the ADA.

One of the most significant changes made by the ADA Amendments is that mitigating measures such as medications or other medical devices (with the exception of ordinary eye glasses and contact lenses) can no longer be considered when determining if an individual is disabled.

Congress also rejected the standards enunciated in Toyota Motor for determining what “substantially limited” and “major life activity” mean. Congress has now charged the Equal Employment Opportunity Commission with redefining what it means for an impairment to “substantially limit a major life activity.”

Additionally, Congress made clear that the definition of disability is to be construed in favor of broad coverage of individuals. In short, the question of whether an individual’s impairment constitutes a disability under the ADA should no longer demand extensive analysis. Rather, the primary focus of cases brought under the ADA will now be on whether covered entities have complied with the statute.

As a result of the ADA Amendments, there will likely be a rise in ADA litigation and cases that previously might have been summarily dismissed are more likely to require a trial. In response to the ADA Amendments, attorneys should advise their clients to consider revising their employment policies and conducting training for managers, supervisors, and human resources professionals on disability-related issues.

If you are interested in learning more about this topic, please join the Employment Law Section for a CLE entitled “ADA Update: The Impact of the ADA Amendments Act of 2008” at the MCBA office at noon on Jan. 22, 2009.

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PLAINE-GLISH continued from page 7

to convey a clear and complete idea — and then to get the president to sign such a miracle — is not easy.

To compound this inherent potential for imprecision, legislative sponsors striving to preserve fragile coalitions for a controversial bill sometimes resort to what Justice William J. Brennan, Jr. called "studied ambiguity," ill-defined standards "deliberately adopted to let the courts put a gloss on the words that the legislators could not agree upon." (In football, such deliberate action is called punting, and it is designed to produce strategic advantage.)

Lawmakers can equivocate or compromise, but the rules of jurisdiction normally require courts to decide cases, even when decision turns on a statute whose language appears puzzling or incomplete. The decision turns on a statute whose language may divide an appellate court when "murky" legislation obscures rather than clarifies meaning.

The Ginsburg critique reminds us that obscurity is obscurity, even when the reader displays a law degree or judicial commission on the office wall.

The Legislature's Audience of Non-Lawyers

The legislative drafter's lay audience begins with sponsors and other lawmakers themselves, many or most of whom in a typical Congress or state or local legislature are not lawyers. Legislators may debate and then vote based on understanding gleaned from staff members' written summaries, but reliance on these secondary sources brings risk when the bill and not the summary becomes law.

Following enactment, a statute's application and enforcement may depend on decisions making by public officials who have no formal legal training or sustained access to a legal staff. Business people and other non-lawyer professionals also frequently consult statutes that regulate their affairs.

The legislative drafter's lay audience typically extends even further, however, to people from all walks of life whom the enactment may affect, a class that may number in the thousands or more.

Congress and the Arizona State Legislature recognize this extended audience by posting filed bills, and the United States Code and Arizona Revised Statutes themselves, on their official websites for downloading and inspection by the general public. City councils and local boards of supervisors or commissioners also typically post their charters, codes and ordinances.

"Dean Roger C. Crampton is right that "[s]impler statutes and regulations written in 'plain English' might be more readily followed without resort to professional advice."

As I spend time in the University of Missouri School of Law library down the hall from my office, I often see the staff assist members of the general public who wish to examine the statute books, as the general public has every right to do. Law and lawyers are expensive, most people seek to avoid litigation, and self-representation remains a right in most circumstances.

In some fields of law, people often cannot afford professional advice, or may feel more comfortable with self-representation. I teach in one such field, family law. According to surveys in some jurisdictions, at least one spouse litigates without a lawyer in more than half of divorce cases, often because the spouse finds representation too costly or intrusive. The divorce act statement of public values stipulated by elected representatives over time, should remain at least as accessible as commercial "do it yourself" books sold in local discount stores.

Lay readers may learn about statutory law from summaries of particular fields written (in Plain English, by the way) by a federal or state agency or a bar association. These summaries may be requested by telephone or mail, and they typically appear on the Internet, supplemented by answers to FAQs (frequently asked questions). The State Bar of Arizona, for example, maintains an array of brochures that experienced Arizona lawyers have written to provide lay persons information on a variety of legal topics.

Some fields of law, such as the federal antitrust laws and much state legislation implementing complex federal mandates, have become so intricate that these unofficial Plain English summaries may provide the lay public's most realistic opportunity for understanding without counsel. Agency or bar association publications, however, should complement rather than supplant the legislature's own efforts to demystify the law.

The 'Legislative Drafter's Presumption'

Legislative drafters should begin writing from the presumption that Plain English would enable lay persons potentially affected by the bill to grasp its meaning. The presumption favoring Plain English remains rebuttable, but only for strong reasons because (as the Uniform Law Conference of Canada recommends) "[a]n Act should be written as much as possible in ordinary language, using technical terminology only if precision requires it."

This Legislative Drafter's Presumption is a logical corollary of a presumption already well-established: Persons are conclusively presumed to know the law, and thus may not plead lack of knowledge when they deal with the government or defend a civil or criminal proceeding. Conclusiveness actually makes the latter "presumption" a rule of law, commonly expressed as "ignorance of the law is no excuse." For the rule to approach reality rather than survive merely as a legal fiction, lawmakers should give lay people that is, most people -- a fair chance to understand the legislation that the legal system conclusively presumes they understand.

Understanding depends on access, which means more than simply the right to inspect bills or statutes in a public law library or on an official website. Access also means making reasonable efforts to enable citizens, to the extent possible, to read a bill or statute with some fair opportunity to figure out generally what it says.

Most citizens, of course, navigate legislative waters without benefit of a formal legal education. But access grounded in Plain English enhances the capacity of lay readers to provide their elected representatives commentary about bills, and then to conform their conduct to the statute or decide whether to secure a lawyer's professional assistance. That most people will not seek out these opportunities does not diminish the entitlement of the people who do.

An Australian government minister, a strong proponent of Plain English drafting, recently acknowledged that when legislation concerns particularly complex legal doctrine, lawmakers sometimes must strike "a delicate balance between ... simplicity ... and ... comprehensive coverage."

The balance might tilt against Plain English in a particular case, but Professor David Mellinkoff provides a sound rationale for the Legislative Drafter's Presumption favoring simplicity in the absence of convincing rebuttal:

"With communication the object, the principle of simplicity would dictate that the language used by lawyers agree with the common speech, unless there are reasons for a difference. ... If there is no reason for departure from the language of common understanding, the special usage is suspect."

Conclusion

Calls for Plain English drafting date at least from the late 16th century, when King Edward VI urged Parliament to make statutes "more plain and short, to the intent that men might better understand them."

"[T]he first end of a writer," English Poet Laureate and literary critic John Dryden counseled in 1700, is "to be understood." This first end is as central today as it was during the Age of Dryden centuries three centuries ago.

In most circumstances, "[t]he simplest English is the best for legislation." Plain English invigorates any writing. Inside or outside the halls of the legislature, writers should strive for nothing less.
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VLP ATTORNEYS OF THE MONTH

Stanley M. Friedman and Allen L. Ginsberg

By Peggi Cornelius

Sadly, there is never a shortage of people with civil legal needs who cannot afford legal counsel. Fortunately, access to the expertise and assistance they need is increased by Arizona Supreme Court Rule 38 (e) and attorneys like Stanley M. Friedman and Allen L. Ginsberg.

For their participation in the Volunteer Lawyers Program (VLP) under Rule 38 (e), and their outstanding service to low-income residents of Maricopa County, Friedman and Ginsberg are recipients of VLP’s Attorney of the Month award.

Provisions of Rule 38 (e) allow an attorney who is or was admitted to practice law for at least five years in any state, district or territory of the U.S. to be admitted in Arizona to provide civil legal assistance on a pro bono basis through an approved legal services organization.

Retired from a successful insurance business and a largely pro bono law practice in New Jersey, Friedman wanted to balance leisure time with meaningful work. As he explains it, “Just as I had in New Jersey, I found advantages in becoming a volunteer when I moved to Chandler, Ariz.: I was not required to take the Arizona bar exam; Community Legal Services provides me insurance coverage as a VLP member; I don’t maintain an office outside my home; and record keeping is minimal. I can concentrate on resolving problems for people.”

Still licensed and practicing in Illinois, but wanting to transition while moving from Chicago to Phoenix, Ginsberg found Rule 38 (e) enables him to be licensed in Arizona and utilize his 41 years of legal experience to low-income people here.

Ginsberg describes pro bono work he has done throughout his career as, “a way to stay grounded in reality. Writing checks to support legal services to those less fortunate is good, but for me, the best way to feel good about myself has always been to do something for someone else.”

Donations

The Volunteer Lawyers Program thanks the following attorneys and firms for accepting these 39 cases during the past month.

VLP supports pro bono service of attorneys by screening for financial need and legal merit and providing primary malpractice coverage, donated services from support professionals, training, materials, mentors, and consultants. Each attorney receives a certificate from MCBA for a CLE discount.

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

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Donate Small Arbitration Fee, Make a Big Difference

Working in partnership 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.

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, which is also available for downloading on the foundations web page at www.maricopabar.org (click on the MCBF link on the right navigation bar).

When an attorney checks the pro bono option, the arbitration fee is automatically forwarded to the foundation, where it helps fund the grant-giving program. The foundation’s Board of Trustees asks all attorneys assigned to arbitration to remember the work of the foundation when filling out their forms, and offer a thank you to all who have donated their fees in the past.
Moves and New Hires

Lewis and Roca is proud to announce that Thomas H. Campbell was appointed to the Arizona Technology Council Board of Directors. A partner in the firm’s Phoenix office, Campbell will serve a three year term with the council. The Arizona Technology Council is a private, not-for-profit trade association founded to connect, represent and support the state’s expanding technology industry.

Lewis and Roca is also pleased to announce that Gov. Janet Napolitano has appointed Katosha Nakai to the Arizona Oil & Gas Conservation Commission. Nakai is an attorney in the firm’s Phoenix office and her term with the Commission will run until 2010. The Arizona Oil & Gas Conservation Commission works to regulate the drilling for and production of oil, gas, helium, carbon dioxide, and geothermal resources.

Additionally, Lewis and Roca is proud to announce that Peter Wand and Scott Bennett, associates in the firm’s Phoenix office, have been selected as chair of the Young Lawyers Subcommittee and chair of the Forfeiture Subcommittee, respectively. Both subcommittees are divisions of the Criminal Litigation Committee of the American Bar Association’s Litigation Section. The ABA Criminal Litigation Committee is concerned with the defense and prosecution of complex white-collar cases and regulatory enforcement matters.

Christian Olson, an associate at Fennermore Craig, has been chosen to serve on the board of the Child Crisis Center Foundation. As a Child Crisis Center Foundation board member, Olson will help raise funds and support the center’s mission of preventing child abuse and neglect. The Child Crisis Center, which was established in 1981, provides emergency shelter, counseling, prevention programs, education, and intervention on behalf of children and families.

Jennings, Strouss & Salmon is pleased to announce that Michael Palumbo, a member of the firm’s Phoenix office, was inducted as a fellow into the Litigation Counsel of America (LCA). The Litigation Counsel of America is a trial lawyer honorary society composed of less than one-half of one percent of American lawyers. Fellows are selected based upon effectiveness and accomplishment in litigation, both at the trial and appellate levels, and superior ethical reputation.

Owens & Perkins, PC, is pleased to announce that Luke Reynoso has joined the firm. Reynoso will continue to practice in the areas of taxation, estate planning, probate, and guardianships and conservatorships.

Holme Roberts & Owen LLP is pleased to announce that Christine Meis McAuliffe, a partner in the firm’s Phoenix office, has been elected to serve on the Executive Committee of the Arizona BioIndustry Association’s (AZBio) Board of Directors. McAuliffe has served on the AZBio Board of Directors since 2005, including as its secretary, and was elected to the recently-formed statewide Board of Directors in February 2008. AZBio seeks to unify, empower and advance its member organizations, which collectively form Arizona’s bioscience community.

Robert M. Kessler, chief counsel of Schaller Anderson, Inc., Aetna’s Medicaid business unit, has been named chair of a new Healthcare Reform Task Force created by the American Health Lawyers Association (AHILA). The task force will provide information to association membership regarding comprehensive healthcare reform initiatives at the state and federal levels.

News and Events

In an effort to raise money for Susan G. Komen for the Cure, Gallagher & Kennedy, PA, held a series of internal fundraisers that resulted in monetary donations of nearly $44,000 from the firm’s employees, families and friends to the charity.

Fundraising events held from Monday, Oct. 6 to Friday, Oct. 10, at the Gallagher & Kennedy offices in Phoenix included: raffle tickets; an online auction for baked goods; Denim/Passionately Pink for the Cure Day; a prize wheel/dart board; a silent auction; a live auction; and a Gallagher & Kennedy cook book featuring dozens of recipes by the firm’s employees.

In addition to many more company sponsored activities that began in September, for the fifth year in a row Gallagher & Kennedy generously paid the registration fees for all employees who participated in the Oct. 12 Race for the Cure.

COURTWATCH

continued from page 4

“In sum,” Bales concluded, “we do not believe that liability-limitation clauses like the one at issue here are unenforceable as contrary to an identifiable public policy that clearly outweighs any interests in their enforcement.”

He next turned to the Arizona Constitution, focusing on Article 18, § 5, which states: “The defense of contributory negligence or of assumption of risk shall, in all cases whatsoever, be a question of fact and shall, at all times, be left to the jury.” To determine whether this provision applied to WLB’s provision, Bales had to determine the meaning of “assumption of risk,” which the Constitution does not define.

Looking at both the records of the Constitutional Convention and the common law, Bales concluded that the framers were referring to “a defense that effectively relieved a defendant of any duty of care by completely barring recovery by the injured party.” So defined, the constitutional provision did not apply to the contract provision because it merely limited WLB’s liability.

“When . . . provisions [like WLB’s] do not effectively relieve a party from a duty to exercise due care but instead merely place a ceiling on recoverable damages,” Bales explained, “they do not operate like the common law defense of assumption of risk.”

Continuing, he wrote, “Construing Article 18, Section 5 to include such provisions would not comport with either the common meaning of the phrase ‘assumption of risk’ at the time of the constitutional convention or with the purpose animating the framers.”

In accordance with the opinion, the Supreme Court vacated the Court of Appeals’ decision and remanded to the trial court to allow 1800 Ocotillo to litigate other defenses to the provision.
Expect great things from the alumni of Phoenix School of Law, as 97 percent of the inaugural graduating class passed the Arizona bar exam.

“We are very excited about our graduates’ exceptional performance and the defining impact it will have on our reputation,” Dean Dennis J. Shields said. “Our high, first-time pass rate is the exception to the rule for most new schools, which typically build toward this result over several years. It is a true reflection of the caliber of our students and faculty at PhoenixLaw.”

Those who sat for the July 2008 bar exam included working professionals who were able to pursue a law degree because of the part-time, flexible programs offered by PhoenixLaw – the only such program in Arizona. The successful bar exam candidates represent the front line of the PhoenixLaw legacy.

“It is noteworthy that our inaugural graduating class posted a pass rate that is above both the state pass rate of 82.4 [percent] and the traditional national average estimated at 65 percent,” Karol Schmidt, assistant dean for Student Outcomes, said. “The results speak volumes about PhoenixLaw’s comprehensive bar preparation program and the shared commitment to graduating students who can effectively participate in the legal profession.”

PhoenixLaw opened in January 2005, and received provisional accreditation from the American Bar Association (ABA) in June 2007. The ABA Standards for Approval of Law Schools state that students graduating from a then provisionally approved law school are entitled to the same recognition given to students and graduates of fully approved law schools, which in Arizona includes eligibility to sit for the Arizona bar exam. PhoenixLaw currently boasts a student body of 335 with about two-thirds of students attending full-time and one-third attending part-time.

When compared to other Arizona law schools, PhoenixLaw’s inaugural graduating class achieved exceptionally strong results, matching or exceeding historical pass rates of graduates from the other law schools in Arizona.

“Our pass rate reflects the ABA’s charge for greater accountability in legal education,” Dean Schmidt added.

2008 Comerica Bank Pro Bono Golf Classic

Benefiting the Maricopa County Bar Foundation and the Volunteer Lawyers Program, the Nov. 8 golf classic once again brought a generous response from the legal community and its supporters.

MCBF and VLP thank the sponsors listed below and all who participated.

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Public Asked for Input on Candidates For Superior Court Vacancies

The Maricopa County Commission on Trial Court Appointments is asking for public input on 10 candidates for two vacancies on the Maricopa County Superior Court.

The candidates are Susan M. Brnovich, Jose A. Colon, Christopher A. Coury, Kristen M. Curry, Troy P. Foster, David B. Gass, Douglas Gerlach, Mina E. Mendez, David J. Palmer and Benjamin E. Vatz.

Citizens may address the commission about any of the candidates on Dec. 15, 2008, at 8:30 a.m. at the Arizona State Courts Building, 1501 W. Washington Street, Conference Room 345. Public comments will not be accepted after the 8:30 a.m. hearing on Dec. 15. Candidate interviews will follow the public hearing at 10 a.m. The interviews are open to the public.

Written comments about candidates can be sent to the commission at 1501 W. Washington, Suite 221, Phoenix, AZ, 85007 or to jnc@courts.az.gov. They must arrive by Dec. 10 to be considered. Anonymous comments cannot be considered.

After the interviews, the commission will recommend at least three nominees for each vacancy to Gov. Janet Napolitano, who will appoint the new judges.
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