Survey shows most attorneys have ‘no problem’ with mandatory CLE
But one-third report difficulty in meeting state requirement

By Joan Dalton
Maricopa Lawyer

In January, the Arizona Supreme Court adopted a regulatory scheme for document preparers. Through this certification program, document preparers must meet certain education and experience requirements. Many document preparers are former legal secretaries, while some have worked as paralegals and legal assistants. This mix of designations can be a source of confusion for both legal service providers and legal consumers. What exactly is a document preparer, and how do they differ from paralegals?

In other regions of the United States the term “document preparer” is synonymous with the terms “legal scrivener,” “legal document technician” or “legal technician.” Although not defined by the court’s rule, the authorized roles and responsibilities of document preparers are provided in the Arizona Code of Judicial Administration. They include: 1) preparing or providing legal documents; 2) providing “general,” rather than “specific,” legal advice; 3) providing “general,” rather than “specific,” legal advice; 4) making legal forms and documents available; and 5) filing and arranging for service of legal forms and documents.

Document preparers may provide these services directly to a client; however, they must refrain from providing legal advice, opinions, or recommendations pertaining to their client’s possible legal rights, remedies, defenses, options or strategies. In the role of paralegal and legal assistant as defined by Arizona law, document preparers may provide these services directly to a client; however, they must refrain from providing legal advice, opinions, or recommendations pertaining to their client’s possible legal rights, remedies, defenses, options or strategies.

With the June 30 mandatory continuing legal education (MCLE) deadline just around the corner, many Maricopa County attorneys are looking at the calendar and counting up their credits. Last month, the MCBA surveyed 60 area attorneys on their opinions about CLE and most said they “have no problem” with either the deadline or the requirement.

A 62 percent majority of respondents agreed the 15 credit hours of CLE required by the state was “the right amount.” Arizona’s CLE requirement closely follows the American Bar Association’s model rule for CLE and is similar to rules in the 39 other states across the nation that mandate CLE for attorneys. However, a sizable 37 percent minority of survey respondents expressed dissatisfaction with the rule.

About 24 percent of attorneys surveyed said fewer credit hours should be required, while another 13 percent said CLE should not be required at all. Of those who gave reasons for their opinion, one said the requirement was particularly “burdensome on solo practitioners,” while another wished for more flexibility in the requirement, such as hours being spread over two or three years as in some states.

From the feedback we generally get, most attorneys feel they are presented with adequate credit earning opportunities. Even those who expressed a negative opinion about the rule often joined the 67 percent who said they “have no problem” earning the required credits. In fact, according to the State Bar’s MCLE administrator, Marnie Leinbeiger, random.

Take Your Child to Work Day

By Teena Booth
Maricopa Lawyer

JUNE 2003
Tuesday, June 2

Take Your Child to Work Day, April 24, was also trial day at Fennewoer Craig, where children of employees sat as jurors in the curious case of State v. Jack B. Stalik. Jack was charged with criminal trespass and burglary. Pictured from left: Loretta Starck (a.k.a. Lucy Goose) gives testimony, Amy Abdo acts as judge, Patrick Black plays prosecutor, Dominica Minore serves as defense counsel, and Josh Forest (a.k.a. Jack B. Stalik) sits accused.

Prosecutors may not amend criminal charges mid-trial

By Daniel P. Schack
Maricopa Lawyer

A mid-trial amendment to criminal charges sparked fireworks not only in the trial court but also in Division One of the Arizona Court of Appeals in State v. Sanders, No. 1 CA-CR 00-0326 (Ariz. App. May 13, 2003). The dispute centered on whether the prosecution’s decision to amend charges in the midst of a trial was unconstitutional.

The Sixth Amendment secures the defendant’s right to notice of the charges. "In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation." In the case of State v. Sanders, a prosecution for assault on a police officer, defense counsel argued the state had violated Sanders’ Sixth Amendment right. In the early morning of Nov. 14, 1999, Phoenix Police Officer Vincent Bingaman saw John Sanders run a red light and followed Sanders home. As Bingaman approached Sanders in his driveway, Sanders walked quickly toward the officer, asking what he had done and whether there was a problem, then refused Bingaman’s several requests to produce his driver’s license. Bingaman then announced that Sanders was under arrest and attempted to grab Sanders’ arm. Sanders, who outweighed Bingaman by 85 pounds, spun and struck the officer’s forearm with his own arm, and a struggle ensued. Bingaman then summoned his canine partner, and the dog subdued Sanders by grabbing his leg. When backup officers arrived, Sanders was taken into custody.

At a preliminary hearing, Bingaman testified about Sanders’ striking him. The prosecutor did not ask him whether he perceived any further threat from Sanders, and the magistrate did not allow Sanders’ attorney to ask Bingaman whether Sanders had threatened him or used any verbal threats, sustaining the prosecutor’s hearsay objection.

Following the preliminary hearing, the state filed an information — See Courtwatch on page 4.
Growing up and making a difference

Yvonne R. Hunter
MCBA PRESIDENT

Paralegals have a reason to be proud

Garth Harris
PARALEGAL DIV. PRESIDENT

So what do you want to be when you grow up?

The question came from five-year-old Ms. J. as she was gathering rocks in the yard for a rock garden. She was also gathering seeds that had fallen from a nearby bush.

I had to stop and think for a minute. What did I want to be when I was growing up? Was I doing the job I’d always intended to do?

I finally told Ms. J. that what I really wanted was to “make a difference.” She, however, had already moved on to explaining her rock garden and how the seeds she planted would make large trees.

Out of the mouths of babes...

Like many of my classmates at Arizona State University College of Law class of 1984, I do not practice law, at least not in the traditional sense of the word. You know, litigation.

But I also discovered that expert witnesses rarely testify with the clarity and conciseness as depicted on television and the movies. And judges really do yell at attorneys. And witnesses can do change their stories. And jurors tend to be distracted by interesting little things.

After a long career of litigation, I eventually joined the society of non-litigators. Many of our fellow MCBA members also are “not practicing.” They are judges, justices, business leaders, community organizers and teachers.

I don’t know how many of these lawyers planned their careers from the beginning, or whether they made the choice well after becoming lawyers. But I find it significant how a law school education translates into such a variety of positions.

Are these lawyers better educators, administrators, legislators and business leaders because of law school? I think they probably are. I also think they bring a unique perspective to their jobs. Their education brings valuable analytical skills to the mix.

So if by chance you catch yourself thinking about what you want to be when you grow up, you still have the opportunity to “make a difference.” Many of us who volunteer at the MCBA fall within this category.

Stepping up to serve allows us to take our education, our experience, and our unique perspective and apply them to a new arena.

Many community organizations could use someone with your experience and perspective. Consider stepping up to the challenge. Maybe you will become a better person for the change, and maybe you will change the organization with your experience.

And maybe you will grow a tree in a rock garden.
Summer brings judicial rotations to Superior Court

By J.W. Brown

The annual judicial rotation is poised to begin for Maricopa County Superior Court judges. Reassignments will become official during the statewide judicial conference in June, and will be in effect on June 23. In total, 22 changes will be made.

The Criminal Department is the only department due for changes to presiding judge positions. Judges Thomas O’Toole and Eddward Ballinger will trade leadership roles. Ballinger will be the department’s presiding judge and O’Toole the associate presiding judge.

Also in the Criminal Department, five new judges will take the place of judges rotated to other courts. Downtown, Judge Gary Donahoe will leave the Civil Court to assume Judge Ruth Hilliard’s calendar, and Judge Kurt O’Connor will move from Family Court to take Judge Jonathan Schwartz’s calendar. At the Southeast Court Facility in Mesa, Judge Brian Ishikawa will switch from Family Court to Judge Linda Akers calendar. Judge David Talamante, also from Family Court, will assume Judge Barbara Jarrett’s calendar.

There are no changes planned for the Juvenile Court. Donahue will leave Juvenile Court to take Donahoe’s calendar. Hilliard will assume the new judges downtown and three new judges in the Southeast Facility. Harrison will move from a Civil Court assignment to assume the calendar of Judge Connie Contes, who is moving to Judge Maria del Mar Velázquez’s calendar. Santana will move from Civil Court to take Judge Maurice Portley’s calendar, while newly appointed Judge Larry Grant will assume Judge Karen O’Connor’s calendar. Akers will be assigned to Ishikawa’s calendar while Willrich will take Judge David Talamante’s caseload.

The changes in Juvenile Court are minimal with Judge Dave Cole moving from the Northwest Regional Center in Surprise to take Dunevan’s calendar at the Durango Juvenile Court Center, and Verdin moving to Dairman’s cases.

The one change at the four-judge Juvenile Court assignment assigns former Superior Court Commissioner and newly-appointed Judge Harriett Chavez to Cole’s calendar.

There are no changes planned for the Probate/Mental Health Department.

One Civil Court assignment and one Family Court assignment, vacancies created by Kaufman’s retirement and Portley’s assignment, are expected to be filled by Gov. Janet Napolitano.

Reassignments currently scheduled are subject to change.

ADR Week now official

By Teena Booth

In an effort to stress the importance of alternative dispute resolution (ADR) to Arizona’s courts, Gov. Janet Napolitano last month signed a proclamation declaring May 12–16 as ADR Week.

With her signature, Napolitano affirmed the growing awareness within the legal community of the value of ADR. According to the proclamation, “Disputes that are resolved through alternative dispute resolution processes result in solutions that can be qualitatively better than court-ordered resolutions, and . . . ADR processes are less time-consuming and less costly than litigation and ease the workload of an overburdened court system.”

To observe ADR week, the Maricopa County Superior Court sponsored an “ADR marathon” at which judges pro tems and volunteer mediators held 80 settlement conferences primarily with family law disputants. Meanwhile, representatives of Maricopa Alternative Dispute Resolution Association (MADRA) and the State Bar of Arizona appeared on “Horizon” on Channel 8, as well as KJZZ radio, to inform the public about ADR.

“Establishing an ADR Week will hopefully raise awareness about ADR for the public, but also for attorneys,” said Amy Lieberman, incoming chair of the State Bar’s ADR Section.

“In the past, MADRA had sponsored a ‘Mediation Week’ to educate the public about the mediation process. This year the name was changed to ADR Week to reflect the emphasis being placed on ADR by courts at all levels.

According to Lieberman, ADR includes not only mediation, but arbitration, early neutral evaluation, short trials, settlement conferences, summary jury trials, mock juries and any other creative forms of dispute resolution on which parties can agree.

Last year, the Arizona Supreme Court adopted Ariz. R.Civ.P Rule 16(g)(2), which requires all parties in civil cases to file joint ADR statements with the court within 90 days of the answer being filed to verify they have consulted with their clients about ADR options. If they choose not to use ADR, they must provide a compelling reason for their choice.

Tell us!

Have you won an award? Is your law firm involved in an interesting community project? Send information for our People in Law column to Maricopa Lawyer, MCBA, 303 E. Palm Lane, Phoenix, AZ 85004; fax to 602-257-0522; or email to: maricopalawyer@mcmbabar.org.
charging Sanders with aggravated assault under A.R.S. § 13-1204(A)(5), which occurs when a simple assault under § 13-1203 is committed upon a peace officer. The information charged that Sanders “knowingly touched Bingaman, with the intent to injure, insult or provoke him,” as defined in subsection (3) of § 13-1203(A), which encompasses the old common-law battery.

Included in A.R.S. § 13-1203(A) are three ways of committing simple assault, and one of these would later figure into this case. Subsection (2) describes old common-law assault: “A person commits assault by . . . intentionally placing another person in reasonable apprehension of imminent physical injury.”

Trial began with the jury being informed that Sanders was charged with striking Bingaman. Just as at the preliminary hearing, the prosecutor did not question the officer about any fear he might have had that Sanders would physically harm him.

On cross-examination, Officer Bingaman confirmed that “[w]hen he struck my arm breaking the grip that I had on his left arm, that’s the assault.”

A trial cannot be fair, he asserted, “if the charges are not adequately communicated to the defendant in a timely fashion.”

In Sult’s view, because the amendment changed the nature of the charge, it presumptively caused prejudice and a separate inquiry into prejudice was unnecessary.

In dissent, Barker took issue with Sult’s analysis and conclusion. “The majority effectively holds that a criminal defendant’s entitlement to notice of the charged crime necessarily arises in the context of the precise theory upon which the state will rely at trial.” He opined that this is contrary to well-established law.

Barker differed with Sult’s analysis of the change. Before [the charge] was amended at the conclusion of the state’s case-in-chief, defendant was charged with committing aggravated assault on Officer Bingaman on November 14, 1999, a class six felony in violation of A.R.S. § 13-1204(A)(5),” he wrote. “After the amendment,” he continued, “defendant was still charged with committing aggravated assault on Officer Bingaman on November 14, 1999, class six felony, in violation of § 13-1204(A)(5).”

He disagreed with the majority’s “mistaken belief” that an assault based on knowingly striking a police officer is a different offense than an assault based on putting the officer in reasonable apprehension. “As defined in the statute, an aggravated assault on a particular peace officer is a single offense, regardless of the officer’s official status.” He pointed out that “the prosecutor had this same information but chose not to include a ‘reasonable apprehension’ charge, either factually or by legal reference, in the information charged to the defendant in a timely fashion.”

Sult’s dissent contained 12 pages devoted to refuting what he called Barker’s “seriously flawed” dissent. He argued that its analysis of the prejudice issue was based on a record that was “tainted” because the lack of prior notice precluded defense counsel from developing defenses to the theory the state ultimately prayed.

Sult dismissed the dissent’s assertion that defense counsel should have been able to anticipate from the facts that a reasonable-apprehension theory might appear at trial. He pointed out that Barker’s prosecutor had this same information but chose not to include a “reasonable apprehension” charge, either factually or by legal reference, in the formal charging document until trial was held.

If knowledge of the facts amounted to notice of the charges the state would bring, Sult wondered, what purpose would notice requirement of the Sixth Amendment serve and which party had the burden of giving notice. “We understand it to be the job of the prosecutor to select the offense or offenses that should be prosecuted and notify a defendant of that choice through a formal charge.”

Sult equated the prosecutor’s decision to abandon the “knowing touching” allegation to a dismissal for insufficient evidence and held that double jeopardy barred its retrial. The “reasonable apprehension” charge, by contrast, did not fall within double jeopardy and whether he was surprised by the amendment. He found neither.

The Achilles’ heel of the majority’s approach, Barker opined by its corollary assertion that the double jeopardy clause does not bar the state from retrying a defendant multiple times for the crime of aggravated assault on a police officer.” He asserted that the trial court was obligated to leave a defendant open to three possible prosecutions for aggravated assault under the three subsections of § 13-1203.

By contrast, he contended that § 13-1203(A)(1)-(3) merely provides the state alternative means to prove the same element of assault” in a prosecution for aggravated assault pursuant to § 13-1203(A)(5),” he was entitled to a prosecution of the charge of aggravated assault on a peace officer may not be retried on that same offense.”

Barker also agreed with the trial judge that Sanders was not surprised by the amendment, and he had anticipated the change in theory.
Court of Appeals, Division 2,
e-files its way into the e-future

When I did my taxes this year, my accountant suggested we file electronically and I decided to give it a try. It was the most stressless tax day of my life. The return was filed in Adobe Acrobat Portable Document Format (pdf) and it was very easy to review. I won’t go back again to the paper form. I already buy my postage online and my trips to the post office are few and far between. That is how it should be!

Several years ago, I was critical of the pdf format because the software was costly and cumbersome to use. Now, both Word and WordPerfect provide the ability to write to pdf, and a number of inexpensive programs on the market will convert different file types to pdf. Adobe Acrobat has carried the day and is now the standard document format for all types of electronic filing.

Speaking of e-filing, I recently spoke with Arizona Court of Appeals Division Two Chief Judge Philip Espinosa about the new remote electronic filing program that is rapidly becoming the method of choice for filing documents with the court in Tucson. In the past, the courts were generally hesitant to traditional and not on the forefront of change, especially when it came to technology. Today, a number of courts are leading the way for the legal profession in the adoption of new technology.

Under both the previous and current Arizona Supreme Court strategic agendas for the state’s courts, Justice 2002 and Justice for a Better Arizona, one of the court’s objectives was to develop a “substantially paperless environment” in order to improve efficiency, provide better service, improve access to the public, and reduce the cost of justice. Under Espinosa’s direction, Division Two has been taking innovative and important steps in that direction.

First and foremost, Division Two has adopted a comprehensive electronic document management system (EDMS) integrated with other court information systems to allow court personnel (i.e., judges, staff attorneys, law clerks, secretaries, and clerk’s office staff) to work with all documents in a case electronically, regardless of their source. The documents can be viewed at multiple locations simultaneously and printed out if desired. In another year, the majority of all case documents at the court will likely be electronic.

A number of related projects have been undertaken and completed at Division Two over the last three years to effectively utilize the system. They include:

- Imaging: Documents that come to the court in traditional hard copy media are routinely scanned, converted to electronic format, and stored in the EDMS.
- E-filing: Litigants can transmit their filings to the court over the Internet, saving them time and money, and allowing the court to more efficiently docket, store, manage, and process the documents. E-filer is an application developed at Division Two and is completely integrated with both the EDMS and case management systems.
- ECMS: The Electronic Case Management System tracks, produces, and maintains all case “documents.” The legacy system used for many years (ODS) lacked flexibility and extended capacity. ODSPlus, a document-based ECMS with a user-friendly “browser” interface, was developed at Division Two and is integrated with both e-filer and the electronic data management system.
- Electronic Blueback Inter-Court Data Transfer: This system of data transfer allows the Superior Court to index and transmit the trial court record electronically to other courts in lieu of transporting large and voluminous paper records. In Pima County, Electronic Blueback data transfer is being used by the court for all criminal cases, and civil cases will be included soon.
- E-Distribution: Orders, notices and decisions are now efficiently and “paperless” delivered via the Internet not only to litigants but to all on the case distribution list. This results in substantial savings of time, labor, and money by eliminating the need to print, copy, collate, stuff envelopes, affix labels, and pay postage. It also reduces delay, improves communication between the court and public, and enhances the efficiency of court operations.

Public Access. In January, Division Two brought ODSPlus WebDocs online. This application allows attorneys to view their case documents and portions of the trial court record via the Internet. It also greatly benefits the court’s judges, staff attorneys and law clerks, allowing them to quickly and easily view indexes and documents via “hotlinks” on their desktop PCs. As electronic access rules are promulgated by the courts, WebDocs will provide Internet access to case documents in accordance with those rules.

E-PR. Since December 2002, when petitions for Supreme Court review of criminal cases are filed in Division Two, the petitions and the entire record on appeal are now provided to the court via secure Internet access. A special notice and “hotlink” are electronically transmitted to the court clerk, who then distributes the link to justices and staff attorneys, enabling them to instantly access all case documents at any time on their desktop PCs.

On March 4, Espinosa issued a groundbreaking administrative order directing Division Two to electronically transmit all decisions, notices and orders to litigants and others, and no longer provide them in paper except by special arrangement. The substantial savings in clerk time and labor as a result of the order are obvious. What is not as obvious are the advantages to lawyers and litigants in receiving official communications from the court immediately and securely, wherever they may be. Out-of-county counsel will particularly benefit and no longer suffer disadvantage from waiting longer on mailed documents than their Tucson counterparts.

Electronic filing clearly is the gold standard for court automation. Over the past three years, Division Two’s e-filer application has been fine tuned and is now a robust and user-friendly gateway for the filing of any type of case document. Any Arizona attorney can access and use the system, with no special software or training. And, after an attorney e-files, he or she not only has direct, real-time access to the court’s online docket information, but can also view all electronic filings in that case from the convenience of any PC with Internet access. Since September 2001 when the system was opened to all Arizona attorneys, registrations and e-filings have multiplied. By last year, 4,885 attorneys had signed up to use the system. So far this year, Division Two has received about 140 e-filings every month and the number continues to grow.

The e-PR project also promises to gain widespread acceptance. As one Supreme Court staff attorney has commented, it is remarkable to no longer have to go to the clerk’s office with a rolling cart and check out a stack of files and folders, lug them back to his office, spread them out on his desk, and start thumbing through hundreds (sometimes thousands) of pages of pleadings, minute orders and transcripts. Instead, a single hot link in an ordinary e-mail instantly brings up an index of all documents in the case. Another click takes him directly to any document he selects, which is then available for viewing, forwarding, or printing if a hard copy is desired. Any number of staff attorneys, law clerks or justices can do the same from any location and at the same time. Such instant access to the record at this early stage of the PR process benefits not only the court, but the lawyers seeking review, their clients and the public.
Strong Medicine For Alcohol or Drug Dependency

Our program includes a powerful non-habit forming prescription medication plus behavioral health counseling. We offer a flexible outpatient program that is confidential and highly successful.

Maricopa County Bar Foundation Mission Statement

“The Mission of the Maricopa County Bar Foundation is to raise and distribute funds to enhance the rule of law and the system of justice in Arizona, with a focus on programs that relate to the administration of justice; ethics in the legal profession; legal assistance for the needy; the encouragement of legal research, publications and forums; and the education of the public.”

Foundation creates new logo, declares new mission

In an effort to bring focus to its new goals, the Maricopa County Bar Foundation board of trustees has unveiled a new logo, created a new website and developed a new mission statement.

“Previously, the foundation worked from a purpose statement that was very broad,” said Foundation Director Shane Clays. “The board felt it was time to focus on specific goals, and develop a more visible identity that will help people in the community get to know who we are and what we do.”

The foundation is the charitable arm of the Maricopa County Bar Association (MCBA), a 501(c)(3) non-profit organization created by, but separate from, the MCBA. Each year the foundation gives thousands of dollars in grants to worthy organizations in the Valley, including Volunteer Lawyers Programs.

The foundation’s new mission statement (see box at left) was written to serve as a clear guideline for the foundation’s future giving.

“We believe the legal community supports many of the same goals and causes the foundation supports,” Clays added. “And with a more clearly defined mission, we think we’ll be able to be more efficient, and certainly more effective, in reaching those goals.”

Another shift in focus for the foundation will be a greater effort toward fundraising. The bulk of the foundation’s grant funds have always come from MCBA members through the $10 dues check-off on member applications, or through donated arbitration fees from the Maricopa County Superior Court. In 2003, the board hopes to create more opportunities for Maricopa County attorneys to support the foundation’s mission.

One of the foundation’s signature fundraising events is the annual Pro Bono Golf Classic, scheduled this year for Sept. 13 at the Westin Kierland Resort & Spa. Last year, the tournament brought in more than $10,000. This year, the board hopes to raise at least $15,000 through sponsorships, player receipts and a raffle.

“This is probably our most visible event each year, the most common way people hear about us,” Clays said. “We encourage everyone to take part, golfers and non-golfers alike, lawyers and non-lawyers. Not only is it a great way to have fun for a good cause, it also provides a positive image for the legal profession.”

For more information on how you can support the foundation, or for details on the golf tournament, visit the foundation’s new website at www.maricopabar.org/foundation, or call Clays at 602-257-4200.
Napolitano fills two appellate vacancies

Two more trial openings in process

Gov. Janet Napolitano filled two Arizona Court of Appeals vacancies in May with the appointments of two seasoned attorneys.

Phoenix attorney Donn Kessler, a partner with Jones, Skelton & Hochul, was appointed to the Division One vacancy created when Judge Edward Voss retired in March. Kessler served two years as staff attorney at the Arizona Supreme Court, and has more than 20 years experience in private practice.

Napolitano chose Tucson lawyer Peter Eckerstrom to fill the Division Two vacancy created by Judge William Druke’s retirement. Eckerstrom, an adjunct professor of law at the University of Arizona, has served as a prosecutor in the U.S. Attorney’s Office and as a Pima County public defender in addition to nine years of private practice.


A meeting was to be held May 30 to choose the applicants to be interviewed. The selected applicants will be interviewed on June 11, and three nominees for each vacancy will be recommended to Napolitano, who will appoint the new judges.

To place a classified ad, call the MCBA, 602-257-4200

Are you missing nursing home neglect & abuse cases?

Nursing home residents are neglected and abused more often than we think. Poor outcomes in the care of the elderly may be a signal of neglect or abuse. However, the investigation and analysis of liability are complex and labor intensive.

In order to maximize recovery, an attorney must possess a working knowledge of federal and state regulations governing nursing homes, as well as an understanding of industry practice (both clinical and fiscal).

Representing nursing home residents and their families in cases of neglect and abuse can have a positive impact on the quality of care given to all residents of nursing homes.

Our Nursing Home Litigation Division is available for association with referring counsel. We promptly pay referral fees in compliance with E.R. 1.5.

For additional information call or write:
Martin J. Solomon
Solomon, Relihan & Blake, P.C.
1951 W. Camelback Road, Suite 110
Phoenix, Arizona 85015
(602) 242-2000

Maricopa Lawyer
June 2003
GET YOUR LAST MINUTE CLE AT THE

2003 Film Festival

**June 2-7  Early Bird Week**
Monday, June 2
9a-12p Conducting a Successful & Ethical Law Practice (3 hrs ethics)
1:30-4:30p Practice Essentials (3 hrs including 2 hrs ethics)

Tuesday, June 3
9a-12p Interactive Ethics for the Estate Planning & Probate Practitioner (3 hrs ethics)
1:30-4:30p Pre-Nuptial Agreements, Powers of Attorney & Reviewing Estate Planning Documents (3 hrs)

Wednesday, June 4
9a-12p Creating the In-Control, Grade “A” Witness (3 hrs)
1:30-4:30p Examining Expert Witnesses (3 hrs)

Thursday, June 5
9a-12p Voir Dire & Opening Statements (3 hrs)
1:30-4:30p HIPAA & Health Care Update (3 hrs)

Friday, June 6
9a-12p Valley of the Sun Growing Pains: Building from the Ground Up (3 hrs including .5 hrs ethics)
1:30-3:30p Punitive Damages (2 hrs)

Saturday, June 7
9a-12p Building a Product Liability Case (3 hrs)
1:30-4:30p Fee & Fee Agreements (3 hrs ethics)

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**Valley Film Fest - June 10 & 12**

**June 10 East Valley Film Fest**
Dobson Ranch Library, 2425 S. Dobson Road, Mesa
10:30a-12:30p Employment & Labor Law Checklist for Small Business (2 hrs)
2:00p-4p Nuts & Bolts of Criminal Law (2 hrs ethics)
4:15p-6:45p Spousal Maintenance (2.5 hrs)

**June 12 Scottsdale Film Fest**
Mustang Library, 10101 N. 90th Street, Scottsdale
9:30a-12:30p Ethics & Settlement Agreements (3 hrs ethics)
2:00p-5p Handling a Motor Vehicle Accident (3 hrs)

**June 12 West Valley Film Fest**
Glendale Muni Airport, 6801 N. Glen Harbor Blvd., Glendale
9:30a-12:30p Current Issues in Guardianship/Conservatorship Issues (3 hrs)
2p-5p Bankruptcy & Divorce (3 hrs)

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**June 21-30  Film Fest**

**Saturday, June 21**
9a–12p Bankruptcy & Divorce (3 hrs incl. 1 hr ethics)
9a–12p The Sale of Our Business (3 hrs incl. .5 hr ethics)
1:15–4:15p Building a Product Liability Case (3 hrs)
1:15–4:15p Chapter 13: A Trustee’s Point of View (3 hrs)

**Monday, June 23**
9a–12p Ethics & Settlement Agreements (3 hrs ethics)
1:15–4:15p Closing Arguments (3 hrs)
4:30–6:30p The Great Affirmative Action Debate (2 hrs)

**Tuesday, June 24**
9a–12p Medical Evidence Made Simple (3 hrs)
9a-12p Direct & Cross Examinations (3 hrs)
1:15–4:15p Handling a Motor Vehicle Accident (3 hrs)
1:15–2:45p Model ADR Practices: Procedural & Ethical (1.5 hrs)
3-6p Conducting a Successful & Ethical Practice (3 hrs ethics)
4:30–6:30p Ethics & Advertising (3 hrs ethics)

**Wednesday, June 25**
9a–12p ADR Alternatives to Litigation in Family Court (3 hrs ethics)
9a–12p Bankruptcy Law: The Big Picture (3 hrs incl. .5 ethics)
1:15–4:15p Choices of Business Entities (3 hrs incl. .5 ethics)
1:15–4:15p Punitive Damages (3 hrs ethics)
4:30–6:30p Nuts & Bolts of Criminal Law (2 hrs ethics)

**Thursday, June 26**
9a–12p Current Issues in Guardianship/Conservatorship (3 hrs)
9a–12p Recent Developments in Arizona Water Law (3 hrs)
1:15–3:45p Spousal Maintenance (2.5 hrs)
1:15–4:30p Mold: Legal, Enviro & Geotechnical Issues (2.5 hrs)
4:45–5:45p Cases Every Family Law Attorney Should Know (1 hr)

**Friday, June 27**
9a–12p Is Your Client’s Wealth Safe (Estate Planning) (3 hrs)
9a–12p Cases That Every Family Attorney Should Know (1 hr)
10:15a–12:15p Overview of the Divorce Process (2 hrs)
1:15–4:15p Delivering WOW: Marketing Your Firm (3 hours)
1:30–3:30p Property Valuation Issues (2 hrs)
3:30–5:30p Child Support, Spousal Support & Tax Issues (2 hrs)
4:30–5:30p Specialty Courts: How to Navigate the Waters (1 hr)

**Saturday, June 28**
8–10a Nuts and Bolts of Custody Issues (2 hrs)
9a–12p Employment Law Basics (3 hrs incl. .5 ethics)
10a–12p International Custody Issues (2 hrs)
1:15–4:15p Developments in Labor & Employment Law (3 hrs)
1:15–3:15p Interstate Custody Issues (2 hrs)
3:30–5:30p Grandparents Rights (2 hrs)
4:30–6:30p Empl & Labor Checklist for Small Business (2 hrs)

**Monday, June 30**
9a–12p Fee & Fee Agreements under E.R. 1.5 (3 hrs ethics)
9a–12p Electronic Discovery & Electronic Evaluation (3 hrs)
1–4p Nuts & Bolts of Evidence (3 hrs incl. 1.5 ethics)
1:15–3:45p Discovery & Deposition (2.5 hrs)
4–7p ADR for Motor Vehicle Accidents (3 hrs)
4:15–7:15p Practice Essentials (3 hrs incl. 2 ethics)
Registration Form - Film Fest 2003

Please be sure to check boxes for video replays you wish to attend! Thank you!

Name: ____________________________________________

Firm: ____________________________________________

Address: _________________________________________

City, State Zip: ____________________________

Email: _________________________________________

Phone: _________________________________________

Fax: ___________________________________________

AZ Bar No. ______________________________________

Check appropriate:
☐ MCBA Member
☐ MCBA Non-Member

Total Enclosed/Charges: $________

Payment Method:
☐ Check, #_________  
☐ Series Ticket, # ________
☐ VISA / Mastercard

Credit Card Number ____________________________

Expiration ____________________________

Signature ____________________________

REGISTRATION: Mail registration with payment or phone/fax/e-mail with credit card information. An additional $15 fee will be added to all walk-up registrations. If space is available, you may register at the door. If you do not register two business days in advance, we cannot guarantee space or materials.

CANCELLATIONS: Refunds, less a $10 fee, will be issued only if the CLE Dept. receives your cancellation in writing two business days prior to the Film Festival date.

If you have a disability, please call ahead so we may accommodate your needs.

To Register:

Mail registration and check to:
Maricopa County Bar Association
303 E. Palm Lane, Phoenix, AZ 85004
Or Call 602-257-4200 ext. 131
Or Fax 602-257-0522
Paralegals score big for scholarship fund

The MCBA Paralegal Division held its first co-ed softball tournament on May 3 and raised over $1,200 for the division’s scholarship fund. Each year the division awards four $1,000 scholarships to paralegal students at its annual conference.

Seven teams participated in the tournament, held at Sneedigar Recreational Park in Chandler. The Snell & Wilmer team swept the event, winning every game it played and earning the first place trophy. The Capitol Repographics team lost only one game and finished in second place. The Advanced Litigation Resources team earned third place.

All other teams, including those sponsored by Littler Mendelson, IKON, the State Bar of Arizona and the Paralegal Division, made a respectable showing and had a lot of fun.

The division board thanks IKON for advertising the event, and for the score board. David Fox, Sharon Frye and Elizabeth McAlister also deserve special thanks for working diligently to put the event together.

The division board is especially grateful to all the teams who showed their support. We congratulate the winners and look forward to seeing them again in next year’s tournament.

For tournament highlights, including team photos, visit the Paralegal Division website at www.maricopaparalegals.org.

Paralegal Conference to look toward the future

“Where do we go from here? Looking towards the future” will be the theme of the 2003 Arizona Paralegal Conference, scheduled for Sept. 19 at the Pointe Hilton at Squaw Peak. Sponsored by the MCBA Paralegal Division, the annual conference is the premier event for paralegals around the state and offers opportunities to network, meet vendors and earn six hours of continuing legal education credit (one hour ethics).

Topics will include:
- The Virtual Practice of Law
  Presented by Derek Miller and Alex Goth of InData Litigation Services along with Bert Binder, president of Advanced Litigation Resources. A multi-media presentation will take attendees into a virtual courtroom to witness a fictional, and paperless, mini-trial. Discussions on other uses of electronics will follow.
- Paralegals: Their Role in Intellectual Property Law
  Presented by George Chen, Bryan Cave associate. This seminar will focus on paralegals involved in licensing, patent and trademark work.
- Ethics in the Electronic Age
  Presented by Gail H. Thackeray, Arizona Attorney General’s Office. Computer crimes, proper use of email communications and the ethical obligations of paralegals will be covered.

Registration fees are $150 for MCBA Paralegal Division members, $175 for non-members and $50 for students. An additional $25 will be added to all registrations received after Aug. 1 (students exempted).

For additional details and registration information, visit the Paralegal Division website at www.maricopaparalegals.org/Conference3.htm, call the MCBA CLE Department at 602-257-4200, ext. 131, or see the insert in this issue of Maricopa Lawyer.

Reach thousands of Maricopa County attorneys with an ad in Maricopa Lawyer, call the MCBA at 602-257-4200

Paralegals: Their Role in Intellectual Property Law
Paralegals: Ethics in the Electronic Age

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JUNE 2003

MCBA Calendar

This calendar includes all CLE seminars presented by MCBA as well as MCBA meetings, luncheons and events and those of other voluntary bar associations and law-related organizations. The divisions, sections and committees listed here are those of the MCBA unless noted otherwise. Everything takes place at the MCBA office, 303 E. Palm Lane, Phoenix, unless noted otherwise. Other frequent venues include the University Club, 39 E. Monte Vista, Phoenix; Arizona State University Downtown (ASUD), 502 E. Monroe, Phoenix; and the Arizona Club, 38th floor, Bank One Building, 201 N. Central, Phoenix. For information about MCBA events or to register for any of the MCBA seminars, contact the MCBA at 602-257-4000 or visit www.maricopa.org.

JUNE

June 2
- Task Force for Recruitment and Retention of Minority Attorneys, noon
- Paralegal Division executive committee, noon, conference call
- Maricopa Lawyer editorial board, 5 p.m.

June 4
- Family Law Section, 5:15 p.m., University Club

June 5
- Construction Law Section, noon, Koehler; Nebleton, Carlson & Haluck, 3200 N. Central Ave., Suite 2300, Phoenix

June 9
- YLD board, noon
- Paralegal Division board, 5:30 p.m.

June 10
- VLP Advisory Committee, noon
- Scottsdale Bar Association luncheon meeting, noon, Scottsdale Athletic Club, 2225 E. Indian Bend Rd., Scottsdale, Speaker: Jan Brewer, Arizona Secretary of State. Cost: $15 with advance payment (send check payable to Scottsdale Bar Association to P.O. Box 2087, Scottsdale, 85252-2087), $18 at the door. Information/reservations: Jill Miller, 480-461-3047.

Banking Issues Related to Lending on Reservations
- Noon to 1 p.m., Know how to overcome cultural differences is essential to successful business practices. Rand Haddock outlines lending on reservations, including issues such as sound fundamental credit writing, collateral and limited recourse, plus mitigating risks and benefits.
- Cost: Member attorneys, $75; member paralegals and public lawyers, $55; member self-study, $75; non-member attorneys, $105; non-member paralegals and public lawyers, $75; non-member self-study, $105; same-day registration, $15 additional. CLE: 1 hour

June 11
- MCBA executive committee, 7:15 a.m.
- Environmental Law Section, noon
- Hazley B. Daniels Bar Association, 5:30 p.m.
- Personal Injury/Negligence Section, noon, Edythe Kelly & Associates, 1501 W. Fountainhead Pkwy, Tempe.

June 16
- Membership Communications Committee, noon
- YLD Domestic Violence Committee, noon

June 17
- Estate Planning & Probate Section executive committee, 7:30 a.m., The Cavanaugh Law Firm, 1850 N. Central, 24th Floor
- PLD CLE lunch, noon, Board of Supervisors conference room
- Labor & Employment Law Section, 12:30 p.m.
- PLD board, 1:30 p.m.
- Bankruptcy Section, 5 p.m.

June 18
- Litigation Section, 7:30 a.m.
- Sole Practitioners Section, 11:30 a.m.

Managing & Preparing Employment Law Cases Through Summary Judgment
- 1 p.m. to 4:30 p.m., ASUD
- A panel of U.S. District Court judges and employment attorneys will discuss case management, discovery and summary judgment of employment law cases.
- Cost: Member attorneys, $75; member paralegals and public lawyers, $55; member self-study, $75; non-member attorneys, $105; non-member paralegals and public lawyers, $75; non-member self-study, $105; same-day registration, $15 additional. CLE: 3 hours

Right, Left, Straight Ahead: How to Settle Your Motor Vehicle Accident Case
- 2 p.m. to 4 p.m., ASUD
- Looking for a way to resolve MVA cases outside of court? Our panel will discuss ADR options from a number of different perspectives (plaintiff’s counsel, defense counsel, mediator) and provide effective strategies for utilizing ADR to resolve even the most challenging MVA cases.
- Cost: Member attorneys, $75; member paralegals and public lawyers, $55; member self-study, $75; non-member attorneys, $105; non-member paralegals and public lawyers, $75; non-member self-study, $105; same-day registration, $15 additional. CLE: 2 hours

June 19
- Technology Section, 7:30 a.m.
- MCBA board of directors, 4:30 p.m.

June 20
- Maricopa County Bar Foundation board of trustees, 7:30 a.m.

June 21
- 2003 Family Law Case Law & Legislative Update
- 1:30 p.m. to 5 p.m., ASUD
- This annual advanced level program qualifies for family law specialization credits and will include a summary of family law-related cases as well as statutory changes and practice tips.
- Cost: Member attorneys, $75; member paralegals and public lawyers, $55; member self-study, $75; non-member attorneys, $105; non-member paralegals and public lawyers, $75; non-member self-study, $105; same-day registration, $15 additional. CLE: 3 hours

June 25
- International Collections: Are Your Clients Protected?
- Noon to 1 p.m., Arizona Club, Bank One Building, 201 N Central Ave, 38th floor
- Dale Furnish and panel present an advanced level seminar on the steps you need to take to protect a client engaged in international transactions. You will learn how to structure the deal and how to conduct international civil litigation, bankruptcies, alternative dispute resolution, final judgments, as well as methods of enforcing judicial judgments and arbitration awards abroad.
- Cost: MCBA and SBA International Section members, $25 including lunch; non-section members, $35; same-day registration, $15 additional. CLE: 1 hour

June 26
- Los Abogados Bar Association, noon, Matador Restaurant, First Street and Adams, Phoenix
- Is Your Client’s Wealth Safe? Estate Planning for Wealth Preservation
- 1 p.m. to 4:30 p.m., ASUD
- Our panel will compare various devices estate planners should utilize in estate planning, including conventional trusts, Alaska and other self-settled trusts, family limited partnerships and foreign trusts. Topics to be covered include assets exempt from creditors, fraudulent transfers, gifts and post-nuptial agreements.
- Cost: Member attorneys, $75; member paralegals and public lawyers, $55; member self-study, $75; non-member attorneys, $105; non-member paralegals and public lawyers, $75; non-member self-study, $105; same-day registration, $15 additional. CLE: 3 hours

June 27
- Technology/IP Issues for Non-Technology Companies
- Corporate Counsel Division lunch
- 11:45 a.m. to 1 p.m., University Club
- Speaker: Paul Burns, Steppeo & Johnson
- Cost: CCD members, $22.50; non-members, $32.50. CLE: 1 hour

State Bar of Arizona’s Course on Professionalism
- 12:30 p.m. to 5 p.m., ASUD
- Take advantage of this opportunity to complete the professionalism requirement before the CLE deadline June 30.
- Cost: Member attorneys, $90; member paralegals and public lawyers, $75; non-member attorneys, $120; non-member paralegals and public lawyers, $105; same-day registration, $15 additional. CLE: 24.5 hours
Pro bono work offers an education along with challenge

By Peggi Cornelius
Special to Maricopa Lawyer

Ask Hershel Ber, Volunteer Lawyers Program Attorney of the Month, why he takes pro bono work at the Family Lawyers Assistance Project (FLAP), and he describes Program Attorney of the Month, why he takes pro bono work at the Family Lawyers Assistance Project (FLAP), and he describes

“Advising people with diverse legal issues at half-hour intervals is like taking a quiz on family law, something akin to the game show Who Wants to be a Millionaire?” he said.

Ber’s sense of humor and desire for knowledge have served him well over the last six years in the fast-paced atmosphere of the advice clinic.

“Td accepted a pro bono case from the Community Legal Service office in Prescott in 1995,” Ber said, “but I formally joined VLP in Phoenix during 1997.” He had moved to Phoenix to set up an office as a sole practitioner and had expected his practice to be based in his criminal and insurance defense experience. But he found he was more often approached for help in domestic matters.

“My first family law case seemed imposing because of court procedures and the volume of paperwork required,” Ber said. Yet the compelling need of many people seeking advice at FLAP is a powerful force, and Ber has never resisted when he’s heard the call to go beyond advising to providing pro bono representation.

“Over the years I’ve accepted pro bono cases involving domestic violence and custody issues. It’s sometimes been a lesson in patience and understanding.” Ber recalled a case in which a client who had been horribly abused withdrew the petition for dissolution to reconcile with the abuser. Although he knew something of the psychology of abuse, it frustrated him that he could not help his client break the cycle.

“Fortunately,” he added, “I was able to help some months later.”

The path to his career in law wasn’t a straight one for Ber. He obtained an undergraduate degree in science and engineering from ASU and began working as a mechanical engineer. A later desire to study patent law led him to Los Angeles where he graduated from Whitter Law School. Yet after arriving in Arizona, he found opportunities for patent lawyers limited and changed his focus yet again.

Like many outstanding volunteers, Ber comes from a family in which community service is a part of daily life.

“My father and brother are doctors, and my father’s philanthropic footprint is one that’s hard to fill,” Ber said. “My fiancé has also chosen a service profession, working as a public lobbyist for the Department of Economic Security. I just contribute in my way.”

➤ Peggi Cornelius is VLP’s programs coordinator. If you or members of your firm would like to know more about pro bono opportunities through VLP, contact director Patricia Gerrich at 602-234-5714.

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, Arizona 85004.

Don Sanders
The Law Office Computer Guy

Tel: 480-946-4318
Cell: 602-717-4770
don@LawOfficeComputerGuy.com
Small Office Tech Support

VLP thanks attorneys who accepted cases

The Volunteer Lawyers Program, co-sponsored by Community Legal Services and the Maricopa County Bar Association, thanks the following attorneys who accepted cases.

Bankruptcy
Robert D. Beucler, Phillips & Associates
Jeffrey L. Phillips, Phillips & Associates
Consumer
Timothy B. Barnes, Barnes Lawler & Killough (2 cases)
Redford T. Baum, Barnet Fairburn Friedman & Balat
Jason J. Bliss, Doyle Berman & Boyack
Mia R. Brodsky, Gold Rosenfield
Frank W. Busch III, Snell & Wilmer
Kenneth M. Frakes, Holden Brodman
Ray Hayes, Sole Practitioner
Alce R. Hillen, Fennemore Craig
Marie L. Hodakiewicz, Quarles & Brady Streich Lang
Elsa E. Ordonez, Levin & Schneider
Kerry F. Patterson, Quarles & Brady Streich Lang
Thomas M. O’Regan, Moore Hackett Pederson
Blekley & Randolph
Jay A. Zwing, Gallagher & Kennedy
Family Law/Domestic Violence
Bonnie L. Bowles, Sole Practitioner
Glenn M. Davis, State Senate
Christina S. Hamilton, The Cavanagh Law Firm
Guardians Ad Litem
for Children in Family Court
Irene Boland, Aris Gallios & Associates
Annette T. Burns, Sole Practitioner
Helen R. Davis, The Cavanagh Law Firm
Jennifer G. Gadow, Cohen & Finnem
Clarence E. Mathern Jr., Quarles & Brady Streich Lang
Guardianship of Incapacitated Adults
Kevin J. Parker, Snell & Wilmer
Guardianship of Minors
David T. Barton, Quarles & Brady Streich Lang
Catherine E. Blinn, Quarles & Brady Streich Lang
Olinda M. Diaz, Sole Practitioner
Tanya Miller, Stephen & Johnson
Chad B. Sampson, Quarles & Brady Streich Lang (2 cases)
Laura Savicki, Quarles & Brady Streich Lang
Misty Light Walker, Quarles & Brady Streich Lang
Home Ownership
Robert W. Bleche, Sole Practitioner
John M. McInerney, Sisson Morrison Hecker
Non-Profit Organization Assistance
Brian K. Moll, Bryan Cave
Tax
John A. Beaver, Moore & Renham
Brad S. Draper, Burch & Crockfiel
Tenants’ Rights
Caryn William Gullings, Brown & Bain
Nicole Perautz, Kubat Rock
Harry N. Stone, Sole Practitioner
Supreme Court Rule 31(a)(4), includes the performance of "substantive legal work" under the supervision of an attorney licensed to practice law. In 1997, the American Bar Association removed language that required legal assistants to work "under the ultimate direction and supervision of an attorney." The removal of language allowed legal assistants and paralegals to work with more autonomy and being better reflected how paralegals are being utilized.

In Paralegal Utilization, 551 PL/Lit 183, 189 (October 2002), it was explained that the general education and training that paralegals and legal assistants receive provide them with knowledge of legal theory in practice areas such as estates, trusts and wills, corporate, real estate, corporate, and civil litigation, as well as familiarity with legal research methods, terminology and court system functions. This training allows paralegals to prepare useful summaries, indices, developments of fact, and analyses of documents and testimony. Moreover, analytical ability supported by paralegal education and training enables them to perform work that could otherwise only be performed by an attorney.

According to Roselle, other paralegal responsibilities performed during trial-level litigation can include:

➤ Drafting (not simply typing) complaints and answers, preparing or responding to interrogatories, requests for the production of documents and requests for admissions, reviewing documents to determine responsiveness, confidentiality, privilege and sensitivity.
➤ Drafting questions for depositions, attending document productions, depositions, indexing and summarizing depositions, interviewing clients, preparing witness books.
➤ Supplying fact statements for motions, briefs, pretrial orders, etc.
➤ Preparing affidavits, exhibits, extensions of time, removal of documents, demands, letters and subpoenas.
➤ Identifying and preparing potential expert witnesses.
➤ Drafting a list of documents and testimony for use in impeaching the opposition's witnesses.

Maintaining lists of defendant/plaintiff exhibits as they are mentioned, offered as evidence and admitted or objected to.

Preparing settlement calculations.

Preparing comparative analyses of terms of potential settlement agreements.

Drafting settlement documents including releases and dismissals.

Due to the nature of client fee agreements, neither paralegals nor attorneys may bill clients for clerical work they've performed. As a general rule, proper utilization of paralegals does not include clerical work, which is a law office overhead expense that cannot be billed to a client. Accordingly, courts will disallow requests for attorneys fee recovery when paralegals have performed clerical work.

The role of a paralegal is much more complex than that of a document preparer. While nearly all paralegals will qualify in terms of education and experience for the role of document preparer, the reverse is not true. The educational requirement for a document preparer may be as little as the completion of a high school equivalency exam. Paralegals, on the other hand, now find that most law firms want them to have some form of college degree. Increasingly, that degree must be a bachelor's degree.

In terms of their roles and responsibilities, paralegals and document preparers differ appreciably as well. While document preparers may provide clients with documents and procedural information in simple legal matters in which the client is likely to appear as a pro per, paralegals assume the more complicated substantive legal work involved in complex legal matters that require attorney representation.
Ernest Calderón, a partner with Jennings, Strouss & Salmon and president of the State Bar of Arizona, was honored with the Arizona Alumni Association’s Distinguished Citizen Award. The award was given in recognition of Calderón’s volunteer service.

The Arizona Supreme Court has announced the following appointments: Andrew M. Federhar has been appointed to serve as chairperson of the Complex Civil Litigation Court Evaluation Committee; Arizona Court of Appeals Judge Murray G. Snow has been appointed to the City of Mesa Judicial Advisory Board; Arizona Court of Appeals Judge Patrick G. Irvine has been appointed to the City of Phoenix Judicial Selection Advisory Board. Tempe Municipal Court Judge Mary Anne Majestic, Arizona Court of Appeals Judge Sheldon H. Weisberg and David Damon have been appointed to the Judicial Ethics Advisory Committee.

Gov. Janet Napolitano has appointed Michael McNulty, a partner with Lewis and Roca, to serve as an Arizona representative for the Western States Water Council. The council, consisting of representatives of 18 western states, exists to accomplish effective cooperation among western states in the conservation, development and management of water resources.

Reese Anderson, a real estate, construction and land use attorney with Snell & Wilmer, has been appointed to the Arizona State Registrar of Contractors Advisory Committee. Anderson is currently the only attorney to serve on the committee, which is part of comprehensive effort to improve the responsiveness, efficiency and productivity of the Registrar of Contractors.

Enterprise Network Inc., a non-profit organization established to promote and support entrepreneurship in Arizona, recently named Snell & Wilmer partner Richard Stagg to its board of directors for a one-year term. Stagg will be responsible for promoting the organization’s mission.

The American College of Trial Lawyers presented William R. Jones Jr. with its Samuel E. Gates Litigation Award in recognition of his significant contribution to improving litigation training, the litigation process and the general administration of justice. Jones is a founding member of Jones Skelton & Hochuli.

The Arizona Supreme Court has appointed the following individuals to serve on the board of governors of the State Bar of Arizona for two-year terms: Donald W. Carson, a retired University of Arizona professor; Paul W. Ahler, Maricopa County Attorney’s Office chief deputy; and David K. McNulty, the Registrar of Contractors.

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Classifieds

POSITIONS

MEDIUM-SIZED TUCSON AV RATED LAW FIRM seeks a transactional attorney with at least four years of experience with emphases on real estate matters. Strong academic credentials and communication skills required. Please send resume to: Office of the Circuit Executive - Ninth Circuit, P.O. Box 193909, San Francisco, CA 94119-3939

FENNEMORE CRAIG’s PHOENIX OFFICE is seeking a business immigration attorney for U.S. and Canadian multi-state permanent status and visa matters. Responsibilities will include preparation of visa petitions for employees of clients working in the U.S. and abroad. Must be licensed attorney plus 5 years of experience in business immigration law. Please send resume referencing job code #11 to: Laura Zilmer, Recruitment Coordinator, Fennemore Craig, 3003 N. Central Avenue, Suite 2700, Phoenix, AZ 85012. facsimile at (602) 246-9647.

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SHARE OFFICE SPACE WITH 2 OTHER ATTORNEYS — $750/month, space for secretary if needed. 111 W. Monroe, Suite 718, Phoenix, (602) 257-0585 for appt.

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OFFICE SPACE FOR RENT Share space with 2 other attorneys $750/month space for secretary, if needed 111 W. Monroe, Suite 718, Phoenix, Call (602) 257-0585 for appointment.

OFFICE SPACE TO SUBLET Looking for a spacious office with a mountain view? Estate lawyer, law firm in Scottsdale wishes to sub-lease to an attorney who can appreciate a small, friendly office with a convenient location. One large office, two smaller offices and secretarial space are available along with use of a conference room and file space. The office is located off the 101 on Via De Ventura between Hayden and Pima Roads. For more information, call Mary Kay or Carmen at 480-922-4684.

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PRESTIGIOUS SPACE AT REASONABLE RATES Class “A” building in great Scottsdale location. One larger office (17 x 12), two smaller offices (12 x 9) available in a suitable law suite. All amenities. Staff space available. Call Michele at (480) 348-9999.

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ANNOUNCEMENTS


Courtwatch...

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Espinoza noted that the common fund doctrine is an equitable exception to the American Rule, it does not apply when a statute does apply. He held, over class counsel’s objection, that A.R.S. § 12-341.01(A) applied to the case. This statute allows an award of fees to the successful party in an action arising out of contract. Here, the class members’ suit arose from their employment contracts with the state, and therefore § 12-341.01(A) applied.

Espinoza disagreed with class counsel’s argument that A.R.S. § 12-341.01(A) does not apply when the contract at issue contains its own attorneys’ fees provision. Class counsel argued that the settlement agreement’s provision that ASRS would pay reasonable fees trumped the statute. Espinoza rejected that argument, holding that the plaintiffs’ causes of action arose out of their individual employment contracts, and there was no evidence that any of them had fee provisions. “Furthermore,” he noted, “the settlement agreement reflected the parties’ agreement to disagree about the proper basis for awarding fees.”

The court vacated the award and remanded to the trial court to determine fees under the lodestar method. Joining Espinoza’s decision were Judges John Pelander and William E. Druke.

Editor’s note: Daniel P. Schaack is an assistant attorney general and in that capacity represented the state in Bache v. ASRS before the Court of Appeals.

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Maricopa Lawyer
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