John P. Frank: He leaves more than memories

By Peter Baird
Special to Maricopa Lawyer

Editor's note: The following is a version of the eulogy the author wrote for the Sept. 14 memorial service for John P. Frank, who died Sept. 7 at age 84.

In John's book, My Son's Story, published in 1952, he wrote this about funerals:

"First and foremost, John leaves Lorraine, their children and grandchildren, as long as there are libraries and an American legal system. Indeed, the irony is that John should have been so wrong about his own extraordinary life. For once, John Frank was wrong because he himself did not leave "only memories." In point of fact, he left vastly more than memories and some of his contributions will remain as long as there are libraries and an American legal system. Indeed, the irony is that John should have been so wrong about his own extraordinary life. First and foremost, John leaves Lorraine, their children and grandchildren."

By Daniel P. Schaack
Maricopa Lawyer

When it comes to agreements between attorneys and clients to submit to mandatory fee arbitration, the State Bar of Arizona should practice what it preaches. That is, in effect, what the Arizona Supreme Court held in In re Connelly, 379 Ariz. Adv. Rep., No. SB-02-0055-D (Aug. 9, 2002).

Imagine you are an attorney who takes your responsibilities to the bar and the public seriously. In accord with the State Bar's announced policy encouraging the practice, you include in your retainer agreements a provision agreeing to mandatory fee arbitration with the State Bar, should you and your client find yourselves at loggerheads over the fee.

Imagine further that you agree to represent a client, who is accused of drug possession, in exchange for a non-refundable, flat fee. Your representation is successful, as you negotiate a diversion program under which the charges are eventually dismissed. Now imagine that for your efforts you are rewarded with that dreaded envelope from the State Bar with "CONFIDENTIAL" in big, red letters.

Phoenix criminal-law attorney Thomas M. Connelly does not have to imagine this scenario. It actually happened to him. His tribulations through the disciplinary process led to the Supreme Court's opinion.

When police arrested Gregory Richman after confiscating three grams of cocaine from his vehicle, he called Connelly, an experienced criminal-law attorney who had previously represented him. Richman was eventually indicted for possession of narcotic drugs.

Although Richman was only charged with the single count of possession, Connelly noted that the indictment named approximately 20 defendants in all and contained 74 separate counts. Because of this, and because he was familiar with the attorney who had prepared the indictment, Connelly believed there would be further charges against Richman.

Connelly estimated that the case would be complex and involve substantial discovery. If he could not successfully move to sever Richman's case from the rest, he believed that

Check out the calendar

Looking for CLE? The date your MCBA section or committee meets? A special MCBA event? Find it in our expanded calendar. We've consolidated everything you need to know about the MCBA and MCBA-related activities. You can easily find our CLE – it's highlighted. We also include meeting dates and activities submitted by our sibling bars. Make Maricopa Lawyer's calendar the source for your calendar, every month. See page 11.

Meet the non-adversarial ADR process of mediation

By Sandra E. Price
Special to Maricopa Lawyer

What's all the grumbling about? In a word, mediation. Litigators generally are comfortable with the most familiar form of ADR, arbitration, which is, simplistically speaking, an informal mini-trial before a paid judge. Arbitration long has been considered an acceptable alternative to litigation, confer with one another about using an alternative-dispute resolution (ADR) process, and report to the outcome of their conference to the court.

Like the early days of the Zlaket rules, litigants or judges have not uniformly embraced Rule 16(g). Like the Zlaket rules, it's also here to stay.

Ryan formally sworn in

Michael D. Ryan was formally sworn in Sept. 20 as an Arizona Supreme Court justice by Chief Justice Charles E. Jones. In his remarks at Ryan's investiture ceremony, Court of Appeals Judge E.G. Noyes Jr. said, "We want judges to serve not only to correct the wrong, but also to live and inspire the right. Mike does that extraordinarily well." Story, page 14.
I write in response to commentary in the June 2002 Maricopa Lawyer by Kenneth W. Reeves III, titled “Does Arizona need the proposed new Uniform Trust Code?”

The answer, quite simply, is yes. The Uniform Trust Code (UTC) will bring Arizona a comprehensive trust law where none currently exists. The UTC’s purpose is to update and fill out the law of trusts. The UTC will enable states that enact it to specify their rules on trust law with precision and in a readily available source. The citizens of Arizona deserve no less.

The National Conference of Commissioners on Uniform State Laws recognized in studying and drafting the UTC that trust law in most states, including Arizona, is thin and contains many gaps. Where no statutory law or case law exists, Arizona, like most states, follows the Restatement of Trusts and the Scott and Bogert multi-volume treatises. However, these sources fail to address numerous practical issues and often provide insufficient guidance. While it is true that the need for uniformity is greater in the commercial area of the law, a uniform trust code will systematize and clarify the American law of trusts and help eliminate many issues, particularly where there are multi-state contacts.

Whether all uniform acts are successful in all states is often overlooked in back-to-school drives. The students attending Eaton have no home, no food, formula, etc.); and household items (dishes, utensils, pots and pans, bedding, towels, furniture, appliances, etc.). No adult clothing is needed this year. The committee also happily accepts money, which will be used to purchase items.

The women and children will “shop” among the donated items on Saturday, Oct. 19.

If you are interested in volunteering to help with the Necessities Drive or would like to make a donation, please contact Shane Clays at sclays@mcbabar.org or 602-237-4200, ext. 111. Volunteers are needed to help transport to and from the drive location; sort and set up; staff the drive location; and clean up. We especially need trucks for making deliveries.

Please help make a difference in the lives of these families in need.

— Melanie Myrick, an attorney with Gallagher & Kennedy, is co-chair of the YLD Domestic Violence Committee.

**COMMENTARY**

**Arizona needs the new Uniform Trust Code**

By James M. Bush

Special to Maricopa Lawyer

The Maricopa County Bar Association Young Lawyers Division recently completed its annual School Supplies Drive, which was far and away the most successful one ever conducted. The YLD’s Domestic Violence Committee collected school supplies and money to benefit children forced to leave their homes and who live in shelters in the Phoenix metropolitan area.

The committee received donations of more than $3,000 and an abundance of backpacks and other school supplies. The committee was able to supply every single child residing in a Phoenix-area shelter with a

**Paralegals give back by adopting Mesa school as community project**

By Theresa A. Prater

Maricopa Lawyer

In compliance with their mission statement, members of the Maricopa County Bar Association Paralegals Division continue to give back to the community by adopting the William E. Eaton School in Mesa.

The Eaton School, part of PREHAB of Arizona, is a self-contained residential school providing regular junior high and high school classes, including special-education programs, for emotionally and learning-disabled children. The students attending Eaton have been placed in PREHAB’s residential treatment homes for many reasons, including abuse, drug and alcohol problems and emotional problems.

The Paralegal Division sought out a charitable endeavor to help older students who are often overlooked in back-to-school drives. Eaton, as part of a non-profit organization, depends on grants and private donations to maintain a quality education program for children placed in its care. Often Eaton teachers pay for their own supplies, such as colored pencils and modeling clay for art, chemicals and specimens for science and maps for history courses. By adopting the teachers and students, the Paralegal Division hopes to ease the burden of the teaching staff and also help provide extras, such as a full set of encyclopedias, computer programs and other teaching aids that are a standard part of public schools.

The division is raising funds for the school by selling zippered portfolios emblazoned with “MCBA Paralegal Division.” They also are considering a book drive and sale, as well as a “give up a lunch” fundraiser, in which paralegals, attorneys and support staff are asked to donate one day’s lunch money to the Eaton School Fund. Money raised through these endeavors will be donated to the school to buy items on the teachers’ wish list.

Items on this list include collegiate dictionaries and thesauruses, microscopes, learning kits, atlases and almanacs. The school also needs a color printer, copy paper and a digital camcorder to be used for student ID and recording student skits and plays.

Since the creation of the Paralegal Committee in 1998, members have taken an active role in the MCBA Young Lawyers Division’s yearly domestic violence Necessities Drive. They have assisted with sorting items, driving abuse victims and their children to and from shelters to go “shopping” for clothes, personal items and household items. They will help collect and distribute donations again this fall.

The Paralegal Division also gives back to the community through its annual Toys-for-Tots drive during December and with its scholarships for paralegal students. For the second year, four local students received $1,000 awards for tuition and books. One scholarship is awarded to a student at each of the four ABA approved paralegal programs in Maricopa County. This year’s winners, Temmaa Bara (Phoenix Career College), Kristal Baker (Lamson College), Ralph Pillinger (Everest College) and Ahsa Thomas (Phoenix College) were honored at the Sept. 27 Arizona Paralegal Conference.

Anyone interested in donating money, services, books or other items to the Paralegal Division’s Eaton School project may contact Sharon Frye at the MCBA, 602-257-4200.

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Arizona’s next attorney general

Terry Goddard and Andrew Thomas are the two major party candidates for Arizona attorney general. Thomas beat out Foster Robberson and John Greene for the Republican nomination. Goddard did not have an opponent in the Democratic primary. Libertarian Eli Kahn, a Tucson attorney, also is running. Phoenix attorney and Maricopa Lawyer reporter Jack Levine interviewed Goddard and Thomas after the primary election and wrote these articles.

Terry Goddard

On the web: www.TerryGoddard.org

Terry Goddard believes battling corporate crime, enforcing fair housing and protecting seniors from fraud are among the most important issues the new Arizona attorney general should pursue.

He suspects that the practice of capitalizing expenses as was done in the recent Enron and WorldCom scandals is still too common in the state. He also has concerns about campaign finance and that the statewide grand jury is the best defense against such misdeeds.

He believes that the state needs increased education and enforcement by the attorney general in cases involving important state issues and the prestige of the office. However, he also has observed that, after a few years, the need to support one's family and send one's children to college frequently results in attorneys leaving for higher pay of private practice.

Goddard sees a definite role for the attorney general in bringing class actions on behalf of the state's citizens as has been the practice with his predecessors. Goddard believes that prescription drug pricing would definitely bear investigation and would be high on his list of priorities.

Goddard sees himself and his opponent Andrew Thomas as politically diverse. From one another as two candidates can be. Goddard views himself as a pragmatist and experienced problem solver, not an ideologue.

"It is the Legislature's responsibility to pass the laws, and the attorney general's responsibil- ity to enforce them," he said.

Goddard, 55, received his undergraduate education at Harvard, graduating in 1969, and then served in the U.S. Navy before attending law school. He received his law degree from Arizona State University in 1976.

While in law school, he clerked in the attorney general's office, working in the antitrust division, and before taking the bar he spent a summer turning out more than 50 appellate briefs.

He joined the office full-time after law school, as an assistant attorney general in the special prosecutions section, where he worked with a team of prosecutors investigating and ultimately convicting Robert Fendler and other officers of Lincoln Thrift and U.S. Thrift.

In 1978, he joined his father, former Arizona Gov. Sam Goddard, in a law practice. He did pro bono work representing several central Phoenix neighborhoods in a federal court challenge to the proposed location of the Papago Freeway. At that time, he also chaired the Arizona Transportation Action Coalition that successfully challenged a tax on gasoline through a referendum petition. In 1982, he co-chaired Citizens for District Representation, which eventually succeeded in establishing city council districts.

Looking back, he feels these community activities served as a springboard to his election as Phoenix mayor in 1985, an office he held for four terms. Goddard points to his leadership through one major expansion, one major development project, one major new resource, increasing citizen participation in government, improving transportation, revitalizing downtown, providing for quality growth and setting up nationally recognized programs in the arts, culture and historic preservation.

Goddard also is concerned about the low pay at the attorney general's office has created a revolving door for young, bright and talented lawyers. Goddard said he is aware of many cases in which lawyers have been attracted to the attorney general's office by the high level of responsibility immediately entrusted to them, the ability to participate in cases involving important state issues and the prestige of the office. However, he also has observed that, after a few years, the need to support one's family and send one's children to college frequently results in attorneys leaving for better pay of private practice.

In 1990, he joined Bryan Cave, concentrating his practice on the financing of affordable housing. This work led to his appointment as the Arizona director for the U.S. Department of Housing and Urban Development, a position he held until February 1998. While working at HUD, he joined a limited law practice.

At ASU, he has taught for the past eight years a public-policy seminar for Flinn Scholars and for the past three years a graduate level course on "Building Great Communities." Among his other affiliations, Goddard is one of Maricopa County's representatives on the board of the Central Arizona Water Conservation District, which oversees the Central Arizona Project. He has completed three terms as a trustee for the National Trust for Historic Preservation and serves as chair- man of its public policy committee. From 1995 to 1999, he was a board member of the Federal Home Loan Bank of San Francisco, and cur- rently serves on the boards of the Arizona Theatre Company, the Benton Foundation, the Cosanti Foundation and the Valley Citizens League, among others.

He retired from the U.S. Naval Reserves after 27 years with the rank of commander. He and his wife, Monica Lee, a former television reporter and assignment editor, have a 3-year-old son, Kevin.

Goddard said he was amused by Thomas' references to him as "an old-fashioned liberal," although Goddard pleads guilty to being "old fashioned." In that regard, he said, he has tried to maintain the history and traditions of neigh- borhoods and communities as "these are a part of our heritage and should be preserved."

Goddard said he is not looking past the race for attorney general to any other office. This is his third try at a statewide office, having run unsuccessfully for governor in 1990 and 1994.

The office of the attorney general, he said, is unique and desirable because it is independent of any political body and is answerable only to the voters. He observed that the caliber of peo- ple who have held the office have been, almost without exception, above that of any other statewide office.

Goddard

Andrew Thomas


Andrew Thomas, who is making his first run at political office, has three key planks in his campaign platform for Arizona attorney general.

He proposes that anyone found guilty of molesting a child be sentenced to life imprison- ment, without parole, and that plea-bargaining be abolished in such cases.

Thomas also would like to see the passage of a constitutional amendment making government more accountable to the people by requir- ing the attorney general to defend all voter-passed initiatives and referendums, even if the attorney general disagrees with them. His pro- posed amendment also would require any court decision that overturns a referendum or initia- tive measure to be put on the ballot at the next state election for ratification or rejection by the voters.

Thomas also strongly supports the Second Amendment; the death penalty, including the new guidelines recently determined by the U.S. Supreme Court in Arizona v. Ring; and favors greater use of faith-based prisons for prison inmates. He is anti-abortion, having served as a lobbyist for Arizona Right to Life, and also opposes extending state benefits to same-sex couples.

Other important issues Thomas are con- sumer protection, strengthening Arizona's clean-elections law and placing more emphasis on the vigorous enforcement of civil- rights statutes.

Thomas believes that the attorney general should serve as a lobbyist for the people at the Legislature and provide leadership in the areas of criminal justice and legal reform. He is rely- ing heavily on his past experience in the attor- ney general's office and in the criminal-justice system in his appeal to voters.

Thomas, 35, is an acknowledged conserva- tive. Thomas sees the contest with Terry Goddard as a classic conservative versus liberal match-up.

Thomas graduated in 1991 from Harvard Law School. While in law school, he worked as a legal assistant at the Boston Branch of the NAACP. After graduating, he spent two years practicing law with Jennings, Strouss & Salmon, doing tort litigation and lobbying work. He then joined the attorney general's office, where he had both criminal and civil assignments, including providing legal advice to the Arizona Department of Agriculture on a wide range of issues.

He then joined the staff of Gov. Fife Symington as deputy counsel and as Symington's chief criminal justice policy advis- or. While in that position, he worked on revamping the state's juvenile justice system, including developing an initiative to mandate the referral of serious juvenile offenders to adult court, appearing before the Legislature on a number of occasions in support of this effort.

In 1997, Thomas became head of the state Department of Corrections' legal ser- vices unit, holding the title of special assistant to the direc- tor. He left DOC in 1998 to go into pri- vate practice, doing research and writing the book, which was published last year.

According to Thomas, he began by immers- ing himself in the writings of black authors such as W.E.B. Dubois, Booker T. Washington and Marcus Garvey. Based on his research, Andrew Thomas discovered that Justice Thomas started out in life with enormous handicaps, having been abandoned by his par- ents when he was very young. Throughout his life, he overcame these obstacles, culminating in the rancorous and unpleasant Senate confirmation hearings, in which Phoenix attorneys John Frank and Janet Napolitano played a part. According to Andrew Thomas, the wounds of the Senate hearings persist to this day. During his work on the biography, he interviewed Justice Thomas' family, including his mother, father and sister. He went to Yale Law School and visited the places where Justice Thomas had worked to interview people who knew him. Justice Thomas refused to be interviewed or to have anything to do with the project, according to Andrew Thomas.

Thomas also has written two other books: Crime and the Sacking of America and Fighting the Good Fight, which he co-authored with Reggie White.

Thomas is a member of the board of Arizona Voice for Crime Victims and Arizona Alliance for Community and Faith-Based Action. He also is an active member in the Knights of Columbus.

He says he has no long-range plans for political office beyond that of attorney general, stat- ing that he “is still taking one day at a time.”
Looking for CLE?  
We’ve got it!

The Maricopa County Bar Association provides affordable, convenient and relevant continuing legal education seminars. October seminars are:

- Oct. 1: Property Valuation Issues (Family Law Brown-Bag Lunch CLE Series)
- Oct. 8: Custody Issues (Family Law Brown-Bag Lunch CLE Series)
- Oct. 9: Probate Administration and Solutions (Estate Planning and Probate Section breakfast CLE)
- Oct. 15: Child Support (Family Law Brown-Bag Lunch CLE Series)
- Oct. 18: Employment Law Basics
- Oct. 23: The Nuts and Bolts of Evidence
- Oct. 25: Recent Developments in Restrictive Covenants
- Oct. 25: Bankruptcy Law: The Big Series)
- Oct. 23: Restrictive Covenants and Related Employment Issues (Corporate Counsel Division lunchtime CLE seminar)
- Oct. 25: Bankruptcy Law: The Big Picture
- Oct. 25: Recent Developments in Arizona Water Law
- Oct. 30: Alternatives to Litigation in Family Court

For all the specifics — time, place, price and information about the content — see Maricopa Lawyer's new, expanded calendar, page 11, or online.

UTC...
Continued from page 2

that apply only if the terms of the trust instrument fail to address or insufficiently cover a particular issue. A drafter is free to override all but a few provisions that are clearly stated in § 105(b). They include:

a. Requirements for creating a trust;
b. The duty of a trustee to act in good faith;
c. The trust has a purpose that is lawful and not contrary to public policy and is possible to achieve;
d. The power of a court to take certain actions such as to remove a trustee or to terminate a trust on certain grounds;
e. The requirement that a trust and its terms be for the benefit of its beneficiaries;
f. The duty of a trustee to respond to the request of a beneficiary of an irrevocable trust for the trustee's reports and other information reasonably related to the administration of a trust.

While the settlor's intent is first and foremost the primary concern with respect to trusts, the drafting committee felt that these requirements were either fundamentally basic provisions in trust law (trust creation requirements, rights of third parties dealing with trustees) or important for basic protection of the beneficiaries.

Mr. Reeves noted in his article that beneficiary notice provisions provided in the UTC are troublesome. The duty to keep the beneficiaries reasonably informed of the administration of the trust is a fundamental duty of a trustee. Section 813 of the UTC codifies this common law obligation. At the same time, it adds detail and makes application of the duty more precise. The most notable requirements apply to beneficiaries currently eligible to receive distributions. Disclosure of the trust's existence and certain other key matters is also required to the presumptive remaindermen, who, together with the current beneficiaries, are referred to as "qualified beneficiaries." Non-qualified beneficiaries are entitled to information from the trustee only upon a specific request. By focusing disclosure to those beneficiaries most likely to receive distributions, the UTC hopefully will enhance trustee accountability, while at the same time relieving the trustee of the undue burden of having to identify and notify those holding truly remote interests. The UTC drafting committee determined that most sellers would choose to protect their beneficiaries' interest in the trust over the concern that a beneficiary will become "a less productive member of society," as suggested in Mr. Reeves' article.

Another concern mentioned was that beneficiaries would be able to enter into private settlement agreements with respect to certain provisions of a trust, contrary to the expectation of the person creating the trust. The UTC encourages resolving disputes by nonjudicial means. A nonjudicial settlement agreement, however, cannot be used to produce a result not authorized by law and may not violate a material purpose of the trust.

Another objection noted in the article is to the UTC's retroactive application, "assuming it is constitutional." The UTC is intended to have the widest possible effect within constitutional limitations. Specifically, it applies to all trusts whenever created. It applies to judicial proceedings concerning a trust commenced on or after its effective date, and unless the court otherwise orders, to judicial proceedings in progress on the effective date. In addition, any rules of construction or presumption provided in the code apply to pre-existing trusts unless there is a clear indication of a contrary intent in the trust's terms. By applying the code to preexisting trusts, the need to know two bodies of law will quickly lessen. The code cannot be fully retroactive because constitutional limitations preclude retroactive application of rules of construction to alter property rights under trusts that become irrevocable prior to the effective date. Also, rights already barred by a statute of limitation or rule under former law are not revived by a new statute or more liberal rule under the code.

Contrary to the argument that retroactivity will be unfair to settlors, the UTC is intended to benefit the intent of the settlor if a badly drafted or incomplete trust does not address an item that later becomes important. The flexibility offered by the UTC is designed to allow for reasonable modifications and terminations if the settlor's intent can be reasonably discerned, but the terms of the trust are not specific. Mr. Reeves suggests that Arizona modify the UTC by adopting certain changes. His suggestions include:

- Defining "qualified beneficiaries" and generally limiting notice to beneficiaries. As described above, the notice to beneficiaries as provided by the UTC is designed for their protection. More importantly, the definitions in the UTC are used throughout its eleven articles, and changes can cause serious, unexpected consequences.
- Defining "spendthrift" provisions as restrictions on voluntary or involuntary assignments of a beneficiary's interest and eliminating the presumption that a spendthrift trust is only a spendthrift trust if so stated in the trust instrument. The UTC follows the Restatement (Third) of Trusts §§ 78 and 153 by requiring spendthrift provisions to prohibit both the voluntary and involuntary transfer of the beneficiary's interest. The restraint also would be recognized in a federal bankruptcy proceeding. The UTC drafting committee also rejected the presumption that a trust is always a spendthrift trust, as it did not follow the rule in the great majority of states.
- Eliminating the subsection permitting interpretation of trust provisions by nonjudicial settlement agreements and limiting them to the other matters mentioned specifically in the statute (approval of trustee's report or accounting and appointment of a trustee and determination of compensation, transfer of trust's principal place of administration, liability of trustee for action relating to the trust). Under the UTC, nonjudicial settlement agreements can be used to produce a result not authorized by law, such as to terminate a trust in an impermissible manner. Furthermore, any interested party may require the court to approve a nonjudicial settlement agreement.

Other states and the UTC

Mr. Reeves' article claims that the UTC is not doing well in the states. The Uniform Commercial Code is the most successful act...
Allocating the precious commodity of time at trial

By Pendleton Gaines
Special to Maricopa Lawyer

Seven or more of our civil judges regularly make trial time allocations when setting cases for trial. Others make time allocations in selected cases. This practice was rare 10 years ago and almost unknown 20 years ago. Why and how are judges imposing trial time limits?

Imposition of reasonable time limits on trials, or portions of trials, is inherent in the court’s authority to control its own proceedings and is specifically confirmed by Civil Rule 16(b)(17), Criminal Rule 16.3 and Evidence Rule 41(a).

A judge’s most precious asset is his or her time, which must be given thoughtfully, carefully, sparingly and, of course, fairly. Here are a few reasons trial time limits are used.

➢ Time limits minimize jurors’ personal inconvenience and financial hardship by setting defined parameters for their service. Civil Rule 16(b)(17) was adopted as part of our jury reforms in December 1995.

➢ Time limits encourage counsel to make the best, most efficient use of their time and to present their cases more persuasively, understandably and cogently in bench and jury trials. Unnecessary repetition and unfocused presentations do not persuade judges or jurors.

➢ Defined time limits help counsel scheduling witnesses and other proof.

➢ Time limits help the court manage its calendar effectively and efficiently. Time limits should be considered by court and counsel at the pretrial or scheduling conference. After careful consideration of the issues to be tried and the type, difficulty and manner of proof to be offered. Ideally, an order limiting time should retain flexibility to deal with unanticipated circumstances and events that may arise at trial.

➢ Some judges make specific time limitations for each witness or for the direct and cross-examination of expert witnesses. Others (the author included) make time limitations “in gross,” to include opening statement, direct and cross-examination and closing argument. The judge should advise counsel that, when the jury is seated, someone’s time allocation is being charged. Counsel should be reasonably and regularly informed of their time usage and remaining time.

Lawyers should consider and make effective use of agreed-upon deposition summaries (and, in some cases, agreed-upon summaries of testimony), juror notebooks, stipulations, advance rulings and determinations on evidentiary and document admissibility issues, waiver of purely formal items of proof and, perhaps most important, the many forms of courtroom technology currently available. Requests for bench conferences and hearings outside the presence of the jury should be minimized or eliminated entirely.

Prevaling counsel in fee-awardable cases may find judges receptive to a suggestion that complying with court-ordered time limits actually increases the amount of time needed for trial preparation. Blaise Pascal, the French philosopher, apologized to a friend for the length of his letter, saying he did not have the leisure to write a short one.

➢ Maricopa County Superior Court Judge Pendleton Gaines is associate presiding civil judge.

Winthrop fills Court of Appeals vacancy

Gov. Jane Dee Hull has appointed Lawrence F. Winthrop to the Arizona Court of Appeals, Division One, filling the vacancy created by her appointment of Judge Michael Lawrence F. Winthrop to the Arizona Court of Appeals vacancy created by her appointment of Judge Michael Lawrence F. Winthrop to the Arizona Court of Appeals vacancy created by her appointment of Judge Michael Lawrence F. Winthrop to the Arizona Court of Appeals vacancy created by her appointment of Judge Michael Lawrence F. Winthrop to the Arizona Court of Appeals.

Winthrop has focused on civil litigation, particularly medical malpractice, with Doyle & Winthrop since 1993. He worked for Snell & Wilmer from 1977 to 1993. Winthrop also has handled workers’ compensation, product liability, personal injury, probate and tax planning.

He has been a member of the Maricopa County Superior Court’s Civil Study Committee and the Arizona Supreme Court’s Committee on Examinations.

He worked on tort reform legislation in conjunction with the Arizona Chamber of Commerce and state and local tax statutes in conjunction with the Arizona Tax Research Association.

Winthrop also is a member of the Volunteer Lawyers Program. While at Snell & Wilmer, he helped establish the firm’s pro bono policy and helped direct the providing of legal service to the Arizona State University College of Law legal clinic.

In making the appointment, Hull cited Winthrop’s expertise in litigation and community service. He received his law degree, magna cum laude, from the California Western School of Law. Winthrop, a Republican, is married.

Winthrop was one of five candidates nominated by the Commission on Appellate Court Appointments. Other candidates were Maricopa County Superior Court judges Louis Araneta, David Cole and Eileen Willett, and Donn Kessler, a Supreme Court staff attorney.

The Maricopa County Commission on Trial Court Appointments has recommend five candidates to Hull to fill the vacancy created by the retirement of Superior Court Judge Sherry Hutt.

Nominees are:

➢ Superior Court Commissioner Harriet E. Chavez, 48, a Democrat, of Phoenix;

➢ Larry Grant, 51, a Democrat, of Phoenix, the Maricopa County Public Defender’s Office’s East Valley chief deputy;

➢ Robert C. Houser Jr., 53, a Republican, of Scottsdale, of counsel to Allen, Price & Paifeden;

➢ John C. Rea, 50, a Democrat, of Scottsdale, vice chief Supreme Court staff attorney; and

➢ Robert J. Weber, 57, Republican, of Tempe, an attorney in private practice in Mesa.

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Robert Pickrell to receive new CLS justice award

When Community Legal Services celebrates its 50th anniversary in late October, it will honor a retired judge who has been active for 46 years in helping provide legal services to those who cannot afford them.

Retired Maricopa County Superior Court Judge Robert W. Pickrell will receive the newly created Lifetime Commitment to Justice Award, which will bear his name when it is given to future recipients.

“He has given so much, we wanted to create an award for him,” said CLS Executive Director Lillian O. Johnson. “It’s appropriate that the award be named for him.”

In 1956, when CLS (then the Maricopa Legal Aid Society) had a total budget of $24,000 and the same goal it has today — providing legal services to those who cannot afford them — Robert Pickrell was starting out in a law practice and split his time between that and a half-time position as the organization’s executive director.

Pickrell recalled having a University of Arizona law professor “who told us we were getting an exclusive license to practice law and we also should devote some time to the people who couldn’t afford legal services.”

He laughed, adding, “Of course, I don’t want to fool you. I was starting out and needed the work!”

He had worked for Arizona Attorney General Ross Jones, who was defeated in the election, and joined with three other lawyers to begin his private law practice.

“I used to ride the bus, go to my office and then head down to the Legal Aid Society,” he said. “I have very fond memories of that.”

Later, he would serve four years as Arizona attorney general and 16 years as a Superior Court judge. But he never forgot that commitment suggested by his law professor, and served on the Legal Aid Society’s board for several years.

“I feel very strongly that we all should contribute to those people who can’t afford legal services,” he said.

Not only did he continue to work with CLS through the years, but now that he has retired, he has become actively involved with a legal program at The Salvation Army. His involvement with the program led to him receiving a Points of Light Award last year.

“Sometimes I feel like I work for The Salvation Army,” he joked.

The Points of Light program said the judge “continues to share his knowledge and experience whenever he can. He is an outstanding volunteer who serves a part of the population many people choose to turn away from. There appears to be no end to his commitment and willingness to help those in need.”

Community Legal Services: 50 years of providing equal access to justice for the poor

By Geoffrey Sturr
Special to Maricopa Lawyer

A single mother and her four young children face homelessness when her landlord files an eviction notice after she complains about holes in her roof and exposed wiring.

A man purchases a car through a small dealership that treats him unethically, increasing his interest payments and selling him a car that breaks down immediately.

A woman who has long been a victim of domestic violence fights to win custody of the children her husband sexually abused.

A family of a child who needs bone grafts on her spine runs into roadblocks in paying for medical services from her health plan.

All of these Arizonans share one thing in common—they are poor—and, because they are poor, they face one additional big hurdle: they lack the funds to retain an attorney and gain access to the civil justice system.

But their stories also all have happy endings. Like thousands of Arizonans over the past 50 years, all of them received the legal help that they needed, thanks to Community Legal Services, a nonprofit agency providing legal services to low-income persons with critical civil legal problems.

CLS will celebrate 50 years of helping the poor with a reception from 5:30 p.m. to 7:30 p.m. Oct. 25 at the Sandra Day O’Connor U.S. Courthouse, 401 W. Washington St., Phoenix. There is no charge for the event, and all are invited to attend especially current and former volunteer lawyers, board members, staff and clients.

Incorporated as the Maricopa Legal Aid Society in 1932, the agency changed its name in 1974 when its service delivery area expanded to included Mohave, Yavapai, Yuma and LaPaz counties.

It has evolved as presidential administrations have changed. In the mid 1960s, Office of Economic Opportunity initiated the first federally funded legal services program. The original OEO program served millions of poor people, but it was jeopardized by partisan politics. Budgets were frozen and the abil- ity of attorneys to represent their poor clients on a full range of issues was compromised.

In the early 1970s, through the efforts of the American Bar Association and the National Legal Aid and Defenders Association, Congress adopted the Legal Services Corporation Act to provide federal support to local legal aid programs.

Up through the 1970s, the client’s legal needs were the major determining factor in what services were provided. Issues like migrant farm workers’ health and restrictive regulations imposed by the state welfare department occupied much of its attorneys’ service focus.

To make a reservation, request a table host form or for general information, please contact Shane Clayes at 602-257-4200, ext. 111.
By Peggi Cornelius
Special to Maricopa Lawyer

Attorney Frank Busch believes knowledge is power and law is a particularly powerful force within society. As someone empowered by education and a license to practice law, he considers himself privileged and compelled to use his professional power in service to those less fortunate. As a member of the Volunteer Lawyers Program, Busch puts conviction into action. His outstanding assistance to VLP clients in 2002 has brought him recognition as Attorney of the Month.

Just as knowledge imparts power, so is language. Busch's fluency in Spanish has been especially helpful to VLP clients whose primary language is Spanish.

"By explaining their legal rights and giving advice or instructions in their native language, I can better educate and empower them to help themselves," he said.

At Snell & Wilmer, pro bono work is part of the firm culture. It is viewed as a professional responsibility for attorneys to periodically engage in low-income legal work. Approximately one hundred attorneys at the firm participate in VLP, providing free legal assistance through a unique pro bono service program.

Busch, along with attorneys from firms throughout Maricopa County, volunteered to work on FLAP (Family Law Attorney Program) cases. FLAP is administered by the Volunteer Lawyers Program, a public interest law firm, and provides pro bono representation to local families experiencing domestic violence. FLAP attorneys have the power to provide legal representation to those who may otherwise be unable to pay high attorney fees.

Busch was recently recognized as VLP Attorney of the Month. In his acceptance speech, Busch stated that "pro bono work is a powerful way to use my professional power in service to those less fortunate. As a member of VLP, I'm in the right place to help people in need."

Busch's dedication to pro bono work has earned him a reputation as a "law firm of last resort" for the poor in Arizona.

The Volunteer Lawyers Program, co-sponsored by Community Legal Services and the Maricopa County Bar Association, thanks the following attorneys and firms in Maricopa County who agreed recently to assist 39 low-income clients with these civil legal needs:

Bankruptcy
Robert D. Beuder, Phillips & Associates
Jeffrey L. Phillips, Phillips & Associates

Consumers
Trevor Chat, Gallagher & Kennedy
Gary A. Fadell, Fadell Cheney & Burt
Carrie Francis, Snell & Wilmer
Gregory P. Gillis, Ridenour Heinpton
Harper & Kalhoff
Kathleen E. Schimpelman, sole practitioner
Barry M. Markson, Herzog & O’Connor
David R. Nelson, Steptoe & Johnson
David A. Paige, Quares & Brady
Streich Lang
Paul M. Weich, sole practitioner

Family law/domestic violence
Mary B. Brudnick, John C. Wilcox
Stephen Ray Smith, Cohen & Fromm

Guardianships (minor children)
Sandra Cress, Quares & Brady
Streich Lang
Michael A. Friedman, Trompeter
Schiffman Petrovitz Friedman & Hulse
Richard H. Hendel, Mack & Herrfeld
Harry L. Howe, sole practitioner
Eric B. Johnson, Quares & Brady
Streich Lang
Jamee Klein, Bryan Cave (2 cases)
Lori Zirkle, Bowman and Brooke

Home ownership
Donald R. Alvarez, Alvarez & Gilbert
J. Scott Burns, Burns and Burns
G. Lee Crosby Jr., Crosby & Gladner
Todd Felts, Snell & Wilmer

Probate
Diane F. Witsell, Barnes & Barnes
Robert W. Pickrell, sole practitioner

VLP thanks attorneys who recently accepted cases

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Todd Felts, Snell & Wilmer

Probate
Diane F. Witsell, Barnes & Barnes
Robert W. Pickrell, sole practitioner

Tell us!
Have you changed employment?
Has your law firm named new partners?
Send information for our Legal Moves column to Maricopa Lawyer,
MCBA, 303 E. Palm Lane, Phoenix, AZ
85004; fax to 602-257-0522; or
to email: maricopalawyer@mcbabar.org.

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MCBA, 303 E. Palm Lane, Phoenix, AZ
85004; fax to 602-257-0522; or
to email: maricopalawyer@mcbabar.org.
key to success is the mediation process, which is designed to help combatants see why working together to solve a problem is in their own best interest. Although legal rights are a part of the picture, the mediation focus is on client interests.

Example: Dr. Phillips (name and facts somewhat changed to protect confidentiality) was handling a fellow doctor over the control of a research project at the medical research firm where both were employed. At some point, Dr. Phillips decided to bring an intellectual-property action against his employer to secure what he believed to be his rights to the idea at the base of the research project. Unbeknownst to Dr. Phillips, he didn't have any legal rights in his ideas, because they were developed under the auspices of his employment. By contract, corporate policy and law, these rights belonged to his employer.

Fortunately for Dr. Phillips, the company rejected the "rights-based" approach in favor of an "interests-based" approach. The company's interests were quite different than its employees'. By contrast, corporate counsel made Dr. Phillips a loser, ultimately destined based litigation would almost certainly have destroyed his career. Defending against the rights-based action, the company respected, valued and wanted to retain Dr. Phillips. His interests were quite different than its employees'.

A research project at the medical research firm somewhat changed to protect confidentiality) are a part of the picture, the mediation focus is on client interests. Working together to solve a problem is in their best interest.

The settlement was achieved because the highly-skilled neutral prepared the parties for the process, gave both doctors an opportunity to vent in private (to deflate the negative tension surrounding the dispute) and earned the parties' trust. Because the mediator properly prepared the parties, they were willing to follow the mediator's lead and work through the problem-solving tasks successfully.

To the uninitiated, mediation looks something like counseling rather than law, and has aspects that appear to be in conflict with principles of litigation. Because mediation is a facilitated discussion, rather than a hearing, the process is less predictable, as are the outcomes. Lawyers, while welcome and integral to the decision-making process, often find themselves playing second chair to unsophisticated clients. Issues may be raised in mediation that have little or nothing to do with the legal claims upon which the cause of action was based. Outcomes may veer drastically from the predictable and available legal remedies. No wonder some lawyers would rather avoid it. Mediation need not be a free-for-all. A good mediator and a few simple skills go a long way toward eliminating the hazards of mediation, and enhancing the likelihood that your clients will have a "satisfying litigation experience" (in most other settings an oxymoron for the client). For some clients, mediation will be your chance to stop feeling like the dentist, whom nobody wants to visit, and start feeling like Santa Claus.

A few mediation skills

Let's address the concerns of the anti-mediation contingent directly, and look at some tips to maximize mediation results. For example, you may feel that mediation simply adds aloof formality to traverse — lengthening the process and adding cost — before the parties can get before a judge. This is only true, however, if mediation fails, which happens maybe 15 percent of the time with a skilled mediator. Even then, Equal Employment Opportunity Commission data on party satisfaction suggests that failed mediation still helps the parties understand more clearly the strengths and weaknesses of both their own and the other party's case, and is useful in moving the conflict along to a later resolution. (To read the entire EEOC report, go to www.eeoc.gov/mediate/report/.)

Lawyers also raise issues of good faith and confidentiality. Mediation encourages parties to be as open as possible during the process, because before mediation, parties usually have only postured their legal rights — in the best possible light — and not identified their underlying interests. However, because the process encourages candor, attorneys fear that clients will give away damaging information. Some lawyers even go into mediation with the intent of gathering information, rather than to work out a settlement.

This concern is legitimate, but can be successfully addressed by client preparation and caucuses. Just as you would never send a client into a deposition without preparation, a lawyer should always instruct a client before mediation. "Caucus" provides an opportunity for a party to speak confidentially with the mediator, or to speak privately with his or her own lawyer. Potentially compromising but useful information may be given to the mediator in confidence, or a client can caucus with his lawyer about the propriety of disclosing a fact. Unlike basketball timeouts, there is no limit on the number caucuses allowed in mediation.

Clients themselves sometimes balk at coming to the mediation table. Some clients feel that simply sitting down sends the message that their position is weak. Other clients, especially if the claim is employment based, fear that a quick settlement in mediation will open a floodgate of get-rich-quick claims by other employees.

The key to overcoming these fears is two-fold. First, a good mediator stimulates appropriate and reasonable expectations in the parties by thoroughly explaining the process before the mediation convenes. Part of that preparation includes a firm message that no one need settle if solutions developed during the process are not the best alternative for the party. The rights-based options remain available if the mediation process does not yield results. Mediation is an opportunity to explore alternatives — no more, no less.

Second, look at the mediation the same way you would any negotiation. Be prepared. Know as clearly as you can what your client is and is not prepared to do to solve a problem, and why. Understand your long-term and short-term interests, and the up- and downsides of negotiating a settlement. Learn as much as you can about the other side's interests and motives. Know your best alternatives if you don't accomplish a negotiated agreement. Have all the relevant information available (and the authority to settle) so you and your client can make a decision if the opportunity arises. Be ready to problem-solve creatively. Be just as ready to walk out if that's what's best for your client.

Selecting a mediator and a mediation style

A final and fair complaint lawyers often have about mediation is the inconsistency in mediator quality. Mediators are not currently subject to training requirements, nor does the state or any organization certify them. Some litigants attempt to get around the problem by opting to use retired judges, in the hopes that judges, at least, will understand the ramifications of the law. Some judges are wonderful mediators. Other judges are, well, judges.

There are several mediation-training options in Maricopa County. The Arizona Attorney General's Office, the Maricopa County Superior Court and, from time to time, city governments offer free 40-hour basic training to the public, to feed their own volunteer mediation programs. Two local private companies, Mediation Consultants and Conflict Pros, and local private and community colleges offer mediation training to the public as well. Graduates often feed into the volunteer programs to get hands-on skill. While these basic-training courses can be trusted for content, most are ill-equipped to effectively supervise or mentor new mediators, and there is no real process for identifying and dismissing poor quality mediators from the programs. Consequently, the lack of basic-training does not guarantee quality. Experienced attorneys, additional training and satisfied clients may be your best recommendations. The Arizona Dispute Resolution Association runs the online ADR Resource Center, with a directory where many professional mediators and arbitrators list their qualifications, training, background.

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For the past twelve years, the Superior Court of Arizona in Maricopa County, in partnership with the Maricopa County Bar Association, has given more than 64,500 Maricopa County students the opportunity to experience the legal system firsthand. The Courthouse Experience matches volunteer attorneys with students (grades 6-12) and provides a forum for youth to learn about the courts and the legal profession from you—the expert in the profession.

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Maricopa Lawyer
The Maricopa County Bar Association’s Alternative Dispute Resolution Committee has defined and begun work on its objectives for the 2002-03 year. The committee views the objectives as essential to focusing and refining its future work and recruiting additional committee members.

With ADR at the fore, as exemplified by Rule 16 (g) (mandating that attorneys of record pursue ADR alternatives) and Rule 72 (mandating arbitration for cases under $50,000), the parties are very entrenched or have no other interest beyond the litigation’s outcome. Evaluative mediation can be a good resolution tool. He or she then assists parties to a settlement conference, and relies heavily on a mediator’s ability to assess the facts, apply the law, and give the parties a frank opinion about what might happen in court if a resolution cannot be negotiated. Some lawyers are very comfortable with evaluative mediation because of its similarity to arbitration. They really want a mediator to evaluate the case and let the clients know where they stand. Evaluative mediation differs from arbitration in that the mediator doesn’t stop with the evaluation. He or she then assists parties to negotiate a reasonable agreement, if it can be done. Evaluative mediation can be a good option when time is tight, the parties are very entrenched or have no other interest beyond having their rights enforced. If you are looking for an evaluative mediator, you will likely need either a lawyer-mediator who is familiar with the law or can be educated, or a mediator with a background in the industry at issue. Evaluative mediation is the least time-consuming of the three styles but, as a drawback, does little to validate the parties, engage them in creative problem solving or raise satisfaction levels.

Mediators use one style predominantly, while others, including me, believe in a “tool box” approach, using whichever technique is appropriate in a given situation. Another way of looking at these approaches is that they fall on a continuum from most interventionist to least interventionist. Evaluative mediation is related to the settlement conference, and relies heavily on a mediator’s ability to assess the facts, apply the law, and give the parties a frank opinion about what might happen in court if a resolution cannot be negotiated. Some lawyers are very comfortable with evaluative mediation because of its similarity to arbitration. They really want a mediator to evaluate the case and let the clients know where they stand. Evaluative mediation differs from arbitration in that the mediator doesn’t stop with the evaluation. He or she then assists parties to negotiate a reasonable agreement, if it can be done. Evaluative mediation can be a good option when time is tight, the parties are very entrenched or have no other interest beyond having their rights enforced. If you are looking for an evaluative mediator, you will likely need either a lawyer-mediator who is familiar with the law or can be educated, or a mediator with a background in the industry at issue. Evaluative mediation is the least time-consuming of the three styles but, as a drawback, does little to validate the parties, engage them in creative problem solving or raise satisfaction levels.

Most mediators are trained in the facilitative style. The facilitative mediator’s job is to get enough information out on the table that the parties can make informed choices. The facilitative mediator will keep the process moving along, use questioning to get information necessary to the decision-making process out on the table, and to help the parties to clarify their interests and goals, initiate brainstorming and other problem-solving techniques, de-escalate emotions or declarative posturing that become obstacles to the process, and make sure that the parties focus on their priority issues in the time available to them. The facilitative mediator is part communication coach, part negotiation expert and part process person. While such a mediator does not “evaluate,” some facilitative mediators will nevertheless make use of the weaknesses and strengths of each party’s case to help the parties assess their best possible scenarios. Many non-lawyer mediators are most comfortable with the facilitative style because they do not feel qualified to make a legal evaluation.

Many lawyer-mediators use a mixed style, employing the facilitative method as far as it will take the parties toward resolution and then turning to evaluative methods to help parties reality test their options and nudge them across the final bridge to resolution. Facilitative mediation takes more time than evaluative mediation, but the parties create and own the solutions they come up with, and are much more likely to live with them willingly. Transformative mediation is the newest mediation model, based on the theory that conflict can be transformed to resolution by empowering and validating the parties and by helping the parties to recognize and validate each other’s interests and points of view. The transformative mediator serves as a mirror, selectively mirroring those statements that will empower, validate and keep a discussion moving. Unlike facilitative mediation, which strives to reframe language to discard negativity while supporting the substance of a party’s statement, the transformative mediator reflects both the party’s feelings and substance, no matter how disturbing. Feeling truly heard empowers the party. Once empowered, the party feels less self-protective and more willing to validate the opposing party’s needs. This dynamic leads to solution-generating behavior. The transformative mediator follows the parties, allowing them to veer as far as they want from the stated purpose of the mediation. Control is exerted indirectly, through questioning about goals and priorities. Transformative mediation is probably the most difficult model of mediation to master, especially for goal-oriented lawyers, but it has been adopted wholesale by such organizations as the U.S. Postal Service for its potential to restore workplace relationships. It may be most beneficial in family and workplace settings where personality conflicts are hidden beneath rights claims, and harmony cannot be restored until the real issues are exposed. Although relatively few Arizona mediators have been formally trained in the transformative method, some of the techniques are being incorporated into more facilitative classes.

In any of its forms, mediation is a party’s last opportunity to control his or her own destiny, rather than turning the decision-making over to a court. In the EEOC’s recent study of party satisfaction with mediation, in which parties to more than 1,000 mediations were queried, parties overwhelmingly felt the mediation process and outcome were fair, and would go back into mediation if the need arose. Mediation gives the parties the best possible opportunity to craft their own outcomes and to uncover creative, interest-based solutions that might never have come to light in the rights-based litigation setting. In all its forms, mediation’s here to stay. Try it. Your clients might just thank you for it.

Dr. Sandra Price is a Phoenix-based attorney and a mediator/arbitrator, with more than 250 hours of ADR training. Read more about mediation at her web site, www.yesmediation.com. For a copy of “10 Ways to Fail at Mediation,” contact her at sprice@yesmediation.com or 602-485-0233.
Focus on the individual to recruit, retain women and minority attorneys

By David H. Benton
Special to Maricopa Lawyer

The Maricopa County Bar Association’s Task Force to Promote the Recruitment and Retention of Women and Minority Lawyers, formed in 1998, remains dedicated to its original goals: equal access to employment opportunities, equal participation in the workplace and an opportunity to maximize chances for success. We continue to believe in the benefits and privileges of collectively embracing our ethnic, cultural and gender experiences, and using these attributes for our own personal and business enrichment. The task force has been working steadily to fulfill our mission and achieve these goals through education, troubleshooting and engaging in practical problem solving.

In our last article for Maricopa Lawyer [May 2001], we wrote that we planned to meet with law firms and law departments to find out their experiences, successes and frustrations with this most difficult subject. We viewed this as an opportunity to learn and teach at the same time. That’s exactly what happened, and we think the results are very encouraging.

Some firms struggle with recruitment, but most of those problems stem from long-standing and apparently tried-and-true methods. Recruiters and managers still receive and review thousands of resumes, seeking key features (law review participation, grades, class standing, etc.) to find the next associate. Because of the volume of applications, this may be a fairly effective method of weeding out clearly unwanted candidates. Yet even recruiters and managers admit this method overlooks the unique individual, minority or not, who could contribute to the firm.

Our advice was obvious, but sound nonetheless: change your rigid thinking. Recruiting with the same methods will likely lead to the same results. Employers were quick to add that change does come readily, and could be costly and time consuming. However, we immediately replied that the benefits would likely outweigh the costs, and the task force is a ready resource to facilitate that change.

As for retention, the story was consistent. Departed attorneys clearly were not happy, but everyone needs to make the grade or else. Clients and constituency are forever demanding. But what goes for recruitment holds true for retention of women and minority attorneys: those who resist change do so at their own expense. Unhappy women and minority attorneys leaving firms to find a suitable place to work cannot be written off as an aberration. Law firms and law departments cannot ignore the problem as the remote blather of the disgruntled few. Women and minority attorneys often feel isolated, unappreciated and targeted. The consequences are frustration, miscommunication and downright anger, so much so that making the grade is nearly impossible.

2002 resume books available

The MCBAs Task Force for the Recruitment and Retention of Minority and Women Attorneys has compiled a book of resumes submitted by more than 50 second- and third-year women and minority law students at American Bar Association-approved law schools in the United States. The task force had asked the law schools to tell their women and minority year women and minority law students at American Bar Association-approved law schools in the United States. The task force had asked the law schools to tell their women and minority law students of the opportunity to submit their resumes to be included in a book for distribution to law firms and offices in Maricopa County.

We hope you will take advantage of this opportunity to investigate the possibility of achieving more diversity within your firm. If your firm has not received a copy of the resume book, contact Sharon Frye at 602-257-4200, ext. 136, or by e-mail at sfrye@mcbabar.org. Student writing samples also are available upon request.

Walk for a cause.....

Please join us for the 2002 AIDS Walk Arizona to benefit the HIV/AIDS Law Project. The HIV/AIDS Law Project, a subdivision of the Maricopa County Bar Association Young Lawyers Division and the Volunteer Lawyers Program, invites you to join its team of volunteers and walk participants in the AIDS WALK ARIZONA scheduled for November 10, 2002.

The Walk will begin and end at Phoenix Symphony Hall Terrace at 201 E. Monroe Street directly across from the Civic Plaza in downtown Phoenix. The Opening Ceremonies kick off at 9:10 a.m. and the Walk begins at 9:35 a.m.

AIDS WALK ARIZONA is the state’s largest AIDS fund- raising and awareness event, benefiting HIV and AIDS-related service organizations throughout the greater Phoenix area. It is also an exciting, energizing and touching event to support those with HIV or AIDS and to remember loved ones who have succumbed to the disease.

The HIV/AIDS Law Project provides free legal services to those persons afflicted with HIV or AIDS who are low-income and in need of legal representation in a number of social service areas.

For more information about AIDS WALK ARIZONA and/or the HIV/AIDS Law Project, please contact Karen Stuart, Coordinator of the HIV/AIDS Law Project at 602-258-3434 ext. 282 or Jessica J. Fotinos, Attorney Volunteer Coordinator for the HIV/AIDS Law Project at 602-262-5704.
October 1
- Property Valuation Issues Family Law Brown-Bag Lunch CLE Series 12:30 p.m. to 2:30 p.m., ASUD How to handle document production and property valuation; effectively presenting valuation evidence at trial; using valuation expert testimony at trial; drafting asset and liability charts.
Cost: MCBA member attorneys, $50; MCBA member paralegals and public attorneys, $30; non-member attorneys, $75; non-member paralegals and public attorneys, $55; same-day registration, $15 additional.
CLE: 2 hours

October 2
- Family Law Section, 5:15 p.m., University Club

October 3
- Task Force for Recruitment and Retention of Minority Attorneys, 8:30 a.m.
- Public Lawyers Division board, noon
- Alternative Dispute Resolution Committee, 4:30 p.m., Starbucks, 2375 E. Camelback Road, Phoenix

October 5
- Certified Legal Assistant (CLA) review course, 9 a.m.

October 7
- Young Lawyers Division Domestic Violence Committee, noon
- Maricopa Lawyer editorial board, 5 p.m.

October 8
- Volunteer Lawyers Program Advisory Committee, noon

October 11
- Lawyer Referral Service Marketing Committee, noon

October 14
- MCBA closed in observance of Columbus Day

October 15
- Estate Planning and Probate Section Executive Committee, 7:30 a.m.
- International Law Section, noon
- Child Support, Spousal Support and Tax Issues Family Law Brown-Bag Lunch CLE Series 12:30 p.m. to 2:30 p.m., ASUD Calculating and modifying child and spousal support awards; divorce-related tax issues for the non-accountant, including how to read tax returns; dependency exemptions and other tax issues the family law attorney should know about.
Cost: MCBA member attorneys, $50; MCBA member paralegals and public attorneys, $30; non-member attorneys, $75; non-member paralegals and public attorneys, $55; same-day registration, $15 additional.
CLE: 2 hours

October 19
- CLA review course, 9 a.m.

October 21
- Paralegal Division board, 5:30 p.m.

October 22
- Corporate Counsel Division board, 4:30 p.m.

October 23
- The Nuts and Bolts of Evidence 1 p.m. to 4:30 p.m., ASUD Learn the ins and outs of evidence law, including how to raise evidentiary issues and make objections at trial. Explore practical, everyday aspects of evidence law to be successful in discovery, hearings, motions and trial practice.
Cost: MCBA member attorneys, $70; MCBA member paralegals and public attorneys, $45; non-member attorneys, $105; non-member paralegals and public attorneys, $75; same-day registration, $15 additional.
CLE: 3 hours (1.5 hours ethics)

October 24
- Technology Section, 8 a.m. - Los Abogados, noon, 100 N. First St. Reservations: 602-253-0547

Immigration law pro bono training seminar Sponsored by the Florence Immigration & Refugee Rights Project 2:30 p.m. to 5:30 p.m., Brown & Baun, 2901 North Central Avenue, Phoenix
Habeas corpus for immigrants in indefinite detention; special immigrant juvenile visas for abandoned, abused and neglected children; and nuts and bolts of asylum, withholding of removal and convention against torture claims.
Cost: $40; free for attorneys who agree to take one pro bono case within the next year.
CLE: 3 hours

Recent Developments in Arizona Water Law 1 p.m. to 4:30 p.m., ASUD Recent major court decisions concerning federal and Indian reserved water rights, developments in Arizona’s Gila River adjudications, settlement of Indian water rights claims, litigation between surface water users and groundwater pumpers along the Gila River, and water development and administration in Arizona’s rural communities.
Presenters: Joseph Feller, ASU College of Law; Mark A. McGuire, Salmon, Lewis & Weldon; Lee A. Storey, Moyes Storey
Cost: MCBA member attorneys, $70; MCBA member paralegals and public attorneys, $45; non-member attorneys, $105; non-member paralegals and public attorneys, $75; same-day registration, $15 additional.
CLE: 3 hours (0.5 ethics)
HOPKINS & KREAMER, L.L.P.

is pleased to announce that

R. Michael Skupin
(formerly of Holloway, Odegard, Sweeney & Evans)
has joined the firm as an Associate.

The firm’s practice will continue to emphasize Civil Litigation with particular emphasis on personal injury, construction, and commercial matters.

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Courtwatch...
Continued from page 1

it could take as long as two years to resolve the case. He informed Richman that he faced possible jail or prison time.

Because of the complications of the case, Connelly initially asked for a flat fee of $75,000. Along with his mother, a Chicago attorney, Richman negotiated the fee down. After discussing various flat-fee options, Richman agreed to a non-refundable, flat fee of $50,000. The retainer agreement specified that any fee dispute would be resolved through binding arbitration before the State Bar.

As it turned out, no additional charges were filed against Richman. Connelly negotiated a diversion program for him. Richman successfully completed the program, and the court dismissed the charges against him.

Richman then filed a bar complaint. He did not bother to first tell Connelly that he had any problem with the fee nor did he seek fee arbitration.

Having learned of Richman’s displeasure for the first time through the disciplinary proceedings that the State Bar initiated on the complaint, Connelly reviewed his representation and fee. He consulted with three other experienced criminal lawyers and concluded that his fee was reasonable.

The State Bar filed a formal complaint against him. Connelly suggested that disciplinary proceedings were premature and that the matter should be sent to fee arbitration. Bar counsel declined because Richman refused to arbitrate, feeling that he would not prevail there.

So the matter went to a disciplinary hearing. Connelly testified that he and his associate had spent approximately 117 hours on the case, which under their hourly rates amounted to $38,015. Connelly explained that Richman was a very needy client who frequently called and visited the office to discuss the case.

Connelly’s expert witness testified that the fee was reasonable and that he would have charged Richman between $75,000 and $100,000. The State Bar’s expert testified that a reasonable fee would have been from $20,000 to $25,000.

The hearing officer determined that Connelly had charged an excessive fee—not initially because the case originally appeared to be labor intensive and Connelly had substantially decreased the fees in a contra - prospek t because of the amount of work he actually ended up doing. She recommended that Connelly be censured and pay Richman restitution of $11,985, the difference between the $50,000 fee and the $38,015 in time he actually spent on the case.

On Connelly’s appeal, the Disciplinary Commission affirmed the censure recommendation. But it upheld the ante, ordering restitution of $25,000 because the hearing officer had inappropriately failed to consider the fee in the light of the conditions that prevailed at the time the parties agreed to the fee.

A proper review, McGregor held, must consider the risk sharing between the client and attorney. Richman was a very needy client who frequently called and visited the office to discuss the case, which under their hourly rates amounted to $38,015. Connelly explained that Richman was a very needy client who frequently called and visited the office to discuss the case. McGregor noted a preference for arbitration over disciplinary proceedings for a couple of reasons: arbitration is likely to be more prompt and the burden of proof is different. Both of these were likely to benefit clients who seek prompt resolution of fee disputes, she opined.

She also lauded arbitration as being helpful for possible later disciplinary proceedings. The arbitration award “provides valuable information for a subsequent hearing, if one follows,” she wrote. She and the court concluded that “the State Bar should follow its policy of encouraging lawyers and clients to resolve fee disputes through arbitration, holding therefore, that the State Bar should not have begun formal disciplinary proceedings against Connelly until arbitration of the fee dispute had concluded.”

“Because a non-refundable flat fee reflects a balancing of the risk to both client and attorney, McGregor stated, “a flat fee can be a proper review, McGregor held, must consider the risk sharing between the client and attorney.” McGregor noted that the State Bar had preempted that policy in Connelly’s case by filing the disciplinary action because, by fee arbitration rules, that action deprived the Fee Arbitration Committee of jurisdiction. McGregor wrote that it is particularly important to use arbitration first when the attorney and client have explicitly agreed to it in the event of a dispute.

“By rejecting Connelly’s request that the matter first proceed to fee arbitration,” she wrote, “the State Bar, in effect, allowed Richman to sidestep his contractual obligation to arbitrate the fee dispute.”

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BAR DISCIPLINE DEFENSE

Disability Proceedings

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Under the Arizona Constitution, if the government takes or damages property, it must pay just compensation. In DUWA Inc. v. City of Tempe, 380 Ariz. Adv. Rep. 17, No. 1 CA-CV 01-0598 (Aug. 21, 2002), Division One of the Court of Appeals had to determine whether governmental actions that hurt a property owner’s business, eventually leading to the loss of the property, constituted a taking or damage, as envisioned by the Constitution.

DUWA owned a bowling alley on Apache Boulevard, an area of Tempe that in the late 1980s and early 1990s was experiencing deterioration and rising crime. The city designated the area — the Apache Boulevard Redevelopment Area — as an urban redevelopment study area. The mayor and the head of the Redevelopment Department informed DUWA that redevelopment plans did not envision a bowling alley and that Tempe would likely condemn the property in a

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McGregor opined that excluding the
notice of claim would not encourage can-
dor and would not hold parties accountable
for relating different facts in the different settings.

“Claimants should present their claims
truthfully,” she wrote. “Lawyers should not lie
on behalf of clients in presenting a claim.”

Judge Joseph E. Howard of Division Two
of the Court of Appeals, who was designated
to sit on the case because of a vacancy, filed
an dissenting opinion, joined by Justice Stanley
Feldman. Howard wrote that the majority opinion
undermines the purposes of Rule 408 and
does not make it automatically
admissible. Rather, other rules operate
to keep the evidence out if it is irrelevant or if
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relevance.

“[E]ven if we regard the notice of claim as an
offer to compromise under Rule 408,”
McGregor concluded, “the trial court properly
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He feared a “significant danger that a jury
will use impeachment evidence substantively,
and, in that way, directly contravene Rule 408.”

When the evidence impeaching a party
consists of statements concerning the facts of
an accident, he stated, “the only possible
relevance of such evidence is to assist the jury in
determining the liability of the claim or its amount.” A party’s credibility
is not a separate issue, necessary to prove to
prevail at trial, he noted. “Evidence concern-
ing credibility merely assists the jury in deter-
mining whether or not one should adopt, which
will determine liability.”

He was unconvinced by McGregor’s retort
that the trial court may give a limiting
instruction. “Such instructions,” he wrote,
“are, of course, of limited practical value and
the better practice remains exclusion of the
evidence.”

Howard predicted that, as a result of the
majority opinion, “attorneys will likely revert
to the common law practice of making hypo-
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Ryan's investiture offers serious accolades and a bit of roasting

By Terri Zimmerman
Maricopa Lawyer

Arizona State University's Great Hall was full of present and past Arizona appellate judges, Superior Court judges, political representatives and friends and relatives for the Sept. 20 investiture of Michael D. Ryan as a Supreme Court justice.

Chief Justice Charles Jones, who presided over the ceremony, said Ryan, the 38th member of the court since Arizona became a state, "will be a remarkable and strong addition to the court."

By the time of his investiture, Ryan had already been on the job for nearly three months, having left the Court of Appeals, where he had been a judge since 1996, on July 1 to move to upstairs to the Supreme Court. Gov. Jane Dee Hull in May appointed Ryan, 56, to replace retired Justice Thomas Zlaket.

As part of the mild roasting part of the ceremony, Maricopa County Superior Court Judge Ronald Reinstein projected on an overhead screen old photos of Ryan. One from the Vietnam era was dubbed his "Hey dude days."

Memories of some of Ryan's former cases were recounted, including Ryan denying Evan Colangelo an opportunity to speak in the courtroom, saying, "This is a court of law" (not a political arena); telling County Attorney Rick Romley that if he violated a gag order again, he should bring his toothbrush to court; presiding over the Sun cases, for which Jerry Colangelo should thank him for his help in developing a new team; and being asked by a reporter, "What does it feel like to be dead?"

"We want judges to serve not only to correct the wrong, but also to live and inspire the right," Ryan said. "Mike does that extraordinarily well. But he thinks he is nothing special. He thinks he is just doing his duty. That he thinks first of serving others, and that he does not particularly like sitting above them, is one of the reasons why it is so great to have him up [on the Supreme Court]."

Ryan spoke on a more serious note when he said, "On his way through the legal profession, the American legal system's grandeur is untouched. The justice system in Maricopa County, where he was a prosecutor and served on the trial bench, is considered one of the best in the country."

Ryan said about the appellate court, "If a trial is like a battle, the appellate court then comes down the hill and shoots all the survivors."

I learned in the regiment and in the class the conclusion, at least, of what I think is the best service that we can do for our country and for ourselves: To see so far as one may, and to feel the great forces that are behind every detail...to hammer out as compact and solid a piece of work as one can, to try to make it first rate, and to leave it unadvertised."

"For a modern example of that lesson," Ryan said, "we can look to Mike Ryan."

Justice Stanley Feldman advised Ryan to appreciate his present 100 percent approval rating. In a month, after his first opinion, Feldman said, it will go down to 95 percent and lower after the second opinion.

"Pretty soon," Feldman said, "everyone will say, 'He's a nice guy, but...'"

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The Arizona State University College of Law invites applications to teach in the law school’s in-house civil practice clinic in the position of associate professor on the tenure track. (Those who prefer an academic professional appointment as Associate Instructional Professional on track are also welcome to apply.) All candidates must have a J.D. degree and a minimum of three years experience as a lawyer, which may include graduate clinical training or judicial clerking. Demonstrated potential for scholarship appropriate to appointment category required. Application deadline is November 1, 2002; if not filled, the 1st of each month thereafter until search is closed. Submit resume (AALS application accepted) to Ms Jan Spence, Coordinator for Appointments Committee, Arizona State University College of Law, P.O. Box 877906, Tempe, AZ 85287-7906. AA/EEO

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My three rules of safe computing — again

Why? Because of KLEZ worm

Only a few months ago, I wrote a column about virus protection. I realize that, as strong as they were, my cautions were neither clear nor strong. So, let me be very clear about the danger of opening email attachments.

Recently, somebody in my office tried to open an attachment she thought had come from a colleague because the email sender line had her colleague’s name on it. Nothing seemed to happen when she clicked on the attachment and she sent it on to me with the request that I try to open it. Fortunately, the attachment had the name of one of the forms of the KLEZ worm (“a useful tool”) that I knew about. I just deleted it, but my colleague’s attempt to open the attachment set the virus loose.

We quickly shut down her machine and I ran the McAfee virus scan package, which found the KLEZ files and deleted them. No harm seemed to have been done, but my colleague was mystified that she had received the file from a trusted associate. I asked if she was expecting a file. She said, “No, but when I saw Harry’s name on the email, I assumed it was from him.” That was the first mistake because many worms like KLEZ infect the mailboxes of the victim’s computer and send out mail from it with the virus attached. Usually the victim does not even have an inkling that his or her computer has been compromised. The virus continues to be spread by recipients unaware of the lurking danger.

That is why KLEZ is one of the most common viruses around and it gives rise to Rule #1 of Safe Computing: Never open an attachment from an unexpected source. If you get an attachment from a friend or colleague that you are not expecting, just drop them a note and say “BTW — did you just send me a file called a useful tool?” If they say no, delete the file without further ado. The chance that deleting the file will deprive you of some knowledge that will deprive you of personal fulfilment and endless wealth is very, very small.

It follows that if you get an attachment with a file from an unknown source you NEVER, EVER, IN A MILLION YEARS click on that file. Years ago, I knew a lawyer who had a remarkable filing system. He just threw almost everything he got in the trashcan unless it was a bill or a notice from a court or some other obviously important document. His theory was “if it is important, they will send me a copy.” As stupid as that rule was in the context of law practice, it is a stunningly brilliant rule for managing email attachments. I have yet to receive an announced attachment that had any real significance to my life or my practice. I am not so blind to reality that I think that you will always follow my Rule #1 of Safe Computing, but I can hope you will at least hesitate for a moment before you click the mouse. But sometimes I must expect that temptation will win you over and click you will. That is what happened in my office. And, when the click got no response, my colleague just assumed it was some kind of file opening error. In reality, the KLEZ worm, in most of its manifestations, gives you absolutely no warning that it has been unleashed on your computer. Indeed, you may click several times wondering to yourself why nothing happens. Unfortunately, the very techniques that allow some 13-year-old kid in Russia to send you the KLEZ virus over the Internet is exactly the technique by which sophisticated computer hackers can send worldwide viruses that can crash the Internet and most of the sophisticated systems that we depend on for almost every aspect of our lives. As individuals, we can’t do much to combat worldwide terrorism. We can, however, make our own computing systems as safe as possible. It takes only a few minutes each day to do that and, in my view, we each have an important obligation to undertake that extra effort.

That leads to Rule #3 of Safe Computing: Make sure your computer has a high-quality virus detection program. More importantly, make sure that you use it and constantly update it. I use the McAfee program because it actively reminds me of every update needed to catch the most recent viruses. I update several times a week because that is how often new and insidious more pernicious viruses are let loose. McAfee is a nagging program but the nagging, just like your mom, is important. “Woody, take your vitamins” has been replaced by a computer program telling me to update my virus protection tables. So far as I know, McAfee Online is the only program that nags you that way. That is why I use it. It takes a minute or two to update. It nags every few days but I believe it is worth the time and effort. To read more about KLEZ and other virus attacks, go to www.mcafee.com/anti-virus/default.asp or www.symantec.com/avcenter.

CA using thought

This column will appear on your desk after the 9/11 anniversary. The really smart people working on terrorism predict that one of the forthcoming terrorist attacks will be on the world’s computing systems. In the United States, it is very clear that our government and commercial processes have become totally dependent on computer systems and the Internet. We no longer have the luxury of academic debate. The very techniques that allow some 13-year-old kid in Russia to send you the KLEZ virus over the Internet is exactly the technique by which sophisticated computer hackers can send worldwide viruses that can crash the Internet and most of the sophisticated systems that we depend on for almost every aspect of our lives. As individuals, we can’t do much to combat worldwide terrorism. We can, however, make our own computing systems as safe as possible. It takes only a few minutes each day to do that and, in my view, we each have an important obligation to undertake that extra effort.

Winton Woods is a lawyer, professor at the University of Arizona College of Law and director of the college’s Courtroom of the Future project. He also serves as general counsel to Lex Souto Corp. and as an electronic litigation consultant. He welcomes questions and comments by email at wintonwoods@mail.com or by phone at 520-881-6118. Visit him at www.wintonwoods.com or www.digitaltrial.net. ■
Hello again Paris, and your eccentricities, too

By George Ridge
Special to Maricopa Lawyer

Hello again Paris. Who’s on strike? My arrival in France always seems to coincide with some sort of insurrection, strike or protest.

I have sat uncomfortably on the docks at Calais when the customs inspectors walked out.

Most memorably, I had the distinction of riding a Metro subway in Paris when the driver walked off in mid-journey! There we were, stopped an an obscure platform well away from nowhere, with a little engine that couldn’t and wouldn’t. The foreign tourists looked puzzled until I explained that the farmers had planted plats of wheat — naturally, as a protest — the entire length of the Champs Elysées. The traffic jams were monumental, not to mention the tangle of tourists with reservations for the floorshow at the Lido. The Champs, indeed, looked like Kansas.

Hello Paris. Good to see you again. I know I’m back in France when I see the light bulb. That means you’re a regular.

I ordered a glass of brutty wine. They misunderstood my pronunciation and brought me a cheese sandwich instead, understanding my request as bribe. When I protested, they shrugged and told me that they cannot be responsible for those who do not pronounce French words properly.

Hello Paris.

much higher order, rummaged through the vineyards of southern France to find a number of vin de pays intent on improving their quality in hopes of receiving the hallowed appellation controller.

Always a first stop when I reach Paris is the Village Gare, out on Avenue Charles de Gaulle between the Grand Arch and the Arch of Triumph. Since I’ve been coming here for 20 years, I expected to be recognized. Soon after I perched on a stool at the bar, the waiter asked to borrow it so he could change a light bulb. That means you’re a regular.

I ordered a glass of brutty wine. They misunderstood my pronunciation and brought me a cheese sandwich instead, understanding my request as bribe. When I protested, they shrugged and told me that they cannot be responsible for those who do not pronounce French words properly.

Hello Paris.

16 October 2002

Maricopa Lawyer

Maricopa Lawyer’s new “Quality of Life” column will feature articles about juggling work and family, non-work activities (travel, hobbies and sports) and mental and physical health — all those things that affect your quality of life. We welcome contributions. Submit your articles via email to maricopalawyer@mcbabar.org or by regular mail (a printout and your article on a computer disk) to Maricopa Lawyer, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, 85004.

➤ George Ridge, a University of Arizona professor emeritus and a member of the Arizona Bar, divides his time between France and Arizona. He writes a weekly travel column. ■

Attention Young Lawyers

The Maricopa County Bar Association Young Lawyers Division is seeking nominations for four seats on the MCBA YLD board of directors. All seats are for three-year terms beginning January 1, 2003.

You are eligible to serve on the YLD board if you are 36 years old or younger OR if you have been practicing law in any jurisdiction for five or fewer years.

The MCBA YLD is committed to promoting educational and civic activities of interest to lawyers new to the practice of law in Arizona. The YLD encourages public education and access to the profession to persons historically not represented.

If you wish to run for a YLD board position, please send a paragraph summarizing your qualifications along with a black and white photo to:

Maricopa County Bar Association
Attention: Shane Clays
303 East Palm Lane
Phoenix, Arizona

Deadline: October 18, 2002

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Alternative to Litigation in Family Court
1 p.m. to 4:30 p.m., ASUD ADR options available to attorneys in Family Court, why and when you should use them and some tips about how best to represent your client in ADR. Presenters: Leah Pallin-Hill, former Maricopa County Superior Court commissioner and now a mediator and arbitrator; retired Superior Court Judge James McDougall, now in private practice focusing on ADR.

Cost: MCBA member attorneys, $55; MCBA member paralegals and public attorneys, $35; auotodaps and manual (MCBA members), $85; non-member attorneys, $105; non-member paralegals and public attorneys, $75; audiotapes and manual (non-members), $120; same-day registration, $15 additional. CLE 3 hours (all ethics)

Write a letter!

We welcome letters to the editor. Letters generally should be no more than 300 words long. Maricopa Lawyer reserves the right to edit all letters for length. Letters to the editor must be typed on your letterhead, signed and submitted to Editor, Maricopa Lawyer, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, 85004.
who will continue their pursuit of social justice as the Frank family always has.

John leaves state and federal officials he helped and advised who are better public servants for having known him. The list includes presidents, senators, congressmen, Supreme Court justices, solicitor generals, governors,

Contribute contributions can be made to the John P. Frank Endowed Lecture Series — School of Justice Studies, Arizona State University, Attn.: Dr. Marie Provine, ASU College of Public Programs, Office of the Dean — Main Campus, P.O. Box 870403, Tempe, 85287-0403. Make checks payable to the ASU Foundation.

attorneys general and an uncountable number of federal and state trial and appellate judges.

John leaves thousands of lawyers whom he taught and touched. This list includes students from his teaching days at Yale, Indiana, Arizona State and the University of Washington; practitioners who were moved by his lectures and writings; and individuals with problems that John got them through by listening, offering insight, giving money and even taking drop-everything, red-eye flights.

John leaves landmark cases he was heaviest in. Though John is most closely linked to Miranda v. Arizona, there are others, such as Sweatt v. Painter, in which the Supreme Court declared segregation in state schools unconstitutional; Sara Baird v. State Bar, in which the Supreme Court declared loyalty oaths for lawyers unconstitutional; and Presbyterian Church v. United States Government, in which the Ninth Circuit Court of Appeals held that the government could not spy on worship services without probable cause.

John leaves all manner of substantive and procedural law reforms in the federal as well as the state legal systems. In his book, American Law: The Case for Radical Reform published in 1969, John proposed dozens of changes in the law and, today, more than 90 percent of them have been adopted, locally and nationally. In Arizona, for example, we have John to thank for dumping the antiquated writs like certiorari and quo warranto and for dreaming up and drafting the special action rules.

John leaves scores of legal aid clients whom he successfully represented and did so regularly up until a few months of his death. To emphasize his commitment to public service, Lewis and Roca each year gives the “John Frank Pro Bono Awards” to firm lawyers who have given the most of themselves to the public good, whether it be for the poor, the arts or the community.

John leaves more than a dozen books published by major publishing houses such as Knopf, McGraw-Hill, McMillan, Duke University Press and Callaghan. He leaves more than a hundred articles in law journals as distinguished as those from Harvard, Yale and Stanford. He leaves articles in mass circulation magazines such as The Reader’s Digest, Redbook and Fortune. He also leaves his annual Christmas booklets he distributed to friends with thoughts on Joan of Arc, Abraham Lincoln, Socrates, Wagner, Marcus Aurelius, John Paul II and Ulysses.

John also leaves a major law firm that, because of him, broke down the barriers against women in large Phoenix firms, fought repeatedly for racial equality and took on cases that were often unique (such as those he filed to protect the nose of Camelback Mountain from development) and frequently controversial (such as the defense of flag burners and war protestors during the Vietnam War).

Finally, let me close on a lighter note and tell you something that John will not leave behind: a completed historical novel he struggled to write about the life of Governor Morris, who was one of the framers of our Constitution, a senator from New York, an ambassador to France and, according to John’s research, a ladies man whose peg leg women found fascinating. In writing this novel, John kept getting blocked by the sex scenes, which he usually described like this: “He did it and she did it too.”

To be helpful, I gave John a book by a Princeton English professor called How to Write About Sex. The next day, I received a memorandum from John, which I quote here: “Peter, thank you for the fascinating book. I could have used this information to good effect 65 years ago but, alas, not now. There is nothing in it about peg legs.”

Peter Baird is a partner at Lewis and Roca, whose John Frank practiced since 1954.

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ARIZONA SUPERIOR COURT
In and For Maricopa County
HEARING OFFICER

The Arizona Superior Court in Maricopa County is currently accepting applications for Hearing Officers. This is a full-time Judicial Officer position, though part-time assignments may arise at the discretion of the Court. Officers may be assigned to the “24-hour” Initial Appearance Court located at the Madison Street jail, Regional Court Centers and various other departments of the Court, including Criminal, Civil, Family, Juvenile and Probate Courts. Positions may be located at various valley sites.

Applicants must be Maricopa County residents, at least 30 years of age, duly licensed members of the AZ State Bar and shall have engaged in the active general practice of law for a period of not less than five (5) years immediately preceding appointment. Compensation may be up to 80% of the salary of a Superior Court Judge. Applications from this recruitment may be used to fill other Judicial Officer vacancies occurring within the next six months. Application form and instructions can be obtained in a hard copy format at the Superior Court of Arizona, East Court Building, Law Library 3rd Floor, 101 W. Jefferson, Phoenix, AZ 85003 or may be downloaded at the following website: www.superiorcourt.maricopa.gov/openJobs. For a computer disc copy, applicant must bring blank virus-free formatted disc. Deadline: Application + 13 copies must be rec’d by 3:00pm on Wednesday, October 30, 2002. For e-mail version, please call Valerie @ (602) 506-0152. We are an Equal Opportunity Employer.
Gregory Y. Harris, of counsel with Lewis and Roca, has been elected to the board of the National Council of State Boards of Nursing, the organization through which state nursing boards act and discuss matters of common interest and concern affecting public health, safety and welfare, including the development of nursing licensure examinations. Harris is the first public member elected to serve with this organization.

Celeste Steen, an associate in Lewis and Roca’s Tucson office, has been appointed to the executive council of the State Bar of Arizona’s Real Property Section. Steen was educated at the University of Arizona College of Law. She is a member of the State Bar of Arizona, the Arizona Real Estate Council of Realtors, the Arizona Bar Association and the Arizona Women’s Lawyer Association. Harris, also an associate at Lewis and Roca, has been appointed to the board of the National Council of State Boards of Nursing. Harris is the first public member elected to serve with this organization.

A seminar room at the University of Arizona’s James E. Rogers College of Law has been dedicated in honor of Quarles & Brady Streich Lang’s 10-year financial commitment to scholarship programs that assist minority law students based on a combination of academic achievements and individual need. The Quarles & Brady Seminar Room was dedicated Sept. 12. “Quarles & Brady Streich Lang firmly believes that our financial commitment to assist minority law students will be of benefit for both the law school and the legal community in countless ways,” said Jim Ryan, national chair of the firm’s summer associate committee.

Bryan Cave partner Frank M. Placenti has been appointed to the board of Lipid Sciences Inc., a NASDAQ-listed Pleasanton, Calif.-based medical device manufacturing company. Placenti, a partner of Bryan Cave, serves as general counsel and corporate secretary.

Patricia Lee Refo has become chair-elect of the American Bar Association’s Litigation Section. Her term as chair begins in August. The Litigation Section is the ABA’s largest section and is comprised of more than 65,000 trial lawyers, judges and others involved in litigation and dispute resolution.

Kimulet W. Winzer, director of legal affairs for Mercy Care Plan, will receive the 2002 Black Board of Directors Project Outstanding Alumna Award at an Oct. 30 banquet. The award is given to an alumna of the leadership organization who is either in the formative or mid-range of his or her career and whose civil involvement in exemplary. Among the organizations she is active in, Winzer chairs the Arizona Coalition on Adolescent Parenting and Parenting Board and the YMCA Achievers Program Steering Committee.

Robert H. Feldman is the new chair of the State Bar of Arizona’s Sole Practitioners/Small Firms Section. Other officers are Guy P. Wolf, vice chair; Bonny S. Brogdon, secretary; and Art C. Atona, budget officer.

Bruce Meyerson, an adjunct professor at the Arizona State University College of Law and a mediator, arbitrator, trainer and facilitator, is the new chair of the American Bar Association’s Dispute Resolution Section.
Justice Court reorganization moves to new level

In a major reorganization of limited jurisdiction courts in Maricopa County, Superior Court Presiding Judge Colin Campbell has created new Justice Court administration regions as a step toward improved management of the county’s 23 separate justice of the peace courts.

Four leadership judges have been appointed to lead the effort: Portia JP Lex Anderson, west valley region; Central Phoenix JP Steve McMurry, central region; Scottsdale JP Jerry Porter, northeast/east central region; and South Mesa JP Tom Freestone, east valley region. As many as four or five neighboring justices of the peace will coordinate their work and programs under the guidance of a leadership judge.

“These four judges are proven leaders,” said Brian Karth, new chief deputy administrator for the Maricopa County Superior Court. “They were selected for their unique qualifications and the professional experience they bring to the position.”

Karth, a former chief deputy administrator for the Phoenix Municipal Court, took over his new position in August.

Some areas of reform to be addressed are improvements in case load management, court statistics, technology systems and coordination of court processes in the four regions.

The new regional team judges also will work to improve community access to court services and coordinate sharing court workloads where possible. In addition to the leadership judge appointments, three regional court administrators have been appointed to assist them from the Superior Court. These managers will do double duty by retaining various Superior Court responsibilities as well.

Marylou Strele will oversee the east region and Ann Marie Crawford will supervise the west region. The central regional position is currently vacant.

“The regional structure is a good first step toward a countywide court administration model where separation between limited and general jurisdiction courts is more legal than management,” said Gordon Grillr, administrator over all the county’s trial courts and Karth’s boss, said. “We are moving toward a blended court administration.”

Two of the leadership judges, Porter and McMurry, have also been selected to supervise training programs for pro tem JPs. The new training program will instruct attorneys who will serve as unpaid volunteers in the county’s 23 JP courts. The new training program is in response to a recent Supreme Court directive that all pro tem judges must be attorneys.

Legal Brief

- How are the latest issues in bankruptcy law affecting franchisors and franchisees as they face the realities of a Chapter 11 reorganization? How are the proposed changes likely to affect the preparation and delivery of a franchise, and a franchisor’s disclosure obligations? How have changes in the economy, competition, technology, franchisor ownership and peoples’ tastes impacted franchised system’s operations and branding? These topics and others will be addressed at 25th annual meeting of the American Bar Association Forum on Franchising, Oct. 9-11 at the Fairmont Scottsdale Princess, Scottsdale. For more information or to register, contact the ABA Forum on Franchising at 312-988-5880 or visit the forum’s website, www.abanet.org/franchising.

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Candidates should have excellent professional credentials. Please send resume to: Laura Zilmer, Recruiting Coordinator, Fennemore Craig, 3000 N. Central Avenue, Suite 2801, Phoenix, Arizona 85012, Fax (602) 916-5957, recruiting@fcnow.com.

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