Legislature puts Uniform Trust Code on hold

By Ken Reeves
Maricopa Lawyer

In 2003, Arizona became the nation’s fifth state to pass the Uniform Trust Code (UTC) after Kansas, Nebraska, New Mexico and Wyoming. The UTC was approved by the Arizona Legislature with minor modifications and was scheduled to take effect on Jan. 1, 2004. However, late in the year, a groundswell of opposition began to build from legislators and lawyers alike. As a result, Gov. Janet Napolitano added the issue to her call for the Special Session, and the Legislature passed an emergency bill delaying implementation of the UTC until Jan. 1, 2006.

Whether the UTC will ever take effect now is in doubt. Bills were “dropped” in both houses prior to the beginning of this year’s session to repeal the UTC. The sponsors are not necessarily committed to repeal, but say they want to have vehicles in place that will allow them to make the changes necessary to satisfy groups impacted by the law and, if the UTC is repealed, to improve Arizona’s existing trust law. An ad hoc group of lawyers opposed to implementation of the UTC has raised a number of issues that will likely be addressed in deciding whether to keep the law. If the UTC is not repealed, these lawyers would modify it to:

➤ Permit people creating trusts (and their lawyers) to draft around the UTC’s notice and “duty to inform” requirements.
➤ Remove the attorney general as the equivalent of a qualified beneficiary in charitable trust situations. Instead, the designated charity would be notified.
➤ Remove the requirement that courts consider the comments of the Arizona bar committee that worked on the UTC in adjudicating matters arising under its terms.
➤ Eliminate the right of beneficiaries and settlors to modify irrevocable trusts without court approval, possibly causing the trust assets to be included in its creator’s estate for transfer tax purposes.
➤ Remove the requirement that courts consider the comments of the Arizona bar committee that worked on the UTC in adjudicating matters arising under its terms.

Other possible issues include adoption of apportionment legislation, lengthening the deadline for vesting of property interests found in A.R.S. § 14-2901(A)(2) from 90 years to 360 years (Article 2, § 29 of the Arizona Constitution bars any law permitting perpetual trusts) and modification of provisions that would allow beneficiaries to alter the dispositive plan chosen by the grantor of a trust for the administration of the trust, without considering the strong public policy of “the jurisdiction having the most significant relationship to the matter at issue.” This would be consistent with the approach taken by the Wyoming Legislature when it approved the UTC.

“Much of the border between our two countries is simply cattle fencing,” Charlton said at the beginning of his keynote address. “This means the best way to address a very real threat of attack to our infrastructure is to work pro-actively to seek those individuals who plan to harm us.”

In Charlton’s opinion, the Patriot Act has become an “effective tool” not only for gathering intelligence, but in allowing intelligence and law enforcement agencies to better communicate with each other about potential attacks against U.S. citizens.

“At our office, we are required to review the intelligence gathered by the FBI and other agencies,” he explained, “and we have the difficult and demanding task to determine whether to arrest and detain those individuals that represent a threat, or to allow them to continue to walk around and perhaps provide us with further intelligence about the real source of the threat.”

He also acknowledged the difficulty in balancing such decisions against an individual’s Fourth Amendment right to privacy.

“But rather than having me stand here and try to convince you that the Patriot Act is an appropriate law,” Charlton continued, “I’d rather encourage you to decide the issue for yourself.”

— See Annual Meeting on page 12
How a decade of MCBA membership transformed a career

This month, we have put together a special “value of membership” issue of Maricopa Lawyer which will be sent to all attorneys in the county, both MCBA members and non-members. While our initial motive was to attract new members and thereby increase the value of belonging for membership as whole, those of us who contributed to this issue were surprised by some unexpected results.

In the effort to tell our “story” to the legal community, board and staff had to sit down and think about who we are and what we have to offer our members. We had to work together to pin down and articulate each benefit, each advantage and each privilege that comes with belonging to the MCBA. This process has helped us to focus on exactly what each of us is here, and what we need to accomplish each day.

On pages 3 – 6, you will find the result of our work to define the importance of membership in this organization. If you are already an MCBA member, we hope you will read this information and be reminded of the benefits and opportunities available to you. If you have not yet joined us, we encourage you to fill out the application inserted in this issue and become part of our growing community.

Just as working on this issue has caused us to think about the role of the MCBA in the career of an attorney, it has caused me reflect on what membership means to me personally.

As a young lawyer eager to get to know my colleagues and to “make a difference,” the MCBA introduced me to other attorneys from many different firms practicing in different areas of law. It also allowed me to work with many of them toward a common goal on a number of worthy projects. These early experiences not only helped me broaden my knowledge and professional circle of contacts, they helped me learn new management skills and gain new confidence. As time passed and my career advanced, I found that I wanted to give my input on the association and its programs and projects, so I volunteered for leadership roles.

Each year I have gained more responsibility at the MCBA, and each year I have gained more leadership efforts. I now know many judges, legislators and senior members of law firms on a personal level. I am able to exchange ideas with them on a variety of subjects. Most importantly, I now have a forum to truly make a difference.

After a decade of belonging, membership in the MCBA has turned out to be immensely rewarding for me, both professionally and personally. I am convinced it can be just as rewarding for you. But, as in most things, it’s up to you to take advantage of the opportunity and make it your own.

I invite you to join me and 4500 other legal professionals in becoming an active member of the MCBA. Send in your application — you may transform your career.

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Barrister’s Ball to benefit homeless youth services

For more than ten years, the Young Lawyers Division has enjoyed the opportunity to raise money for extremely worthwhile charities with its annual Barrister’s Ball. This year’s ball — slated for March 13 at the Arizona Biltmore — will benefit Home Base Youth Services, a transitional living program in Arizona dedicated to serving 16- to 21-year-old homeless and runaway young people who are too old for foster care, yet too young to be on their own.

Home Base provides an environment in which young adults can acquire basic life skills, secure employment, and learn how to live healthy and independent lives. The money raised at the ball’s silent auction will be used to fund several of the following programs:

➤ Prevention Specialists — Home Base sends specialists into schools and community groups to educate youth about conflict resolution, substance abuse, domestic violence, sexual assault and the realities of life on the streets.

➤ Project Safe Place — A volunteer-driven program that provides an immediate source of help for children in crisis.

➤ Street Outreach — Home Base provides immediate sustenance needs such as food, water and clothing.

➤ Mobile Medical Outreach — The mobile team takes to the street twice each week to provide direct medical treatment and education on disease prevention, self-care and hygiene.

The Barrister’s Ball Committee — chaired by Melanie Myrick and Jennifer Ratcliff — has been working diligently to secure corporate sponsors, table hosts and silent auction donors. Now, with the ball just over a month away, the committee needs your help in gathering donations. If you know individuals or businesses that would be willing to donate to this worthy cause, please take a moment of your time to pick up the phone and ask.

Every donation, from $25 gift certificates to travel packages, will help Home Base make sure that “No kid sleeps on the streets.” If you secure a donation, or would like to host a table, please contact Shane Clays at the Maricopa County Bar Association at (602) 257-4200.

Be on the lookout for more information on the Barrister’s Ball, which will include dinner, a fantastic silent auction, and a swing band with professional dancers to show us how it’s done.

You’ll find a registration form for the ball on page 13 of this issue of Maricopa Lawyer. We need your RSVP no later than March 1.

We hope to see you there!

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Important facts about paralegal certification

Paralegal certification may be voluntary, but that doesn’t mean it’s not important. I have been a paralegal for 20 years, and two years ago I sat for, and passed, the PACE Certification Exam. I consider it one of the best, if not the very best, career decisions I have made.

If you are considering whether to pursue paralegal certification — or if you are an attorney wondering what certification means here are a few facts:

Fact: There are two national voluntary certification exams offered to paralegal/legal assistants — the CLA (Certified Legal Assistant) Exam, sponsored by the National Association of Legal Assistants, and the PACE (Paralegal Advanced Competency Exam), sponsored by the National Federation of Paralegal Associations. Both exams require a combination of education and experience. The study and preparation a paralegal undertakes for such an exam can roughly be compared to the study and preparation an attorney undertakes to sit for the bar exam.

Fact: The successful CLA candidates who pass the exam can add “CLA” after their names (or “CP” for Certified Paralegal). Those with the CLA credential may seek advanced certification in specialty practice areas, including bankruptcy, civil litigation, corporations/business law, criminal law and procedure, intellectual property and estate planning, probate and real estate. After passing a specialty exam, the paralegal can then use “CLAS” after his or her name. At last count, there were 857 CLAs in Arizona.

Fact: The PACE exam is an advanced exam developed to test the competency level of experienced paralegals. PACE is offered to paralegal/legal assistants who have a minimum of two years’ substantive legal experience and meet specific educational requirements. Established in 1994, PACE is the.
One judge, one family approach goes countywide

By J. W. Brown
Maricopa Lawyer

Over the next several months, the Maricopa County Superior Court will assimilate integrated family courts in all three court locations, including Phoenix and Surprise. Previously, the Integrated Family Court (IFC), with its “one judge, one family” approach, was available only at the Southwest court facility in Mesa.

Today, many families have related financial and emotional problems that repeatedly present themselves under different guises in different courts,” explained Family Court Presiding Judge Mark Armstrong, who has had special responsibility for implementing the Integrated Court among the family, juvenile, and probate court departments.

“A couple contesting custody in a dissolution action may also be involved in a child abuse or neglect proceeding,” Armstrong added. “A child of the couple may come to the attention of juvenile authorities because of behavior related to the parents’ conflict. The same family appearing in two or more courts creates difficulties of logistics and coordination, as well as emotional trauma and unnecessary expense.”

Since June, integrated cases have been assigned to Judges Connie Contes and Maria del mar Verdin at the Southwest court. Judges assigned to Integrated Family Court are trained in the full spectrum of family-related legal issues and can use a variety of resources, programs and social service assistance to address family issues. Currently, about 50 cases are designated as IFC cases.

Assignment of a case to Integrated Family Court is initiated by application or referral. The application can be made by a lawyer or party in the case. The application is reviewed and approved by Armstrong. Judges also can refer their cases to Armstrong for consideration.

Cases are that are appropriate for the Integrated Family Court include divorce, legal separation, child custody, parenting time, support, paternity, orders of protection, dependency, delinquency, severance of parental rights, guardianship of minors and conservatorship.

The Integrated Family Court’s pilot program, launched two years ago, has proven valuable as a means of providing therapeutic justice. When one judge hears the full range of issues involved in a family’s court cases, the opportunity for treatment, protection and healing increase.

To learn more about Integrated Family Court, e-mail questions to IFC.Project@SuperiorCourt.maricopa.gov. Or, contact IFC Case Coordinators Kristie Bracketts at (602) 506-6441 or Stephanie Culbertson at (602) 506-0858.

To fill out an Integrated Family Court Referral, go to Superior Court’s Web site, www.superiorcourt.maricopa.gov/familycourt/forms/IFCForm.asp.

Pendleton...

Continued from page 2

newest of the two voluntary certification exams. PACE will be developed in stages, the bigger discount your firm will earn.

Pendleton...

Continued from page 2

most of the two voluntary certification exams. PACE will be developed in stages, starting as tiers. Tier I, comprised of general and ethics questions, is currently available; state-specific modules will be developed as the need arises. Tier II will be comprised of specialty sections. The candidate who passes the exam can use “RP” (Registered Paralegal) after his or her name. Currently, there are only 10 RPs in Arizona.

Fact: In order to keep the CLA, CP or RP credential, a paralegal is required to comply with mandatory continuing legal education requirements. All CLAs must submit evidence of completion of five units (50 hours) of continuing legal assistant education every five years to maintain valid certification. To maintain the RP credential, 12 hours of continuing legal or specialty education is required every two years, with at least one hour in legal ethics.

The CLA credential signifies that a paralegal/legal assistant is capable of providing superior services to firms and corporations. National surveys consistently show Certified Legal Assistants are better paid and better
MCBA membership takes legal careers to ‘the next level’

By Sonya Brant
Membership Director

“Knowledgeable people know facts. Successful people know people.” — author unknown

As one of the fastest-growing counties in the nation, Maricopa County offers law professionals many unique opportunities — and a number of unique challenges. The influx of new residents and businesses means the demand for legal services multiplies each year. Yet it is precisely because so many new professionals many unique opportunities — and the nation, Maricopa County offers law professionals many unique opportunities — builds on relationships. And they know joining this association is the best way to meet their fellow attorneys and share information.”

The size and diversity of our membership means our attorneys are able to draw from a wide pool of knowledge and expertise. Yet our focus remains local and personal, allowing us to address your individual needs.

With four bar divisions and 11 active sections of law, MCBA members are offered many chances throughout the year to make new contacts. From the Barrister’s Ball to bench-bar summits, judge’s receptions, conferences, socials and other meetings and networking events, the MCBA makes it easy to network with colleagues, learn about job leads or exchange referrals.

For those looking to build their practice through a consistent source of referrals, MCBA members may register with our Lawyer Referral Service, the only not-for-profit referral service in Maricopa County (see story on page 5).

The information advantage

“Getting timely and reliable information also can be a challenge for attorneys,” Elwell said. “We have to figure out how to satisfy not only our clients and our superiors, but different judges, as well as different courts and officials and regulating bodies. And just when we’re getting the hang of it — the law changes. Or the judge rotates, or the court procedures change. Or a new precedent is found, or a new argument raised.”

The MCBA is a dependable source of current information on what’s going on in the local legal community, along with analysis on how that information impacts you and your practice.

The networking advantage

The MCBA is the largest voluntary bar association in Arizona, and boasts 4500 members who have joined together to create a supportive environment for professional growth. The size and diversity of our membership means our members are able to draw from a wide pool of knowledge and expertise. Yet our focus remains local and personal, allowing us to address your individual needs.

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The MCBA is a dependable source of current information on what’s going on in the local legal community, along with analysis on how that information impacts you and your practice. As an MCBA member, you receive regular updates on the latest developments from court news and rule changes to appellate decisions and new legislation. You get Maricopa Lawyer, an award-winning newspaper written for local lawyers by local lawyers, full of articles, news, commentary and legal tips. You also receive the Friday Fax, a weekly newsletter with a calendar of bar activities, legal events and opportunities for community service, as well as regular updates via e-mail. If you are a division or section member, you also may receive electronic newsletters and/or other updates regarding your specific area of practice.

Plus, members have access to the MCBA Web site with additional news, information and resources. By visiting www.maricopa-bar.org, members will find “one stop shopping” for legal forms specific to Arizona, as well as onlineCLE registration, legal classifieds, back issues of Maricopa Lawyer and links to attorney resources and services.

For more in-depth knowledge, the MCBA CLE Department offers 70 seminars a year on timely legal topics, along with self-study packages, special educational programs and must-have publications like the Arizona Litigation Guide and Arizona Statue of Limitations Guide.

“Information is key to so many aspects of building a successful law practice,” Elwell added. “In my experience, attorneys who belong to the MCBA are better informed, better connected and better positioned to take their careers to the next level.”

The leadership advantage

For attorneys preparing for “the next level,” the MCBA gives you the opportunity to develop the skills you need to become a leader. Each year, hundreds of attorneys volunteer for leadership roles on division, section and committee boards. Not only do they gain the satisfaction of helping to create new opportunities for their colleagues, they hone their abilities to work with others toward common goals. From section board to MCBA board to other leadership positions throughout the community, many attorneys find their MCBA leadership experience to be an invaluable stepping stone in the growth of their career.

An invitation

If you are not yet a member, we invite you to take a fresh look at the opportunities available to you outlined in these pages. You may discover new ways to take advantage of the benefits, discounts and opportunities available to you.

If you are a member, we invite you to fill out an application, visit our Web site or stop by our offices or call to speak to one of our friendly staff members about how we can help you. You will find the MCBA to be a great place for Maricopa County attorneys and other legal professionals to get together and share the work of building a successful career.
LRS panel attorney Norman Miller has worked with LRS clients from his Phoenix office for the past 20 years. Miller concentrates his practice on real estate and probate law.

LRS clients ‘enrich’ practice in more ways than one

By Teena Booth
Maricopa Lawyer

Two years ago, attorney Amber Mied moved to the Phoenix area from California to establish her own family law practice.

“I got the same advice from a number of well-respected attorneys,” Mied recalled. “They told me new clients could more easily find me if I joined the MCBA’s Lawyer Referral Service [LRS].”

The advice proved sound, and for the past two years she has received an average of one new referral per week, and has been retained by dozens of LRS clients beyond the initial 30-minute consultation. Yet the referrals have turned out to be only the beginning of her client development.

“Each LRS client has turned out to be another referral source,” Mied said. “One client springboards to another in a ripple effect, and my practice has grown beyond what I would have expected.”

Indeed, Mied became so impressed with the effectiveness of LRS in developing her client base that she volunteered to chair the MCBA committee charged with managing the service.

In talking with other LRS panel members, she says she has come to further appreciate the “full dynamic of the process.”

“It’s not just the number of referrals that I find helpful, it’s also the type of problem they bring,” Mied said. “When you practice in one particular area of town you tend to see the same types of problems over and over. But LRS clients often come to me with more unique problems, so I get the opportunity to work on different kinds of cases. This helps me learn aspects of the law and discover new information I might not have otherwise known.”

She added that she has been surprised not only by the types of cases that come to her through LRS, but the types of clients as well.

“I’ve been retained by doctors, venture capitalists, people from all different income ranges,” she said. “There’s a lot of people who are concerned about privacy and anonymity that prefer not to go through their personal contacts when they need an attorney. So they end up going through LRS.”

While Mied emphasized that she has been more than compensated for the 30-minute consultations that do not lead to retainers, other LRS panel members believe uncompensated consultations to be just as enriching to their practice.

Norman Miller has practiced real estate and probate law in Phoenix for 30 years, and has been an LRS panel attorney “on and off” for over 20 years. He says that although he first joined the panel in order to get more consultations to be just as enriching to their practice.

Attorneys:
Dorothy Baran, Daniel Collins, Margaret Gillespie, Maureen Henry, Philip May, Austin Potenza, Amy Popham, and Ted Witthoft

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Value...
Continued from page 5

clients, now that he is in the latter part of his career he finds more value in the educational and community service aspects of helping LRS clients.

“These aren’t large corporate clients dealing with acquisitions and mergers and contracts,” Miller said. “These are real people in their real lives dealing with real dilemmas.”

He adds that knowing he is helping the people who come to him for advice, whether they retain him or not, brings him great satisfaction.

“I’m at the point in my practice where I just so rich to truly touch clients’ lives and complex problems” that LRS clients have brought.

“Like Meld, Miller also noted that “unusual and complex problems” that LRS clients have brought to his office, and he finds working on LRS cases more interesting and challenging than those that come to him through more typical means.

“I always recommend LRS to my fellow attorneys,” Meld added. “The opportunity is just so rich to truly touch clients’ lives and beyond that, to have an impact on the entire community.”

From left, LRS Committee Chair Amber Mied and LRS Director Margarita Flores talk with Arizona Midday host Jineane Ford at their Jan. 6 appearance on the show.

LRS broadens client base through multi-media approach

By Margarita Flores
LRS Director

Our primary goal at Lawyer Referral Service for 2004 is to attract a wider array of clients for the attorneys on our panel. Recently, marketing consultant Jean Lupa volunteered her services to help us broaden our marketing scope and maximize the return on our marketing budget. We are now going to more markets with multiple messages, allowing us to further grow and diversify our client base.

“We have been working toward a genuine multi-media approach to marketing the referral service to the public,” said LRS Committee Chair Amber Mied. “Last year we concentrated on getting more brochures out in court-houses and libraries and getting a new public-oriented Web site online. This year we will be concentrating on more Web marketing, along with radio and television appearances.”

The new Web site, located at www.lawyerfinders.org, is expected to draw clients that begin their search for an attorney on the Internet, as well as those who may have been reluctant to phone the service during business hours for privacy reasons. The Web site also will allow clients to request appointments 24 hours a day, seven days a week. Meanwhile, we began our television campaign with a Jan. 6 appearance on Arizona Midday on Channel 12. We expect this to be followed by other appearances on various Arizona-based programs. On the radio side, Al McCoy of Skyview Networks will do live, once-a-week ads for LRS during his news program throughout 2004.

Another LRS committee project in the works is the establishment of a reciprocity program with the Los Angeles County Bar Association’s referral service, which is expected to bring a substantial jump in the number of requests for lawyer referrals. Currently, LRS receives 1,000 to 2,000 calls per week from people seeking legal help.

Because of our new marketing push, LRS is seeking attorneys who wish to build their practice through referrals. To join the LRS panel, an attorney must be an MCBA member, must have professional liability insurance and must be willing to offer an initial 30-minute consultation to LRS clients free of charge. The yearly dues fee is $50.

To learn more about how to become an LRS panel member, please call (602) 257-4672, or download an application from the MCBA Web site at www.maricopabar.org.
Foundation enters third decade with renewed commitment to community

The Beginning

It was on December 15th in 1982 that a group of 15 people with a distinct vision created a small piece of Maricopa County legal history by signing the Maricopa County Bar Foundation articles of incorporation. In March of 1983, the foundation was formally incorporated and was able to begin its work.

The first board of trustees recorded the following statement of purpose:

“To improve and facilitate the administration of justice; to promote study and research in the field of law, the diffusion of knowledge thereof, and the continuing education of lawyers; to cause to be published and to distribute addresses, reports, treaties and other literary works on legal subjects and to acquire, preserve and exhibit rare books and documents, objects of art, and items of historical interest having legal significance or bearing on the administration of justice.”

Through 21 years of work on focus on this purpose, the Maricopa County Bar Foundation has had the opportunity to help many organizations, which in turn have helped countless people throughout Arizona. As the foundation reaches its 21st birthday, those who have been touched by the vision of a small group of people eager to make a positive impact in the world would like to take a moment to thank our 15 founding members: Christopher A Combs, David M. Lurie, Edwin F. Hendricks, James A. Telbarg, James E. McDougall, James R. Breining, John D. Lyons Jr., John L. Hay, Marshall A. Lehman, Michael D. Hawkins, Michael K. Kennedy, Rebecca A. Albrecht, Robert R. Mills, Roxana C. Bacon.

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 profession; legal assistance for the needy; the encouragement of legal research, publications and forums; and the education of the public.

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

“We know the legal community supports many of the same goals and causes that 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 new emphasis for the foundation will be a greater effort toward fundraising. The bulk of the foundation’s grant funds come from MCBA members through the $15 dues check-off on member applications. While this method will likely remain the primary source of funding for its grants program, the board is now shifting its focus to alternative sources such as the Pro Bono Option offered by the Maricopa County Superior Court. When assigned to arbitration, lawyers may choose to donate their $75 arbitration fee to the foundation simply by checking a box on the form provided by the court.

More importantly, the foundation is directly appealing to the legal community by mail and through publications such as Maricopa Lawyer.

“No matter how worthy the causes you support, no one is going to give you money unless you ask,” Clays said. “And we’re learning that, when we ask, attorneys are by and large very generous people. If you ask them to help out, they don’t hesitate.”

Indeed, with a half-a-million dollar grant history in just 20 years (see page 9), the foundation is a testament to the concern, commitment and generosity of Maricopa County’s lawyers toward their community.

Today, as the foundation enters its third decade of giving, it once again asks Maricopa County attorneys and legal professionals for their help through donations. Please read through the next few pages about the foundation and the kind of organizations it funds. If you agree that the foundation is doing important work in Maricopa County, please support its efforts through one or more of the options listed on page 10. Put your dollars to work for your peers, your neighbors and your community.

Legal community holds key to access to justice

If you are reading this, you are likely a lawyer. Or a legal assistant. Or a legal secretary. Or maybe a client sitting in a lawyer’s lobby.

Whichever fits you, you are part of the legal system. Like me. And like me, you have access to the courts, to ready sources of legal advice and to those “hallowed halls of justice” that we continually hear about.

But not everyone is like you, or like me. Far too many people have no access to the courts, no access to law or policy makers, no access even to the most basic information about their rights or how to exercise them.

By Teena Booth
Maricopa Lawyer

Over the past six months, the Maricopa County Bar Foundation has unveiled a new logo, created a new Web site and developed a new mission statement. Now, with a new vision and sense of commitment in place, the 2004 board of trustees is working on its goal of better meeting the legal needs of the community.

“In the past, the foundation worked from a purpose statement that was very broad,” said Foundation Director Shane Clays. “The board of trustees feels it is time to focus on specific goals and develop a more visible identity that will allow the legal community to better 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 awards thousands of dollars in grants to worthy organizations around the Valley, including Volunteer Lawyers Programs.

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Another new emphasis for the foundation will be a greater effort toward fundraising. The bulk of the foundation’s grant funds come from MCBA members through the $15 dues check-off on member applications. While this method will likely remain the primary source of funding for its grants program, the board is now shifting its focus to alternative sources such as the Pro Bono Option offered by the Maricopa County Superior Court. When assigned to arbitration, lawyers may choose to donate their $75 arbitration fee to the foundation simply by checking a box on the form provided by the court.

More importantly, the foundation is directly appealing to the legal community by mail and through publications such as Maricopa Lawyer.

“No matter how worthy the causes you support, no one is going to give you money unless you ask,” Clays said. “And we’re learning that, when we ask, attorneys are by and large very generous people. If you ask them to help out, they don’t hesitate.”

Indeed, with a half-a-million dollar grant history in just 20 years (see page 9), the foundation is a testament to the concern, commitment and generosity of Maricopa County’s lawyers toward their community.

Today, as the foundation enters its third decade of giving, it once again asks Maricopa County attorneys and legal professionals for their help through donations. Please read through the next few pages about the foundation and the kind of organizations it funds. If you agree that the foundation is doing important work in Maricopa County, please support its efforts through one or more of the options listed on page 10. Put your dollars to work for your peers, your neighbors and your community.

Legal community holds key to access to justice

By Patricia E. Nolan
Foundation Chair

“Mere access to the courthouse doors does not by itself assure a proper functioning of the adversary process.”

– Thurgood Marshall
U.S. Supreme Court Justice

If you are reading this, you are likely a lawyer. Or a legal assistant. Or a legal secretary. Or maybe a client sitting in a lawyer’s lobby.

Whichever fits you, you are part of the legal system. Like me. And like me, you have access to the courts, to ready sources of legal advice and to those “hallowed halls of justice” that we continually hear about.

But not everyone is like you, or like me. Far too many people have no access to the courts, no access to law or policy makers, no access even to the most basic information about their rights or how to exercise them.

– See Chair on page 10
Annual golf classic puts the fun in fundraising

By Shane Clays
Foundation Director

“When I’m on a golf course and it starts to rain and lightning, I hold up my one iron, ‘cause I know even God can’t hit a one iron.”

– Lee Trevino

Who could say it better than Lee Trevino? Even for the pros, golf is one of the world’s most challenging, frustrating and fun games in existence. Each year, some of the Valley’s best “weekend hacks,” “sandbaggers” and “polished golfers” sign up for a day of golf with friends and colleagues at the Maricopa County Bar Foundation Pro Bono Golf Classic.

By spending an enjoyable day on the greens (and hopefully not in the sand bunkers), the legal community helps support the foundation and its mission.

“For more than 15 years, our annual golf classic has been one of the primary sources of funding for the foundation and its grants program,” said John Hendricks, co-chair of the 2003 golf tournament committee. “If it wasn’t for the generosity of the attorneys who come out and play at this event, the grants we give each year and the impact we have in the community would be greatly diminished.”

For the last several years, the September tournament has been held at the Westin Kierland Resort in Scottsdale, regarded as one of the most beautiful golf courses in Arizona. Breakfast and lunch are provided, and a raffle drawing and silent auction complete the festivities. Over the last few years, raffle winners have walked away with prizes such as DVD players, golf clubs, a suite at a Phoenix Suns basketball game, tickets to Arizona Diamondback games, along with dozens of resort packages and gift certificates to local restaurants.

“You can tell that people truly enjoy this event from the atmosphere during the tournament,” said Pat Fowler, also a co-chair of the 2003 tournament committee. “There’s a lot of laughing and ribbing going on, so it’s a lot of fun. Golfers get a chance to play on a great course, enjoy a wonderful lunch and the opportunity to win some great prizes, all while supporting an important charity.”

Expertise or prior golf experience is not a requirement for participation, just a willingness to get out there and swing your club. Categories for prizes include “Most Stylish Foursome,” “Most Time Spent in the Sand” and “Worst Shot of the Day,” along with the usual prizes for top-place finishers.

Last year, foundation trustee Don Alvarez organized a hole-in-one contest where each golfer had a chance at glory and a free 2-year lease of a Ford Mustang (graciously donated by Ron Jones of Tom Jones Ford in Buckeye).

Single golfers as well as foursomes are always welcome. Non-golfers also can support the event by registering a “phantom foursome.” Firms can contribute by sponsoring particular holes on the course, or by hosting a table at the luncheon. Corporate sponsors such as Thomson West and Martindale-Hubbell help add to the day’s total of dollars raised.

In 2003, the golf classic raised $17,000 for the foundation and the Volunteer Lawyers Program, the tournament beneficiary. Our goal is to make the 2004 golf tournament even bigger and better. Registration will begin this summer, so go ahead and challenge your dad, your friends, your co-workers or your boss to a round of golf for a good cause. You might start a great yearly tradition.

See you on the course!

Maricopa County Bar Foundation
2004 Board of Trustees

Maricopa County Bar Foundation
Grant Applications Available

APPLICATIONS FOR 2004 GRANTS from the Maricopa County Bar Foundation are available. Our grants focus on organizations that 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.

For grant applications, please call Shane Clays at 602-257-4200 ext. 111 or applications can be picked up at the County Bar Office; 303 East Palm Lane, Phoenix, AZ 85004.

Deadline for applications is March 1, 2004.
Who do we help?

A grant from the Maricopa County Bar Foundation helped the Fresh Start Women’s Foundation to hire attorney Jodi Weisberg to provide legal advice to clients in need of help.

Maricopa County Bar Foundation grants are awarded to non-profit organizations that work to enhance the justice system and address the legal needs of the underserved.

The following is a partial list of organizations that have received foundation grants in the past decade. (For a full list, see our Web site at www.maricopabar.org/foundation). Many of these organizations would not be able to operate without yearly grant monies from foundations such as ours. We are proud to be able to contribute to the vital work they do.

➤ Advocates for the Disabled
Helps individuals with disabilities to obtain social security benefits.

➤ Arizona Senior Citizens Law Project
Offers information and legal assistance to seniors in Maricopa County.

➤ ASU Homeless Legal Assistance Program
Provides legal assistance to homeless people living in shelters throughout the Valley.

➤ Beatitudes Center for Developing Older Adult Resources
Provides support and assistance to older persons, adults with physical disabilities and family caregivers.

➤ Community Legal Services
Provides civil legal services free of charge to applicants with incomes below poverty level.

➤ Fresh Start Women’s Foundation
Provides services that help women achieve self-sufficiency.

➤ Friendly House
Operates the Friendly House Academia Del Pueblo Elementary charter school in downtown Phoenix.

➤ Never Again Foundation
Assists victims of physical or sexual abuse with access to the civil justice system.

➤ VLP Children’s Law Center
Recruits, trains, and supports volunteer attorneys who meet children’s legal needs through representation in guardianship and dependency cases and as volunteer guardians ad litem and advisors.

➤ VLP Domestic Violence Project
Provides document preparation assistance from certified document preparers for victims of domestic violence who represent themselves in family court.

➤ VLP Family Lawyers Assistance Project
Assists unrepresented family law litigants by providing volunteer attorney consultations and group presentations to help victims of domestic violence and others with family law problems.

➤ VLP Tenants’ Rights Project
Provides volunteer attorneys to advise, assist or represent low-income families who need legal help to prevent unsafe housing conditions, wrongful conditions and homelessness.

GRANT HISTORY

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<th>2002</th>
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<tr>
<td>$2,000.00</td>
<td>Arizona Senior Citizens Law Project $4,000.00</td>
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<td>ASU Homeless Legal Assistance Project $1,000.00</td>
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<td>$1,000.00</td>
<td>Disability Advocacy Project $3,000.00</td>
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<td>Legal Advocacy and Information Project $4,000.00</td>
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<td>MCBA YLD - HIV/AIDS Law Project $2,000.00</td>
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<td>State Bar Arizona Modest Means Project $1,000.00</td>
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<td>VLP - Family Lawyers Assistance Project $8,000.00</td>
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<td>VLP - Tenants’ Rights $6,000.00</td>
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2001
Advocates for the Disabled $2,000.00
Arizona Senior Citizens Law Project $2,000.00
ASU College of Law $5,000.00
Save the Family Foundation of Arizona $4,000.00
The Never Again Foundation $2,500.00
VLP - Children’s Law Center $7,000.00
VLP - Domestic Violence Project $1,000.00
VLP - Family Lawyers Assistance Project $8,000.00
VLP - Tenants’ Rights $6,000.00
TOTAL $40,000.00

2000
Arizona Senior Citizens Law Project $4,000.00
ASU Homeless Legal Assistance Project $1,000.00
Disability Advocacy Project $3,000.00
Legal Advocacy and Information Project $4,000.00
MCBA YLD - HIV/AIDS Law Project $2,000.00
State Bar Arizona Modest Means Project $1,000.00
VLP - Children’s Law Center $7,000.00
VLP - Family Lawyers Assistance Project $8,000.00
VLP - Tenants’ Rights $6,000.00
William E. Morris Institute for Justice $1,000.00

GRANT HISTORY

GRANT HISTORY

GRANT HISTORY

GRANT HISTORY

Grand Total: $508,553.00

2001
Advocates for the Disabled $2,000.00
Arizona Senior Citizens Law Project $2,000.00
ASU College of Law $5,000.00
Save the Family Foundation of Arizona $4,000.00
The Never Again Foundation $2,500.00
VLP - Children’s Law Center $7,000.00
VLP - Domestic Violence Project $1,000.00
VLP - Family Lawyers Assistance Project $8,000.00
VLP - Tenants’ Rights $6,000.00
TOTAL $40,000.00

2000
Arizona Senior Citizens Law Project $4,000.00
ASU Homeless Legal Assistance Project $1,000.00
Disability Advocacy Project $3,000.00
Legal Advocacy and Information Project $4,000.00
MCBA YLD - HIV/AIDS Law Project $2,000.00
State Bar Arizona Modest Means Project $1,000.00
VLP - Children’s Law Center $7,000.00
VLP - Family Lawyers Assistance Project $8,000.00
VLP - Tenants’ Rights $6,000.00
William E. Morris Institute for Justice $1,000.00

TOTAL $40,000.00

Total grant dollars awarded (1987-1999)
1999 $39,500.00
1998 $38,200.00
1997 $40,980.00
1996 $42,638.00
1995 $46,300.00
1994 $33,300.00
1993 $25,800.00
1992 $34,784.00
1991 $21,495.00
1990 $20,002.00
1989 $17,600.00
1988 $10,528.00
1987 $14,946.00

TOTAL $42,500.00

Chris Bayley (left), a bankruptcy and creditor’s rights attorney with Snell & Wilmer, confers with a pro bono client at the offices of the Volunteer Lawyers Program.

➤ Save the Family Foundation of Arizona
Helps homeless families transition to economically self-sufficient members of society.

➤ William E. Morris Institute for Justice
Conducts research, advocacy and training activities to enhance legal services to low-income households.

Attorney Edward Mancey teaches a VLP-sponsored class in legal options for dealing with debt.
How you can help

The success of the Maricopa County Bar Foundation reflects a true collaboration of thousands of Maricopa County lawyers, law firms, non-profit organizations, corporations and individuals who share a commitment to the legal health of the community. There are a number of ways you can contribute to this dynamic team effort:

■ Dues Check-Off – The annual dues billing for MCBA membership includes a request for a minimal contribution to the foundation. Many members find this to be the most convenient way to support the foundation at a basic level.

■ Donations – Many local lawyers give much more than the minimal amount required to be a member of the foundation. Donations of any size at any time are welcome, and all gifts over $75 are publicly acknowledged. We encourage you to donate today by filling out the form below and mailing it along with your check.

■ Arbitration Donation – The Maricopa County Superior Court has helped make it easy for attorneys assigned to arbitration cases to donate their $75 fee directly to the foundation. Simply check the Pro Bono Option box on the invoice form provided in the arbitration packet, and the fee is automatically forwarded to the foundation.

■ Pro Bono Golf Classic – Proceeds from the foundation’s annual golf tournament go to the foundation and its designated beneficiary. While we welcome all golfers, there are many other ways to help make the event a success, such as sponsoring a hole or other event.

■ Non-Cash Donations – You can help the foundation raise money through its annual raffle and auction, held each year at the golf tournament, by donating items such as sports tickets, gift certificates, gift baskets or other appropriate items.

■ Gifts – A gift to the foundation made on behalf of another is a thoughtful way to honor a family member or colleague, and can be made at any time. A letter will be sent from the foundation’s board of trustees informing the honoree of the gift made in his or her name. Gifts can also be made in memoriam.

■ Bequests – Remember the foundation in your will or other estate planning devices.

■ Time – Sometimes donating your time and effort can be more rewarding for you personally than simply writing a check. Donating your time to a foundation event or project, or as a member of the board of trustees, or one of its committees, will help the foundation grow and improve each year. New faces and ideas are always welcome!

Committed firms

The Maricopa County Bar Foundation thanks the following firms that have made “the firm commitment.”

— Gammage & Burnham
— Jennings Haug & Cunningham
— Salmon Lewis & Weldon
— Cohen Kennedy Dowd & Quigley
— Begam Lewis Marks & Wolfe
— Koeller Neberker Carlson & Haluck
— Bonnett Fairbourn Friedman & Ballant
— Polese Pietzsch Williams & Nolan
— Anderson Brody Levinson
— Weiser & Horwitz
— Mayer Hendricks & Bivens
— Quarles & Brady Streich Lang
— Berk & Moskowitz
— Chelteiz, Iannitelli, Marcolini
— Bess Kuntz
— Berr & Toone

Foundation asks for a ‘firm commitment’

For a number of years, the Maricopa County Bar Foundation, working in cooperation with the Maricopa County Superior Court, has raised funds through a Pro Bono Option that allows attorneys assigned to arbitration to donate the $75 fee.

“Arbitration fee donations have long been a source of income for the foundation, but we recently realized that donations had significantly decreased” said Jeff Crockett, past-chair of the foundation’s board of trustees. “We decided one way to get donors back up was to get firms behind the program.”

So what is the firm commitment? Simply put, a firm agrees to actively encourage its attorneys to donate their arbitration fees to the foundation, whether it’s through an internal e-mail message, memo or through the company newsletter. This commitment will earn the firm recognition in Maricopa Lawyer and on a plaque which will be displayed at the MCBA offices.

Making the commitment takes only a few minutes. Simply download the form from the foundation’s web site (www.mcba.org/foundation), then fill it out and mail or fax it to us. Once we receive the completed form, we will send your firm a packet with the current arbitration forms and further information regarding the program.

“The firm commitment is an easy way for Maricopa County firms to become involved with the foundation.” Crockett said. “Simply by filling out the form and communicating the firm’s commitment to its attorneys, the firm will be helping the foundation meet its goal of helping organizations provide legal services to those in need.”

I would like to help the Maricopa County Bar Foundation with its Mission!

Name_________________________Email______________________Phone________________________
Address_____________________City_____________________State______Zip ________________

I would like to make a donation to the foundation in the amount of:

___$100.00  ___$250.00  ___$500.00  Other $_________________

Check Number (enclosed)________________________Exp. Date ________________

Name on Card________________________Signature________________________

Please have an MCBF representative contact me to discuss:

— A cash donation
— A non-cash donation
— Arbitration donations
— The Pro Bono Golf Classic
— Joining the foundation board or a committee
— Gifting to the foundation
— Making a Firm Commitment
— Bequesting to the foundation

For more information, or to make a donation, please fill out this form and mail to:

MCBF, 303 East Palm Lane, Phoenix, AZ 85004 or fax to 602-257-9727. For questions, please call Shane Clayes at 602-257-4200 or email sclayes@mcbar.org

The Maricopa County Bar Foundation is a 501(c)(3) organization. All donations made to the foundation are tax deductible as allowed by law.

Chair...

Continued from page 7

And certainly no funds with which to do so even if they knew how.

At the Maricopa County Bar Foundation, our mission is to create opportunities for those people to have access to the process that we take for granted because we’re part of it every day. For over 20 years, the foundation has been raising and distributing funds to agencies and individuals who provide legal assistance to the needy.

As the charitable arm of the Maricopa County Bar Association, the funds we raise come completely from private sources. We do not share in any portion of IQUNA funds (only the state bar’s foundation gets that benefit). We must depend on lawyers and their law firms. And legal assistants. And legal secretaries. People like you, and like me.

In these pages, you will read of the people helped over the years by the foundation and the agencies that our grants help fund. Over a half million dollars has been provided to a wide variety of organizations helping the poor, the homeless, the elderly, the physically and mentally disabled, the battered and abused, those who are facing eviction from their homes, and many, many others.

I was drawn to the foundation and its work several years ago. As my involvement grew, I met wonderful lawyers doing wonderful things. Donating their time, their effort and their money to those who could not help themselves. And doing so in a way that made everyone feel involved, too.

I invite you, too, to participate in the Maricopa County Bar Foundation. The legal system works because of us. It needs to work for everyone. And it can’t work if people can’t access it. We are the key. Not each of us can give a lot of time. Not each of us can give a lot of money. But each of us can give something. I challenge you to determine your “something.” And to give it willingly.

Patricia Nolan is a shareholder in the firm of Polese, Pietzsch, Williams & Nolan and the chair of the foundation’s board of trustees. She can be reached at nolan@gpwn.com.
JANUARY 2004

February 2
- Maricopa Lawyer editorial board, 5:15 p.m.

February 3
- Defenses to Preference Actions and the Impact of the Deprizio Doctrine (Bankruptcy Section luncheon) 11:30 a.m. to 1 p.m., ASUD
- Family/Juvenile Law Section, 5:15 p.m.

February 4
- Reading Construction Drawings 2:30 to 4:30 p.m., ASUD
- Paralegal Division board, 5:30 p.m.
- Are You A “Violent” Communicator? 1:00 to 4:30 p.m., ASUD

February 11
- Business Valuation Issues In Divorce 1:00 to 4:30 p.m., ASUD
- Medicaid Malpractice 1:00 to 4:30 p.m., ASUD

February 12
- Are You A “Violent” Communicator? 1:00 to 4:30 p.m., ASUD

February 13
- Paralegal Division board, 5:30 p.m.
- Are You A “Violent” Communicator? 1:00 to 4:30 p.m., ASUD

February 14
- Medical Malpractice 1:00 to 4:30 p.m., ASUD

February 16
- President’s Day, MCBA office closed

February 17
- Estate Planning, Probate & Trust Section, 7:30 a.m.
- Bankruptcy Section, 5 p.m.

February 18
- Litigation Section, 7:30 a.m.
- Bench-Bar Committee, Central Courthouse, 12:15 p.m.

February 19
- Public Lawyers Division board, noon
- Paralegal Division Brown Bag-It fundraising, noon

February 23
- Employment Law Section, 12:30 p.m.
People in Law

Osborn Maledon attorney Diane Johnson has been named to the Stanford Law School Board of Visitors. The board helps set key goals for the school’s future. Johnson is a 1982 graduate of the law school and served as associate editor of the Stanford Law Review.

Richard Mallery, a partner with Snell & Wilmer, received the William F. McWhorter Award at the annual Governor’s Celebration of Innovation Awards Gala. The award recognizes an individual for contributions to Arizona’s technology community. Mallery was honored for his leadership role in bringing the Translation Genomics Institute and the International Genomics Consortium to Phoenix.

The American College of Trial Lawyers has appointed Philip A. Robbins to head its International Committee and William H. Sandweg to serve as state chair for Arizona. Both attorneys are with the firm of Robbins & Green. The invitation-only college strives to improve and elevate the standards of trial practice and the ethics of the trial profession.

Snell & Wilmer attorney Dawn C. Valdivia has been named a member of the Latino Advisory Council to the Arizona Department of Education. The council advises the superintendent of public instruction on how to address issues facing public education and the Latino population.

Annul Meeting...

He asked all Arizona attorneys to visit two Web sites — www.usdoj.gov and www.aclu.org — before forming an opinion on the law.

“Once you’ve had a chance to look at everything involved, then please — you tell us whether the Patriot Act is good and right for Arizona.”

Charlton’s address followed an awards ceremony that honored Timothy Hyland as MCBA Member of the Year and the Honorable Cecil Patterson as Judge of the Year. ASU Faculty of the Year and two Student of the Year awards also were presented to Professors James Weinstein and K. Royal and Kyrsten Sinema respectively. Outgoing MCBA President Yvonne Hunter also remarked on progress made by the association during her tenure.

“The MCBA has been showing signs of age, but we are happy to report that we are now a much stronger and better focused organization today than we were a year ago,” she told an audience of 175.

For more on the meeting and awards, please visit the MCBA Web site at www.maricopabar.org.
**Classifieds**

**Positions**

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MOVE TO TUCSON. ASSOCIATE ATTORNEY POSITION: Al-rated, Tucson, medium-sized law firm has an opening for an associate attorney, 2-3 years experience in broad-based litigation practice. Excellent writing and analytical skills and ability to work independently required. Mail or fax resume and references to Bruce R. Heurin, Karp, Heurin & Weitz, P.C., 3060 North Swan Road, Suite 100, Tucson, Arizona 85712-1225, Fax 520-325-4224.

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Court Rules...
Continued from page 1

the deposition must bear the cost of any recording.

The amendment further explains that the appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound recording techniques.

At the end of the deposition, the officer recording the deposition must state that the deposition is complete and shall describe any stipulations made by counsel concerning the custody of the transcript or recording.

New language added to Rule 30(b)(1) explains that a notice of deposition must specify the technique for recording the deposition and the protocols to be used for such recording, as well as the identity of the person recording the deposition and the placement of camera(s), if any.

Under the revisions to Rule 30(c), if the deponent or a party requests the opportunity to read and sign a deposition before the deposition is completed, the deponent shall have 30 days to review the transcript or recording and sign a statement reciting any changes to form or substance and the reason for making the changes.

The officer who records the deposition must securely seal the recording in an envelope or package endorsed with the title of the action and the name of the deponent. The officer must then send it to the attorney who arranged for the recording. That attorney must protect the recording under conditions that will secure it against loss, destruction, tampering, or deterioration. The stenographic notes and tapes of any deposition and any copy of the recording taken by another method must be retained by the recording officer for ten years.

Rule 16 also was amended to reflect trial issues related to depositions that are not transcribed stenographically. According to the amendment to Rule 16(d)(6), if a deposition or portion thereof is to be offered at trial and that deposition was not transcribed stenographically, a stenographic transcript of the pertinent portions of the deposition testimony must be prepared and submitted by the person offering the deposition.

A change to Rule 36(e) explains that only a written transcript of a deposition or portion thereof, and not any electronic recording thereof, may be submitted in support of or in opposition to a motion for summary judgment, except where a party contends that the written transcript is erroneous.

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Is your case heading for appeal? You may need an appellate lawyer

By Dan Kaplan
Maricopa Lawyer

A former colleague at the appeals-only component of the U.S. Department of Justice where I used to work liked to tell a story that reflected the way in which our “discrete and insular” community was viewed by other components of the department:

“See those people down the hall?” his supervisor had said to him. “Those are the appellate lawyers. They tend to wander around mumbling to themselves. If you ask me, they’re a little weird.” Solicited or not, borrowing from Lord Byron, once described the rows of appellate court reporters on a library shelf as “the petrifications of the plodding brain.”

Leaving aside the question of their accuracy, remarks like these can make appellate lawyers sound fairly odd. What can these “plodding brains” be good for?

Well, appeals actually. It may come as no surprise to hear this from an appellate lawyer, but isn’t the cost still greater if the appeal is lost for want of the particular faculties that an appellate lawyer can offer?

Finally, an appellate lawyer can bring the detached perspective needed to conduct the important tasks of “argument-triage” and “fact-triage.” William Faulkner said that to write well you must “kill all your darlings,” and a similar rule applies at the appeal phase of litigation. Court of appeals judges commonly stress that the parties to an appeal should present only their strongest arguments and facts. It can be difficult to cut out facts that you have fought hard to get on the record, and even more difficult to avoid focusing on matters that, while not pertinent to the issues on appeal, tend in a general way to cast your client in a negative light and your opponent in a positive one. Yet, for the most part, that’s what needs to be done on appeal, and an appellate attorney can be appropriately merciless in going about it.

So there, in a characteristically “plodding” fashion, are a few reasons to go to an appellate lawyer at the appeal stage. Doing so may entail some additional out-of-pocket costs, but isn’t the cost still greater if the appeal is lost for want of the particular faculties that an appellate lawyer can offer?

— Daniel L. Kaplan is an attorney with Osborn Malcolm, where he focuses on appellate litigation. He previously served on the civil appellate staff of the U.S. Department of Justice in Washington, D.C. He can be reached at dkaplan@omlaw.com.
Are footprints as foolproof as fingerprints?

The prosecutor in a capital offense case wanted to submit footprints taken inside a shoe as evidence. Two nights before the trial, the defense attorney received a Mealey’s E-Mail News Report about a case that questioned the admissibility of this evidence.

The Mealey’s E-Mail News Report notified the defense attorney of a recent court decision from the highest court in a neighboring state. He was surprised to find the prosecution’s expert witness had also testified in that case. But the court held that footprints from inside a shoe were not a recognized area for expert testimony under the Daubert standard. As the defense attorney continued his search of analytical sources from Matthew Bender®, including Moore’s Federal Practice® on the LexisNexis™ services, he quickly found further supportive commentary and analysis.

When you need to go a step beyond cases and codes in your research, use the LexisNexis™ Total Research System—It’s how you know.