Bales Investiture Thought to Give Arizona Supreme Court Top Ranking

By Joan Dalton
Maricopa Lawyer

On September 16, U.S. Supreme Court Justice Sandra Day O’Connor administered the oath of office to incoming justice Scott Bales, Governor Napolitano’s latest appointment to the Arizona Supreme Court. The ceremony took place before a filled auditorium at Phoenix College.

High expectations

Napolitano told the hundreds of people who had come to observe Bales’ induction to the court that the new justice was one of the most intelligent people she knew, and described Bales as being “well-respected both in his profession and as a person.” In fact, divulgled Napolitano, “[w]hen we called Justice O’Connor and informed her that I picked Scott to sit on the Arizona Supreme Court, she responded: ‘Arizona now has the best Supreme Court in the country’.” Napolitano said that although she is “proud of what [the Arizona Supreme Court] has accomplished,” she looks forward to seeing what Justice Bales will bring to the court.

Bales’ wife Michele, his daughter Caitlin and son Chase performed the ceremonial robing. After being sworn in by O’Connor, the new justice affectionately recognized his family, friends, colleagues, teachers, and mentors, many of whom had come from various parts of the country to honor him. Helen Perry Grimwood, Jon Sands, and Jose Cardenas invoked both admiration and humor as they communicated the impact that Bales has made in their lives and the lives of others, in the legal community, and as a mentor to young lawyers.

Judicial values

In his speech, Bales provided some insight into how he will approach his new job. First, Bales attributed his perspective on the role of the judiciary to O’Connor. Reciting the inscription on O’Connor’s statue at the federal court house, Bales said that O’Connor, with her characteristic directness, ascribed the values associated with being a judge as: "Be independent, be fair, venture to be wise."

"The first statement, ‘be independent,’” said Bales, “is primary because it underlies all that we ask judges to do.” "Judges must be independent to fairly apply the law without regard to the identity of the parties. They must be independent to make decisions that may be unpopular but appropriately protect the rights of minorities. And judges must be independent if we truly believe that our constitutions define and limit the powers of government.” Bales told the audience how O’Connor, “[o]ver her long career in public service,” believed that merit selection ensured judicial independence, and that Arizona has benefited from O’Connor’s efforts in bringing merit selection to Arizona.

The second phrase, “be fair,” explained Bales, “is at the center of what we expect of judges.” “But in a time when our judiciary, and indeed, even the physical safety of judges, is threatened by some, we should remember that in order for judges to be fair, they must be independent. Judges should not decide cases based on fear of reprisal – whether reprisal from the public or from the other branches of government.”

Bales said that the final statement, “venture to be wise,” reflects what he thinks is “a proper degree of humility on the part of judges.” “A judge, of course, is not wise merely by virtue of appointment to office. Judges must make difficult decisions every day, but they should do so recognizing that they do not have a monopoly on wisdom and they will not get it right every time. This counsels for deciding only those issues necessary to resolve each case and for giving due respect to the elected branches of government.”

Judges, explained Bales, “should approach each case with an open mind; they should expect to learn from exchanging views with their colleagues and legal counsel for the parties; and they should recognize that understanding often comes with experience and reflection.” “This is how I plan to approach my new job,” said Bales, “I’m joining a court with four experienced and very talented justices. I will learn much from them, and I hope to venture towards wisdom as we work to decide cases fairly and independently.”
Trend Spotting vs. Precedent Following

Lawyers are trained and apparently genetically predisposed to dispense advice. Lawyers are often asked to predict the future. If we insert this clause in this contract, will it be enforceable? If we make this counter offer, will the other side accept it, present their own counter, or withdraw their original offer? And my personal favorite, what is the likelihood of prevailing if this dispute proceeds to litigation?

Lawyers draw upon a variety of sources to make these educated predictions. Sometimes these assessments are delivered with the certainty of a Phoenix weather forecast between May and September, and sometimes these gauesstimates have the odds of a proposition bet at the crap table.

But lawyers are not often hired and usually do not last long as popular trend spotters. We are usually better at representing the trend spotters. At least so long as they are trendy.

Lawyers often excel when we have an opportunity to rely on precedent, using what came before as a barometer of what is going to come next. We enjoy the development process, be it the life of a deal, the genesis of a new business, or the strategy involved in preparing a case for trial. Clients understandably often wish to fast forward to the conclusion—closing the transaction or concluding the lawsuit. And lawyers are often asked to opine when those terminal events will occur.

As an unaccomplished trend spotter, I am hard pressed to comment on the next likely stages in Arizona’s real estate cycle—have you heard about that new resort development in Miami (Beach), Arizona? I am confident that so long as housing remains affordable compared to neighboring states and so long as we raise the bar on our public investment in education, Maricopa County will grow.

Growth in the need for legal services is a precedent that the membership of the Maricopa County Bar Association will continue to embrace. We know that Maricopa County attorneys actively participate in providing pro bono and affordable legal services through the Volunteer Lawyers and MCBA Lawyer Referral Service Programs. We need more of these lawyers who take the extra step of not only belonging to the State Bar, but also voluntarily joining the MCBA.

MCBA members have been at the forefront of volunteer efforts to raise money for worthwhile community causes like the Justice Learning Center and Museum and to step up when their legal expertise is needed. The response from Maricopa County attorneys to the call for volunteers to assist with legal issues faced by Hurricane Katrina victims who were relocated to the Valley was remarkable. In coordination with the State Bar and the Arizona Department of Administration, we found that we had many more volunteer lawyers than were needed. The oversubscription of volunteers is a welcome precedent. MCBA’s job is to harness that volunteer spirit to assist our own community members who are in need of affordable legal services.

One way that you can support these efforts is to renew your MCBA membership for 2006 today. And bring a friend—or even someone who sits across the table in a current deal or a lawsuit. It is a great way to establish even more common ground.

And please make plans to bring a friend to the MCBA Annual Meeting at the America West Arena Pavilion on November 15 from 5:30 to 7 p.m. See some predictable old faces and meet some new colleagues. It’s free to MCBA members. We’re trending away from those pricy rubber chicken lunches and keynote speeches. More information is available at www.maricopabar.org or at 602-257-4208.

My best wishes for a happy, healthy, and meaningful Thanksgiving to you and your family. Thank you for supporting the MCBA and the community causes that we champion.

Simple Yet Valuable Leadership Lessons

The closer I get to completing my tenure as president of the Paralegal Division, the more focused I have become on encouraging new and up-and-coming leaders to expand their involvement and respective roles within the division. In response to my encouragement, potential board members and committee chairs invariably ask me what leadership advice I can offer. I am happy to share two simple lessons that I have learned so far through my service to the division.

The first leadership lesson is to be confident in your ideas and abilities, but don’t be too stubborn to compromise. While serving on the division’s board these past few years, I have done my fair share of persuading others to accept my point of view. I have also been persuaded toward other viewpoints and have compromised solutions. Good leaders must be able to do this.

Too often leaders presume that other leaders and active members of an organization share the same perspectives about issues concerning their organization. That is not always the case. Although people may have similar underlying interests, they do not necessarily have the same ideas about how to best serve those interests or how to achieve certain goals for an organization and its members. Good leaders must acknowledge and embrace each other’s diverse perspectives.

In my experience, the differences among members of the Paralegal Division, particularly its leaders, usually bring about changes that are positive and productive. This is because people are open to and respectful of others’ viewpoints, even when their opinions are at odds. It is this kind of deference and cooperation that makes it easy to remember the second leadership lesson: Have fun and do your best to make volunteer service enjoyable for others.

Although the division’s leaders work very hard and devote a considerable amount of time and effort toward coordinating projects and events, we are very conscious of other benefits of leadership. We are particularly appreciative of the many opportunities to network with other members and to develop lasting friendships. I am hopeful that future division leaders will recognize, as I have, that good leaders make great friends.

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Remembering One of Phoenix’s Best: Frank Haze Burch

By Claudia Dinnell and Daryl Manhart

Special to Maricopa Lawyer

On September 26, the Maricopa County Bar Association lost one of its long-standing members, Frank Haze Burch, founding partner of Burch & Cracchiolo, had been a member of the MCBA for more than 50 years.

Born in 1919 to a police officer and a registered nurse, Burch was a native of Arizona. At five years old, he lost his father when he became the first Phoenix policeman killed in the line of duty. Burch attended Phoenix College until joining the Navy and serving in World War II as a pharmacist mate on the U.S.S. Rixie. After the war, Burch returned to Phoenix to work in law enforcement, following in his late father’s footsteps. He was a deputy sheriff for two years and began attending Phoenix College again. Burch married Mary Jane Lester in 1949, a year after he entered the University of Arizona College of Law.

Starting as a deputy Maricopa County attorney, Burch was instrumental in drafting the first zoning ordinance for Maricopa County and became its first planning director. He then entered private practice at a firm with ties back to the time of Arizona statehood and became well-known as the man to see for zoning problems. In 1958, Burch encouraged his firm to hire Dan Cracchiolo, making its name Kramer, Roche, Burch, Streich & Cracchiolo. It turned out to be the beginning of a beautiful friendship. By 1970, the two men decided it was time to form their own firm—and that was the beginning of Burch & Cracchiolo.

Besides his law practice, Burch was very involved in judging national and international dog shows and was a national delegate to the American Kennel Club for many years. One friend observed that he practiced law solely to support his dog habit, and the only portrait painted of Burch which his family can recall is with his dog! He also was involved in many civic activities, including as co-founder of the 100 Club, which provides financial help to widows of police and firemen killed in the line of duty, and the Salvation Army, which honored him with its distinguished Sally Award in 1983.

Though his law practice and civic activities took a lot of Haze’s time, he spent a lot of time with his wife, four children, 14 grandchildren, and eight great grandchildren, who all remember him as the funniest man they knew.

Burch also made a lasting impression on those who worked with him over the years. Dan Cracchiolo, with whom he founded Burch & Cracchiolo: “He was a man to be admired not only for his legal talents, but also as a family man who was devoted to his dear wife and children.”

Don Lindholm of Burch & Cracchiolo started representing the City of Phoenix in zoning matters in the late 1960s: “He was representing all of the top land developers in the city, and even though our respective roles were somewhat as adversaries, he always made me feel good because he treated me like I knew what I was doing.”

C. Michael Pierce, his first associate: “He was my mentor. Haze’s unique combination of morals, humor, intelligence, and kindness was greater than I have ever known in anyone else.”

Marty Jones, an attorney at Gust Rosenfeld, also spoke of the way Burch treated young attorneys: ‘For six months he took me to every meeting and every hearing to listen and observe. Afterwards, he would take time to review with me what had occurred, explain why he did what he did, and ask if I had questions. For my first appearance, he introduced me, told the board that he had trained me, that I was as knowledgeable as he was, and that the board could count on my integrity as being the equal to his. I doubt any young lawyers get that kind of mentoring today.”

Though Frank Haze Burch will be greatly missed, he left a lasting impression on Phoenix’s legal community that will not be forgotten.

Claudia Dinnell is the daughter of the late Frank Haze Burch. Darryl Manhart is a shareholder at Burch and Cracchiolo.

Save the Date!

MCBA Young Lawyers Division

2006 Barristers Ball & Silent Auction
Saturday, March 4, 2006

Phoenician Resort
Silent Auction
Beneficiary: Arizonans for Children

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 our People in Law Column to Claudia Dinnell, MCBA, 303 E. Palm Lane, Phoenix, AZ 85004; fax to 602-257-0522; or e-mail to: kbrieske@mcbabar.org
The Many Hats of a Legal Professional

Penny Willrich came to Phoenix in the 1980s and hasn’t stopped making lasting marks in the legal community since her arrival.

Growing up in Texas, Willrich received bachelor degrees in political science and history from the University of Texas at Arlington. From there she moved east, receiving a law degree from Antioch–District of Columbia School of Law and a master of science degree from Springfield College in Massachusetts. Her education is still a work in progress as she is currently pursuing a doctorate of philosophy in criminal justice.

Willrich has embarked on an equally diverse legal career path. She started as an attorney at West Texas Legal Services in Fort Worth before moving to Phoenix to work at Community Legal Services. There she wore many hats, including managing attorney, director of its domestic violence project, and litigation director.

She also had her own private practice focusing on criminal, juvenile, family, probate and entertainment law before going back to public law—first as a Maricopa County Superior Court commissioner and then as a Superior Court judge.

As if that wasn’t enough, this year she left the bench to become an associate professor of law and the director of lawyering process at the Phoenix International School of Law.

Finding law

Willrich’s legal drive was firmly rooted in her head at the age of 13, influenced by her role models, Justice Thurgood Marshall and Congresswoman Barbara Jordan. She also wanted to ensure that the justice system was fair and equal for all.

The most significant factor of all was her parents’ encouragement for her to pursue her dreams.

“My parents were both very smart people but undereducated because the system of oppression that prevented them from pursuing their dreams. They poured their energies into me and my siblings, pushing us to achieve and be successful.”

There was one final reason Willrich pursued law.

She started law school at Texas Tech University as the only African American in her class. When she transferred to Antioch–District of Columbia, one-third of her class was African American. Both experiences served as proof she had made the right decision.

From judge to teacher

In the last two decades, according to Willrich, some of the most innovative programs in the country have come from the Maricopa County court system.

Willrich became a judge to be a part of the progress and make a contribution to the innovation.

“One of the greatest honors for a lawyer is to be selected to make decisions about critical issues that affect the citizens.”

Willrich considers herself to be on “retired active duty” and hopes from time to time to put the robe back on and assist the court.

Teaching is not a new trick for Willrich—she has been doing it for the past 23 years as an adjunct professor, at the University of Texas at Arlington, Tarrant County Junior College, Phoenix College, Arizona State University, University of Phoenix and Springfield College.

“I love challenging those who are knowledge seekers and being able to break complex issues into small nuggets.”

Apples and oranges

Willrich feels judging and teaching are similar and very different.

“As a judge, you are in the public spotlight and subject to scrutiny at all times; on some days you are the most revered and respected and on others, folks are asking where you got your law degree.

“As a law professor, you are always revered and respected, yet students know that you are not perfect and that mistakes can be made.

“Teaching allows you to get closer to those under your instruction. Judging requires that you distance yourself from those for whom you make a decision.”

What is most important in Willrich’s profession of teaching is that she has come full circle in her law career. Her real life experience in the courtroom as a practitioner and judge only adds to the value of teaching.

“Student’s eyes light up when you can share a real life experience.”

Passing on passion

“I have come to realize that the ultimate purpose of my work as a lawyer, as a judge and as a teacher is inspiring others to the same passion and purpose.”

Willrich is also directs Phoenix International’s lawyering process program, often known as legal research and writing.

Phoenix International aims to create practice-ready attorneys, granting Willrich the unique opportunity to demonstrate the way in which students will use the acquired legal knowledge. Lawyering process becomes not just how to write a motion but why.

“If I feel like I am adding the mortar to the wall that the students are building, brick by brick.”

Father knows best

The best lesson Willrich has learned in her career came from the words of her father; “to be a leader, you have to be a servant.”

“My father’s words constantly come to mind to remind me of the humility that it takes to be a leader.”

An integral part of Willrich’s career has been public service. “Public service is often a thankless job, but it is a privilege to do it.”

Dancing to her own beat

Willrich is on the board of directors of Arizona Drum and Dance, where she helps to plan events introducing the beauty of African drumming to Arizona.

She plays African drums, including the African djembe hand drum and the bell and stick drums called dunduns. She performs occasionally with a group in the Phoenix area and in California.

Willrich also serves on the board of directors of First New Life House, a transitional living home for women who are in recovery. There, she provides pro bono legal advice and spiritual counseling.

Telling stories

According to her daughter, Willrich is a very good story teller.

One of the ways that she would persuade her daughter to see her way when she was young was to promise her an adventure story from “Rarebits and the Bunnees,” fictional characters created just for her by Willrich.

“Even now, at the age of 19, she still enjoys a good story. Maybe one day I will write them down.”

Changing times

Ten years ago, Willrich was looking at a career of 20 years on the bench. Today, she is looking at the longevity of teaching the law as well as select opportunities to practice law.

“I am also looking forward to opportunities to contribute to scholarly journals and to work on interesting projects involving access to justice.”

And, she hopes to have completed her Ph.D. in criminal justice by 2008. There is no doubt Willrich will continue expanding her legal path and wear even more hats—and when there aren’t any more to put on, she will create some of her own.
Comments Sought on Proposed Rule Changes

Court Rules
Brian E. Cieniawski

The Arizona Supreme Court has ordered circulated for comment a State Bar of Arizona petition to change Civil Rules 5 and 6 and Supreme Court Rule 124. These rules address the manner and method of serving documents after an appearance has been made, additional time allowed to perform activity triggered by service of the document, and related to electronic filing and delivery. Comments concerning the proposed changes to these rules are due by Monday, November 21, 2005.

Rule 5 proposed changes

The proposed changes to Ariz.R.Civ. P. 5(c) would explain that a document may be served by handing it to the person; leaving it at the person's office with a clerk or the person in charge, or in a conspicuous place if no one is in charge; if a person has no office in charge, or in a conspicuous place if service is made, additional time allowed to perform activity triggered by service of the document, and related to electronic filing and delivery. Comments concerning the proposed changes to these rules are due by Monday, November 21, 2005.

The former State Bar Committee Note to Rule 5 (c) would be stricken and replaced by language explaining the amended rule authorizes service by electronic means if the recipient consents to such service in writing. An electronically served paper must be in final form. The consent to electronic service must be express, and may not be implied from conduct. The new proposed note would also exist.

See Court Rules page 6

Clerk’s Office Adds Services at Northeast Location

By Michael K. Jeanes, Clerk of the Superior Court
Special to Maricopa Lawyer

On September 13, 2005, the long-awaited Northeast Regional Court Center (RCC) was dedicated to the citizens of Maricopa County. Arizona Supreme Court Chief Justice Ruth McGregor and court and community leaders offered words of thanks and appreciation, followed by a ribbon-cutting ceremony.

The Clerk’s Office’s dedication toward serving the needs of our customers made this event extremely exciting. By spreading the word about this convenient location, we hope that many people will take advantage of the Northeast RCC, as an alternative for selected court filings.

The new court complex spans more than 104,000 square feet and houses 12 courtrooms, three justice courts, and state-of-the-art technology, including electronic courtrooms. Within the complex, the Clerk’s Office provides a filing counter with six windows to serve customers. The Northeast RCC will accept filings for civil, family, probate, and tax cases, but will not accept filings in juvenile or criminal cases. Staff will also issue marriage licenses from this location, but will not process passport applications at the Northeast location at this time.

For after-hours filings, an external filing depository box is located at the complex. This service allows customers to file adult case type filings 24 hours a day, seven days a week. Again, juvenile and criminal case filings will not be accepted, and only Superior Court adult case type filings will be accepted, which may require a learning curve from those visiting the complex on Justice Court matters. The external filing boxes have been a popular service with our customers. Last fiscal year, the two external filing boxes in Phoenix and Mesa received 41,929 filings. The addition of the Northeast RCC external filing box will add another level of service to our customers in the Northeast Valley.

The Clerk’s Office is proud of the work and planning that brought this satellite office to reality and of the services offered there. In addition, the trial courts will offer additional services at the center, including a Self-Service Center, Family Violence Prevention Center, Juror Services, Court Interpreter and Translation Services, and a Conciliation Services office.

Finding the Northeast RCC is easy and convenient. The Clerk’s Office is located at 18580 North 40th Street, Suite 120, Phoenix, Arizona 85032, just east of State Route 51 at the Union Hills exit. For additional information about Clerk’s services at the Northeast RCC, contact 602.506.3360.

The new court center is the third part of a long-term plan to create four regional court complexes around the Valley. A Southwest Regional Court Center is planned for the Avondale area. Opening Regional Court Centers as the Valley continues to expand is part of a larger Maricopa County vision to keep pace with growth by offering responsive and responsible service to our citizens. The Clerk’s Office is proud to be an active participant in these and other improvements, as time and technology require us to change and improve in ways that benefit our customers.

Notary Bonds in Other Clerk’s News

Many customers contact the Clerk’s Office regarding the status of notary bonds. In response, the Clerk’s Office created a new website feature to improve customer service and offer quick and easy access to check the status of a notary bond or certificate information. To use this feature, you may access the Clerk’s public website and select “Notary Bonds”, or go to http://www.clerkofcourt.maricopa.gov/notary_bonds/notarybonds.asp.
plain that service by other means, including facsimile and overnight delivery is authorized if the recipient expressly consents to such service in writing. The proposed note also explains that courts are authorized to order service by any means. The proposed note also states that service by electronic means or by other means is complete upon transmission, but also explains that evidence that the intended recipient did not receive a paper served by these methods may defeat the presumption that service has been effected. The amended rule eliminates the requirement that certificates of service must be filed with the court whenever service is effected. The amended rule, however, is not intended to modify the requirement that a certificate of service accompany any paper that is served on a party or is filed with a court.

Rule 6(e) proposed change

The proposed change to Ariz. R.Civ.P. 6(e) would explain that whenever the recipient of a paper has a right or is required to do something within an identified period after service, that five calendar days shall be added to the prescribed, unless service was made by hand-delivery to the person or to that person's office or home. The proposed amended rule would continue to explain that it does not apply to notices of entry of judgment, but would change the word "mailing" to "distribution" to reflect that court clerks may now distribute notices of entry of judgment by mail, electronic mail, or delivery to an attorney drop-box.

Rule 124 proposed change

The proposed change to Arizona Rule of Supreme Court 124 would explain that an electronically filed document shall be deemed filed on the date and time it is received by the court or the court's designee, unless the court later rejects the document for filing. Upon receipt, the court or its designee must transmit to the filing party an acknowledgment indicating the date and time of receipt. If the court later does not accept the document for filing, it must promptly notify the filing party electronically and set forth the grounds for rejection. The proposed amendment would also eliminate language of Rule 124(g) explaining that if electronic delivery or service of documents was completed after 5 p.m., then the documents would have deemed to be transmitted on the next day that was not a Saturday, Sunday, or a legal holiday.

Proposed amendments to Ariz. R.Civ.P. 56

The Arizona Supreme Court has ordered circulated for comment a petition filed by the State Bar of Arizona to change Ariz. R.Civ.P. 56 concerning motions for summary judgment and responses and replies thereto. The proposed amendment of Rule 56(c)(1) would change the deadline for responding to a motion for summary judgment from the fifteen days presently allowed, to thirty days after service of the motion. The proposal also seeks to change the deadline to serve a reply from the present five day deadline to the date of fifteen days after the filing of the response. The suggested changes would bring Arizona's version of Rule 56(c)(1) into conformance with the practice in front of the United States District Court for the District of Arizona. The petition further seeks to change the local rules in Apache County, Gila County, Maricopa County, and Santa Cruz County, to explain that motions for summary judgment must be filed at least 90 days before trial, rather than the current 60 day deadline used in those counties. The proposed amended rule would delete the “at any time” language included in Rule 56(a) and Rule 56(b). Comments concerning the proposed amendments are due by November 21, 2005.

Maricopa County Bar Association Annual Meeting 2005

America West Arena Pavilions
November 15, 2005 5:30—7:00 p.m.

Attend this unique membership reception with members of the Judicial and Legal Community

Visual Presentation
MCBA Year in Review: The Power of Membership

Hors d’Oeuvres
No Host Bar Free to all MCBA Members
$25 for Non-Members

Contributions to benefit the Justice Learning Center and Museum and MCBA Young Lawyers Division’s Hurricane Katrina efforts are kindly appreciated

Must RSVP by November 10, 2005
Andrew Pickering at (602) 257-4200 x107

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 can be e-mailed to kbrieske@mcbabar.org or mailed to: Editor, Maricopa Lawyer, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, AZ 85004.
Making the Big Move the Right Way

**Q** What can you do to be prepared before the movers arrive?

Even after making the decision to hire a mover there are still several things that you can do to help make your move easier and less stressful. A mover can be hired to do as much or as little as you need, from packing your entire house to just moving boxes that are already packed and ready to go. Depending on what you hired the mover to do, being organized is the key to a stress-free move.

- Two to four weeks in advance, you should make reservations with the moving company, clean out those forgotten locations such as the attic, and arrange for your change of address with the post office.
- One to two weeks in advance, you should make a survival closet that includes the last things to be packed, label all boxes with their new room destination, and schedule disconnect dates for your utilities and cancel your regular house services such as lawn maintenance.
- The day before your move, don’t forget to clean out the stove, defrost the refrigerator and say goodbye to your neighbors.

**Q** What is most important about a commercial move?

The key to the success of any commercial move is communication, planning, and management. First, the moving company needs to identify what is most important to their customer in making the move successful. This may be completing the move in a certain time frame, minimizing your downtime to limit the disruption to employees and your customers, completing the move within a certain budget or something else critical to keep your operation running smoothly. Knowing your priorities enables the movers to make sure the move exceeds the expectations.

- Conduct a pre-move conference with managers.
- Communicate with all employees so they know their roles and responsibilities.
- It’s recommended that employee participation be limited on move day.
- Also, make sure you have other professionals on hand such as electricians and plumbers who may need to discuss how to safely disconnect and reconnect your equipment while the movers take care of logically relocating the items.

**Q** What questions should you ask moving companies when considering a professional mover?

Selecting a mover is a huge decision and shouldn’t be taken lightly whether it is residential or business related. Many people just go with the mover who is the least expensive, but that can be a dangerous decision. In order to make the best decision for you, research is key. Make sure you fully understand the services each mover provides and the fees involved. Anyone in Arizona can slap a sign on a truck and declare themselves a mover, so it is especially important to take all the precautions you can to protect yourself and your valuables.

- To help you fairly compare the services and benefits of the moving companies you are considering, the following is a list of questions to ask each of them:
  - Is the moving company licensed?
  - What is their experience moving businesses?
  - Does the company charge by the piece or by the hour?
  - Do they have a minimum charge? How are you charged after the minimum is met?
  - How do they charge for larger items such as pianos, large screen televisions, or an extra flight of stairs?
  - Do they charge for travel time from their office to your home or business?
  - What type of payment do they accept?
  - Do they have full-time employees or do they use temps or day labor?
  - Are items insured during the move?
  - What kind of cancellation policy do they provide?
  - Do they offer free estimates?
  - Do they offer suggestions on how to make the move easier?
  - Do they have contact numbers for the day of the move should a challenge arise?

**On the Road Again**

**Q** IS PLEASED TO ANNOUNCE THAT

**MONIQUE A. SIMPSON**

**ANGELY Gonzalez**

HAVE RECENTLY PASSED THE ARIZONA STATE BAR EXAMINATION AND HAVE JOINED THE FIRM AS ASSOCIATE ATTORNEYS

Our firm continues to provide quality insurance defense legal services throughout the state of Arizona.

2700 N. Central Ave., Suite 800
Phoenix, Arizona 85004
(602) 274-8289

**Winton Woods**

Law Office Computing

**THOMAS, THOMAS & APPEL, P.C.**

**I was recently stuck out of town on a family emergency and was unable to bring my laptop, so I was consigned to using public computers. This column is an update on the pleasures and travails of working over the Internet.**

I have learned some important things during the last year, not the least of which is the Kinko’s (which had a service in the hotel where I stayed) has in place a filter that prevented me from accessing my email from the university servers. I was able to make plane reservations and send email from another server but my important mail was locked up on the law college server.

I was fortunate to find another access point from an Internet café very similar to the ones that seem to be on every street corner in every city I have visited outside the United States. However in Los Angeles, they are hard to find. Luckily, I was able to use the Kinko’s computer to Google a place that had computer reservations and without restricted access.

What follows is a summary of the tools available for the sometime traveler.

**Computer voicemail**

I have recently started to have my office phone calls forwarded to my phone at Vonage.com, where they are converted into a .wav file that is, in turn, sent to me as an e-mail attachment. Since the .wav file is played in Windows Media Player, I am able to access my voicemail from any computer with speakers. I have found that the Vonage Forward to E-mail service is incredibly useful both at home and on the road. Try it—you’ll love it!

I will talk more about Vonage and detail its incredible range of options in a future column but for now check out the long list of telephone services you can get for $15 a month at Vonage.com.

**Webmail default**

If all you really need to do is to check your e-mail, then webmail is probably enough if you can find a computer to access the Internet. I use a wonderful service from Geo-Express.com that links all of my Internet resources in one place and gives me access to most newspapers free of charge. Most commercial Internet Service Providers provide webmail services and all you need to do is log on from any computer with a web browser to check your mail. You can have your office forward your mail (or better yet, only part of it) to the webmail site.

If you don’t have a laptop with you, computers with Internet access are almost everywhere, and webmail is the easiest way to go. I was even able to access some webmail from Kinko’s but since I had not had my university server mail forwarded to a Web portal I was stuck. You may want, and need, more. For example, you may need a lot of important files and the programs that run them on a regular basis. Here are some of the ways you can do that.

**Broadband access everywhere**

It is amazing how accessible the Internet has become by virtue of the rapid and massive rollout of broadband connections in recent months. Philadelphia, San Francisco and a few other cities will soon provide free wireless broadband access from most places. If you are staying in one of the major chain hotels (both first class and budget), you will probably be able to purchase a broadband connection for about $10 per day. Some even offer broadband free as an incentive to stay there. If you frequent Starbucks when you travel, you can sign up for T-Mobile wireless service that you can access from most of its locations as well as many other places. There are other wireless access points, or hotspots, in virtually any location. Intel provides a service for locating them at http://intel.jiwire.com/index.htm.

**Office computer replication**

If you have access to a physical broadband connection through the network port on your laptop, the choice for connecting with your home or office is easy. GoToMyPC (www.gotomypc.com) allows you to replicate your home or office computer on your laptop. If your broadband connection is fast, GoToMyPC allows you to work on your distant computer just as if it were in front of you. Although it is less effective on a slow connection, it still works. It is a remarkable program that has received rave reviews from almost everyone.

Because of the way GoToMyPC accesses your home computer, it is technically very secure and clearly appropriate for everything but the most sensitive kind of work. GoToMyPC requires that your home computer be turned on and booted up—but there is some kind of glitch, like a power outage or other computer failure, you may not be able to access your computer until it has been restarted. You
October 2005

Same-day CLE registrations/payments, $15 additional.

2 Navigating the Legal Waters of Rehabsilitating the Rio Salado River
10 a.m. to noon, Rio Salado Gateway, 2901 South Central Avenue, Phoenix, Arizona
CLE: 2 hours
As the City of Phoenix completes the Rio Salado Habitat Restoration Project, we are pleased to offer a sneak preview into the legal considerations involved in restoring 600-acres of the Salt River to its native wetland habitat. We will look at the legal agreements and partnerships made with the U.S. Army Corps of Engineers, Flood Control District of Maricopa County, as well as a private partnership with the National Audubon Society. The City of Phoenix will also provide a guided tour to discuss what it took to design, construct and fund the $100 million dollar project.
Cost: MCBA member attorneys, $50; member paralegals and public lawyers, $35; non-member attorneys, $70; non-member paralegals and public lawyers, $55

3 Representing Authors and Screenwriters
9 to 11 a.m., ASU Downtown
CLE: 2 hours general
The MCBA is proud to present Michael Levin, a noted scholar and author, as he focuses on how to successfully represent your literary-inclined client. We’ll discuss what you need to know about literary agents, the world of publishing, taking the script from page to screen, and the screenwriter’s/author’s rights.
Cost: MCBA member attorneys, $50; member paralegals and public lawyers, $35; non-member attorneys, $70; non-member paralegals and public lawyers, $55

4 Juvenile Transfers
1 to 3 p.m., ASU Downtown
CLE: 2 hours
In this seminar, attendees will learn practical information about how the juvenile transfer process works, including how to prepare for a hearing, what to expect, how to counsel clients and how to spot issues for appeal. This seminar will be helpful to juvenile delinquency and adult criminal practitioners alike.
Cost: MCBA member attorneys, $50; member paralegals and public lawyers, $35; non-member attorneys, $70; non-member paralegals and public lawyers, $55

7 Maricopa Lawyer Editorial Board (B), 5:15 p.m.

8 Estate Planning Breakfast: Issues Related to Financial Exploitation/Vulnerable Adult Statutes
7:15 to 8:30 a.m., ASU Downtown Center
CLE: 1 hour general includes breakfast
This intermediate seminar will feature a review of Financial Exploitation Statutes—A.R.S. §46-456 and related statutes; including a discussion on what you should and should not do in statute related cases, mandatory and discretionary penalties, and application on penalties to the improper use of Powers of Attorneys. The presentation will also discuss proposed changes to A.R.S. §46-456.
Cost: Estate Planning Section members, $25; MCBA member attorneys, $30; member paralegals and public lawyers, $25; non-member attorneys, $40; non-member paralegals and public lawyers, $30

9 MCBA Executive Committee (A), 7:30 a.m.
Environmental Board (A), noon
Hayzel B. Daniels Bar (B), 6 p.m.

14 YLD Board (A), noon
Paralegal Board (A), 5:30 p.m.

15 Employment Law Board (C), 11:30 a.m.
LRS Committee (A), noon

16 Criminal Law Section (C), 7:30 a.m.

17 Estate Planning/Trust Board (C), 7:30 a.m.
Personal Injury/Neg Section (A), noon
MCBA Board (A), 4:30 p.m.

18 MCBA, 7:30 a.m.
CCD Luncheon: Email the Silent Killer of Companies 11:45 a.m. to 1 p.m., University Club
CLE: 1 hour
This presentation will address the growing danger to companies caused by employees’ unmanage use of e-mail, and what can be done to stop it. Corporate Counsel will benefit from this presenta-

This calendar includes 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), 302 E. Monroe, Phoenix; and the Arizona Club, 10th floor, bank One building, 201 N. Central Ave., Phoenix. For more information about MCBA events or to register for any of the MCBA seminars, contact the MCBA at 602-257-4200 or visit www.maricopabar.org.
Donald L. Myles Jr., a partner with Jones, Skelton & Hochuli, P.L.C., has been elected chair of USLAW Network.

USLAW Network is a national organization composed of 58 law firms in 44 states with a membership of over 3400 lawyers. USLAW Network attorneys are experienced in both litigation and have substantial trial experience. The commitment of member firms is to provide high quality legal representation to major corporations, captive insurance companies, insurance carriers, and to both large and small businesses across the United States.

Myles (J.D., 1982, Southwestern University) practices insurance bad faith, professional liability, construction and products liability litigation.

Bill Maledon, a founding partner at Osborn Maledon, P.A., has been appointed to a three-year term on the United States Standing Committee on Rules of Practice and Procedure for the Federal Courts.

The 11-person committee oversees the various Federal Rules Advisory Committees—appellate, bankruptcy, civil, criminal and evidence. It also serves as the liaison with Congress on all legislation affecting rules changes and the federal rules generally. Six federal judges and five attorneys or law professors from around the country serve on the Committee, and the U.S. Solicitor General is an ex officio member.

Maledon (J.D., 1972, University of Notre Dame) practices antitrust, securities, commercial, sports and other complex litigation.

Arizona Supreme Court Chief Justice Ruth McGregor has been selected by the American Judicature Society to receive the Dwight D. Opperman Award. AJS presents the award annually to a state court judge to recognize a career of distinguished judicial service.

AJS is a national, nonpartisan organization that works to maintain the independence and integrity of the courts and to increase public understanding of the justice system.

McGregor (J.D., ASU) has been on the Arizona Supreme Court since 1998 and is only the second woman in Arizona history to serve as chief justice. Previously she served on the Arizona Court of Appeals as well as practicing law privately.

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Four Tips for Using Gender-Neutral Language

One of the most frequent questions I am asked during writing seminars is how to use gender-neutral language in a legal document. The questioner is usually quick to point out that the use of constructions such as “he/she” or “s/he” is cumbersome to the writer and distracting to the reader; I agree. Thus, my response to the questioner is this: if the legal writer’s goal is to produce a clear, concise document that avoids offending its readers, the legal writer should avoid gender-linked pronouns, as well as awkward gender-neutral constructions such as “he/she,” if possible.


1. Avoid using a pronoun at all. Suppose a sentence in a document reads as follows: “The attorney must file her appearance.” If the document is not referring to a specific, known attorney, some readers might find the sentence objectionable because it presumes that the attorney is female by the use of the pronoun “her.” One way to avoid this language is to take out the pronoun. This may mean that the legal writer will need to insert an article (a, an, the) into the sentence to aid clarity. Following is an example: “The attorney must file an appearance.”

2. Change the singular nouns to plural nouns. Using this technique, the sentence referenced above would change to the following: “Attorneys must file their appearances.”

3. Use the pronoun “one.” Using this technique, the sentence referenced above would change to the following: “One should file one’s appearance.”

4. Use the pronoun “you.” Using this technique, the sentence referenced above would change to the following: “You must file your appearance.” This technique is a last resort and generally works best in less formal documents, such as letters. If none of the four techniques work, the preferred gender-linked pronoun phrase is “he or she.” Although its use can seem awkward in a long document, the phrase “he or she” is less distracting to a reader than an unconventional (and oddly punctuated) construction such as “he/she” or “s/he.”

Computing

There are other options to laptops however, there are several PDA type devices that claim to bring you interactive access to your calendar and e-mail around the clock. I have looked at several of them, and it seems that the Blackberry handheld device is far and away the one most lawyers prefer. It is expensive, but it does provide the total connectivity that many desire or need. The new Treo 650 phone and PDA combination is very nice but very expensive. Check with your cell phone provider to see which option is cheapest. There is a lot of competition in this field, giving you a lot of choice. And you cannot underestimate the cool factor these phone and PDA tools provide.

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 can be e-mailed to kbrieske@mcbabar.org or mailed to:

Editor, Maricopa Lawyer, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, AZ 85004.
New Arizona Legislation in Effect

By Thomas J. Murphy
Special to Maricopa Lawyer

New legislation passed by the Arizona state legislature has recently taken effect. This article highlights the legislation that will primarily affect probate and estate planning practitioners.

This year, 334 bills were passed. All bills have an effective date of August 12, 2005, unless a new statute indicates otherwise. To access any session law, visit www.azleg.state.az.us/sessionlaws.asp and click on the particular chapter number you are seeking. Here are the new statutes that caught my eye:

**Chapter 195 – Uniform Disclaimer of Property Interest Act**
This is by far the most significant session law passed this year for probate and estate planning practitioners. It repeals ARS 14-2801, the disclaimer statute (that was the prior uniform act) and enacts a new ARS 14-10001 et seq.

It applies to “any interest in or power over property, wherever created.” Any disclaimer must be in writing, describing the disclaimed property, signed by the disclaimant and delivered to the appropriate person or entity. Delivery can be by first class mail or “any other method likely to result in its receipt.” ARS 14-10005(e). The Act then provides for specific situations. For decedent’s estates, delivery must be made to the personal representative or trustee. If there is no personal representative or trustee, then the disclaimer must be filed with the probate court where the probate would otherwise be opened. For a beneficiary designation, delivery must be made to the person who made the designation or, if that person is deceased, to the “person obligated to distribute the interest.” For joint tenancy property, delivery is made to the surviving joint tenant. ARS 14-10012.

Most importantly, there is no longer a required nine month period to disclaim. However, for a tax-qualified disclaimer, the nine month period set forth in IRC 2518 still must be met. A disclaimer is “not a transfer, assignment or release.” ARS 14-10005(f). This is important for creditor protection purposes. A disclaimant will be treated as never having received the property, so the disclaimant’s creditor cannot reach the disclaimed property.

**Chapter 165 – Creditor Protection of Life Insurance**
This bill is an apparent legislative response to the case of May v. Ellis, 208 Ariz 229 (2004), that held that insurance policies are protected from creditors of the deceased insured’s probate estate. The bill expressly extends the May holding to annuities by amending ARS 20-1131 and 33-1126. The $25,000.00 cap is eliminated for policies and annuities that are at least two years old and name a family member as beneficiary. The protection also includes cash surrender values. The protection does not apply to policies or annuities that were pledged as collateral for a loan.

**Chapter 137 – Emancipation of Minors**
This bill creates a new ARS 12-2451 through 2456. It sets forth what must be included in a petition for emancipation, the factors for a court to consider and the effect of emancipation – ability to contract, to sue and be sued, etc.

**Chapter 127 – POD Accounts Held by Trust Companies**
This bill amends ARS 14-6301 by specifically including investment accounts held by trust companies within the definition of a security for purposes of non-probate (POD) transfers at death.

**Chapters 303 & 264 – Tax Exemption and Credit for Active Duty Military Members**
This bill provides an income tax exemption for all income earned by military personnel while on active duty for the 2006 tax year. If the only source of income is the active duty pay, then no income tax return need be filed.

Employers of Arizona National Guard members who are recalled to active duty may take a $1,000 credit for each recalled employee.

**Chapter 334 – Partial Conformity with Federal Tax Code**
After much wrangling and a veto by the governor, this bill is much the new ARS 14-10016.

The new legislation will apply to any property where the nine month disclaimer period had not expired at the effective date of the legislation (August 12, 2005). ARS 14-10016.

**Chapter 27**
Donna M. Hougen has joined Winsor Law Firm, PLC as a junior partner.
Hougen (J.D., 1996, University of Arizona) practices general litigation with a focus in family law.

**Chapter 239**
William F. King has joined Bonnett, Fairbourn, Friedman & Balint, P.C. as an associate.

King (J.D., 2005, Creighton University School of Law) is a part of the firm’s litigation practice.

**Chapter 123**
Tamara L. Barner, Benjamin J. Naylor, Denten D. Robinson, Michelle J. Roddy, and S. Gary Shullaw have all joined Quailes & Brady Streich Lang LLP as associates.

Barner (J.D., 2005, Georgetown University Law Center) practices with the real estate practice group.

**Chapter 119**
Robinson (J.D., 2005, Columbia University) concentrates on developing his real estate and federal and Indian gaming law practice.

Maurice D. Roddy (J.D., 2005, University of Iowa) joins the litigation practice group.

Shullaw (J.D., 2005, University of Iowa) focuses primarily on corporate services including mergers and acquisitions, business transactions, and federal and state securities law compliance.

**Chapter 115**
Matthew C. Burbach and Stacy L. Luedtke have joined Lewis and Roca as associates.

Burbach (J.D., 2005, Georgetown University Law Center) practices with the real estate group.

Luedtke (J.D., 2002, Chicago-Kent College of Law) joins the firm’s insurance and product liability group.

See New Legislation page 16

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Maricopa County Bar Association
Candidates for MCBA Board of Directors Ready to Serve Legal Community

Thirteen candidates are running for five seats on the Maricopa County Bar Association Board of Directors.

Ballots were mailed on Nov. 1 to all MCBA members, who may vote for up to five candidates. Write-in votes are permitted. Ballots must be returned to the MCBA no later than November 25.

The MCBA Board is composed of 19 active members and 10 ex-officio members. Four of the 19 active members are the presidents of the Young Lawyers, Public Lawyers, Corporate Counsel and Paralegal divisions. The other 15 members are elected by MCBA general membership. Each year, five seats are open for election.

The terms of the board members who are elected to the five officer positions each year are extended automatically for an additional year to allow them to serve as officers during that time.

The 13 candidates for the five open seats provided the following biographical information about themselves.

David H. Benton
Arizona Supreme Court
Legislative Officer in the Administrative Office of the Courts, administrative arm of the Arizona Supreme Court. Lobbyist with legislative team that assists the Supreme Court in administering the statewide court system. Former attorney with the Maricopa County Attorney’s Office, Division of County Counsel; County Counsel in Charge of the Planning and Development Department; land use attorney for the Maricopa County Board of Supervisors.

Brian M. Bergin
Nearhood Law Offices
Practices commercial litigation and administrative law, including real property, lease and contract disputes, construction law, consumer fraud and corporate governance issues. Licensed to practice in state and federal courts in Arizona and Nevada. MCBA litigation section. Member, Arizona Celtic Bar Association. Member, Knights of Columbus. J.D., 1993, ASU.

Jennifer E. Green
Maricopa County Attorney’s Office
Deputy County Attorney, Maricopa County Attorney’s Office, Vehicular Crimes. Formerly prosecutor in Gilbert. Law Clerk, Arizona Court of Appeals. MCBA YLD President and 5-year YLD Board Member. Law Week Co-Chair, Barristers Ball, Domestic Violence, and 5K Run Committees. Wants to see public lawyers represented. Former President, Sandra Day O’Connor Inn of Court. J.D., 1997, ASU College of Law.

Keelan S. Bodow
Arizona Attorney General’s Office
Litigates child abuse and neglect as Assistant Attorney General. Former Officer of State Bar YLD; Former Chairperson of State Bar and MCBA Speakers Bureau; Former Chairperson of MCBA Attorneys Teaching Tolerance. President of Brown Club of Phoenix, founder of East Valley Working Moms Group. Member of AWLA. J.D., 1994, University of New York at Buffalo School of Law.

Lori A. Higuera
Fennemore Craig, PC

Jennifer A. Ratcliff
Gallagher & Kennedy, P.A.
Practices general commercial litigation, with an emphasis on condemnation and valuation matters. Serves as Secretary of the MCBA Young Lawyers Division. 2004 Barristers Ball Co-Chair; 2005 Barristers Ball Chair; 2006 Barristers’ Ball Silent Auction Chair. Co-Author of Eminent Domain in Arizona (2d ed. 2004). J.D., 2000, UA College of Law.

Marlon E. Branham
Branham Law Offices, P.C.
Practices personal injury law, family law, and criminal defense. Serves as Vice Chairperson to the Mesa Judicial Advisory Board and serves under contract as a legal consultant for students at Mesa Community College. Prior member of the Mesa Process Improvement Committee for the U.S. Postal Service and Board for Dobson Place Homeowner’s Association.

Carrie J. Brennan
Arizona Attorney General’s Office
Practices complex construction defects litigation. Member, Los Abogados; Internet E-Commerce & Technology Law section; Thurgood Marshall Inn of Court. Former Assistant Attorney General. Practiced law in Chicago representing healthcare entities. While in Chicago held leadership positions with the Chicago Bar Association. In Arizona, served as Director for Arizona Bar's Independent Living, Past President of homeowners’ association, and involved with cub scouting. J.D., ASU. LL.M. in Health Law, Loyola University.

Jennifer A. Kercsmar
Snell & Wilmer L.L.P.
Practices commercial litigation, including commercial leasing, banking and lending disputes, international dispute resolution and ADR. Admitted in Arizona and Delaware, Board Member, Maricopa County Bar Foundation; Committee Co-chair, MCBF/VLP Pro Bono Golf Classic; Participant, Class XX, Scottsdale Leadership. Former Member, Thurgood Marshall Inn of Court. J.D., 1998, Penn State University.

Rod Galarza
Kasdan Simmons Riley & Vaughan, LLP

W. LaNelle Owens
Quarles & Brady Streich Lang LLP

Jennifer A. Ratcliff
Gallagher & Kennedy, P.A.
Practices general commercial litigation, with an emphasis on condemnation and valuation matters. Serves as Secretary of the MCBA Young Lawyers Division. 2004 Barristers Ball Co-Chair; 2005 Barristers Ball Chair; 2006 Barristers’ Ball Silent Auction Chair. Co-Author of Eminent Domain in Arizona (2d ed. 2004). J.D., 2000, UA College of Law.
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Bill could require U.S. Supreme Court to televise proceedings

On September 26, Senate Judiciary Chair Arlen Specter [R-PA] introduced Senate Bill 1768, a measure that would permit television coverage of all open sessions of the Supreme Court, unless a majority of the justices should decide that allowing such coverage in a particular case would violate the due process rights of one or more of the parties appearing before the Court. Senators George Allen [R-VA], John Cornyn [R-TX], Russel D. Feingold [D-WI], Chuck Grassley [R-IA], Patrick J. Leahy [D-VT], and Charles E. Schumer [D-NY] co-sponsored the bill.

Specter said the bill is aimed at opening the Supreme Court doors “so that more Americans can see the process by which the Court reaches critical decisions of law that affect this country and everyday Americans.” “The public has a right to know what the Supreme Court is doing,” Specter said on the Senate floor as he introduced the bill.

Although the Supreme Court could permit television coverage on its own motion, its failure to do so presents, in Specter’s view, “the necessity for legislating on this subject.” “Beyond [the] general policy preference for openness,” said Specter, “there is a strong argument that the Constitution requires that television cameras be permitted in the Supreme Court.” After reciting case law holding that the Constitution guarantees to the press and the public access to judicial proceedings, Specter told the Senate that “a strong argument can be made that forbidding television cameras in the court, while permitting access to print and other media, constitutes an impermissible discrimination against one type of media over another.”

But does Congress have the authority to create legislation requiring the Supreme Court to permit television coverage of its open proceedings? “In my judgment,” explained Specter, “Congress, with the concurrence of the President, or overriding his veto, has the authority to require the Supreme Court to televise its proceedings. Such a conclusion is not free from doubt and is highly likely to be tested with the Supreme Court, as usual, having the final word. As I see it, there is clearly no constitutional prohibition against such legislation.”

Judicial conference taking no position on Ninth Circuit split

At its September semi-annual meeting in Washington, the U.S. Judicial Conference agreed not to take a position on legislation aimed at splitting the Ninth Judicial Circuit into smaller units. Ninth Circuit Chief Judge Mary M. Schroeder praised the decision as being consistent with longstanding Conference policy to take no position unless asked to do so by the judges in the affected court.

Beginning with the body of judges making up the Ninth Circuit Court of Appeals and the Judicial Council of the Ninth Circuit, Schroeder said there is “overwhelming[] opposition to any split.” Schroeder also named the organized bars of Arizona, Hawaii, Montana and Washington, four of the nine states enveloped by the Ninth Circuit, as having voiced opposition to a split.

While the decision was made by the Conference to take no position on a Ninth Circuit division, the Conference did say that any consideration of a split of the circuit should not be linked to a judgeship bill. Additionally, the Conference said that it would oppose any legislation that would inadequately fund or insufficiently provide judicial resources for new circuit structures.
Volunteer Lawyers Program

Thanks Attorneys

The Volunteer Lawyers Program thanks the following attorneys and firms who accepted these cases during the past four months to assist 136 low-income families. Each attorney receives a certificate from the Maricopa County Bar Association for a CLE discount.

Assistance to Non-Profit Organizations:
- Ellis Carter
  - Quarles & Brady Streich Lang
- Raya Tahan
  - Sole Practitioner
- Mark A. Bregman
  - Bregman & Bart
- Scott K. Brown II
  - Lewis & Roca
- Andrew M. Ellis
  - Sole Practitioner
- David Wm Engelman
  - Engelman Beger
- Jeffrey A. Katz
  - Sole Practitioner
- Keith M. Knowlton
  - Sole Practitioner
- Kent Lang
  - Lang & Baker
- Charles E. McThuery
  - 4 cases
  - Sole Practitioner
- Suzanne K. Weathermon
  - Lang & Baker

Consumer:
- John P. Ager
  - Robbins & Creen
- Leonard W. Aragon
  - Caviggia & Burnham
- Timothy H. Barnes
  - Sole Practitioner
- Daniel P. Beeks
  - Mohr Hackett Blakley Pederson & Randolph
- David M. Bell
  - David Bell & Associates
- Brian Booker
  - Bowman & Brooke
- George Coleman III
  - Snell & Wilmer
- John S. Craig
  - Quarles & Brady Streich Lang
- John Curtis, II
  - Burch & Cracchiolo
- Tasha N. Cycholl
  - Low & Childers
- Kimberly A. Demarchi
  - Lewis and Roca
- Robert DuComb, Jr.
  - Sole Practitioner
- Steven J. Duffy
  - Isaacs & Duffy
- John J. Egbert
  - Jennings Stroup & Salmon
- Patrick K. Fowler
  - Snell & Wilmer
- David E. Funkhouser III
  - Quarles & Brady Streich Lang
- Richard N. Goldsmith
  - Lewis and Roca
- Carolyn Matthews
  - Mohr Hackett Blakley Pederson & Randolph
- Kirk McCawville
  - Sole Practitioner
- Ernest Modzelewski
  - Sole Practitioner
- Thomas Moring
  - Merritt & Associates
- William J. Morris
  - Levenbaum & Coher
- Philip R. Rupprecht
  - Hecht Schiefer
- Kira A. Schlesinger
  - Lewis Brisbois Bisgaard & Smith

Richard A. Segal
  - Cast Rosenfeld
Debra A. Sirover
  - Bryan Cave
Michael Stark
  - Ira Stark & Williamson
Ralph Strebel
  - Winsor Law Firm
Bruce A. Suzuki
  - Bryan Cave
Dawn C. Valdivia
  - Quarles & Brady Streich Lang
Michael Yates
  - Snell & Wilmer

Employment:
- Suzanne M. Dobr
  - Dobr & Watts
Barbara A. Hoerner
  - Fadell Cheney & Bart
Janice Harrison Moore
  - Fadell Cheney & Bart
James Dunn Shields
  - Sole Practitioner

Family Law/Domestic Violence:
- Shannon Bradley
  - Sole Practitioner
Heather Bucht
  - Quarles & Brady Streich Lang
Clarence Calvin, III
  - Sole Practitioner
Michael J. Cohen
  - Sole Practitioner
Roger R. Gilbert
  - Walter Angle Hallam Jackson & Forman
Gary L. Lane
  - Sole Practitioner
Lisa A. Maggioni-Corner
  - Lieberman Dodge Gerding & Anderson
Teri D. McCall
  - Kramer & Derrick
Gregory Michael
  - Sole Practitioner
Stephen Murphy
  - Sole Practitioner
Sharon Ottenberg
  - Office of S. Alan Cook
James Osborn Popp
  - Sole Practitioner
Stephanie A. Stromfors
  - Bishop Law Firm
Josh Valdez
  - Rose & Hildbrandt
Marie Zawrowski
  - Zawrowski Law Offices

Guardians Ad Litem for Children in Family Court:
- Corey D. Babington
  - 2 cases
  - Quarles & Brady Streich Lang
- Sarah L. Barlow
  - Stinson Morrison Hecker
- Irene Boland
  - Arv Caillos & Associates
- Florence Brumm
  - Sole Practitioner
- S. Alan Cook
  - Sole Practitioner
- Jessica M. Cotter
  - Law Office of Bruce D. Brown
- Jennifer G. Gadow
  - Fennermore Craig
- Erin Gallagher
  - Owens & Perkins
- Stuart J. Gerrick
  - Sole Practitioner
- Harold M. Gilbert, Jr.
  - Mesa Community Action Network

William A. Hicks III
  - Snell & Wilmer
Tammi Hugo
  - Sole Practitioner
Lisa B. Johnson
  - Stone & Davis
Kelly W. Lewis
  - Maricopa Weeks Mcintyre & Friedlander
Danielle J. Malody
  - Snell & Wilmer
Denise M. Quinterri
  - State Bar of Arizona
Debra L. Runbeck
  - 4 cases
  - Jerome Gabriel Stewart Friedman Stevenson & Angle
Jennifer W. Shick
  - 3 cases
  - Shuck Law Offices
William R. Wingard
  - Cole and Wingard
Claudia D. Work
  - Maricopa Weeks Mcintyre & Friedlander

Guardianships of Minor Children:
- David S. Barton
  - Quarles & Brady Streich Lang
Kathleen A. Bierterfeld
  - 2 cases
  - Quarles & Brady Streich Lang
Joseph M. Boyle
  - 2 cases
  - Basha Boyle & Jones
Jamie D. Burgess
  - 2 cases
  - Fennermore Craig
Joan S. Burke
  - Osborn Melen
William F. Doran
  - Sole Practitioner

John Drazkowski
  - Garett Baker Hickman & Houston
Ronda R. Fisk
  - Osborn Melen
Jerome Froimson
  - Sole Practitioner
Shelley Digiorno
  - Osborn Melen
Matthew Fischer III
  - Snell & Wilmer
Ronda R. Fisk
  - Osborn Melen
Christy Jensen
  - Snell & Wilmer
Susan Klemmer
  - Greenberg Traurig
Aaron Ludwig
  - Ludwig Law Offices
Clarence Mather
  - State Bar of Arizona
Melanie McBride
  - Plattner Verdemar
Andre H. Merrett
  - 2 cases
  - Quarles & Brady Streich Lang
Tony Merrill
  - 2 cases
  - Bryan Cave
Marcie Montgomery
  - Snell & Wilmer
Yvonne D. Moss
  - Quarles & Brady Streich Lang
  - 2 cases
Kevin J. Parker
  - Snell & Wilmer
Scott Schwartz
  - Snell & Wilmer
Nancy Tribbusen
  - 2 cases
  - ASU Office of General Counsel

Guardianships of Incapacitated Adults:
- Dorothy E. Brogan
  - Sole Practitioner
- Kristin L. Copeland
  - Sole Practitioner
- Matthew Green
  - Sole Practitioner
- Charles M. Dyer
  - Bregman & Burt
- Jennifer H. Hill
  - Bregman & Burt
- Michael L. Parks
  - Bregman & Burt
- Wilfred L. Taylor
  - Sole Practitioner

Home Ownership Issues:
- John L. Blanchard
  - Osborn Maledon
- Scott K. Brown II
  - Lewis & Roca
- Timothy J. Casey
  - Snell & Wilmer
- George Coleman III
  - Snell & Wilmer
- Shelley Digiorno
  - Osborn Maledon
- William F. Haug
  - Jennings Haug & Cunningham
- Daniel L. Kaplan
  - Osborn Maledon
- Melissa M. Krueger
  - Snell & Wilmer
- Ruth Levitt
  - Sole Practitioner
- Catherine Marie Lockard
  - Bryan Cave
- Julie Maurer
  - Ryley Carlock & Applewhite
- Ronald Messerly
  - Snell & Wilmer
- Jennifer D. Murray
  - Snell & Wilmer
- Mark Ohler
  - Snell & Wilmer
- Michael W. Wright
  - Mohr Hackett Blakley & Randolph

Tax:
- Martha C. Patrick
  - Burch & Cracchiolo

Tenants’ Rights:
- Joseph G. Adams
  - Snell & Wilmer
- Co Horgan
  - Sole Practitioner
- Vera E. Munoz
  - Sanders & Parks
- Matthew Shan
  - Jennings Haug & Cunningham

Tort Defense:
- Frank L. Ballint, Jr.
  - Bonnett Fairbourn Friedman & Ballint
- Daniel P. Beeks
  - Mohr Hackett Pederson Blakley & Randolph
- Ernest Calderon
  - Calderon Law Offices
- George Coleman III
  - Snell & Wilmer

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New Legislation
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same as what has been passed for each of the past several years—conformity with federal code except for a) the deduction for new equipment authorized under IRC sec. 179 is limited to $25,000.00 rather than federal limit of $100,000.00 and b) no bonus (50%) depreciation authorized under IRC 168(k) of any amount will be allowed.

In addition, this bill provides for an increase in the popular income tax credit for joint filers for contributions made to the school tuition program (ARS 43-1089) or public school extracurricular programs (ARS 43-1089.01) so that the joint credit will eventually be double that of single filers. For joint filers, the school tuition credit has increased from $625 for 2004 to $825 for 2005 and $1,000 for 2006. The public school extracurricular credit has been increased from $250 in 2004 to $300 in 2005 and $400 in 2006.

Chapter 206 – Medical Privacy Rights
This is another attempt to conform Arizona statutes to the privacy requirements of medical records set forth in HIPAA, 42 USC 1320d. The bill equates payment records for medical services with medical records, so that both are protected and accessible under HIPAA. It attempts to incorporate HIPAA requirements for subpoenas by amending ARS 12-2294.01 but the new statute still falls well short of what HIPAA requires. (For a thorough review of all HIPAA disclosures issues, to include rules governing subpoenas, visit my website at www.murphylawaz.com.) If there is no healthcare decision maker or none is available, the healthcare provider “in exercise of professional judgment, may determine if disclosure is in the best interests of the patient.” ARS 36-509(7).

Chapter 14 – Release of Lis Pendis
This bill adds to ARS 12-1191 by providing that, once a lis pendis is released, nothing contained in the lis pendis shall constitute actual or constructive notice of any information contained in the initial lis pendis filing.

Chapter 22 – Life Care Contracts
This bill amends ARS 20-1808 by requiring that the provider of services under a life care contract must “possess assets in an amount sufficient to assure full performance” and authorizes the Department of Insurance to establish a reserve fund.

Chapter 25 – Notary Public
This bill amends ARS 41-311. For proof of identification when notarizing a document, a valid, unexpired US passport is sufficient identification. For non-US passports, a “valid visa or other documentation issued by the United States government necessary to establish an individual’s legal presence in the United States.”

Chapter 124 – Electronic Notary Public
This bill provides a procedure for filing complaints against an electronic notary and makes other changes that parallel the filing complaints against an electronic notary public, including the requirement that a notary must “keep as a reference a manual approved by the Secretary of State.” A 91 page manual in PDF format prepared by the Secretary of State can be obtained at: www.azsos.gov/notary/notary_handbook.

Chapter 109 – Uniform Real Property Electronic Recording Act
This creates a new ARS 11-487.01 et seq by adopting the Uniform Real Property Electronic Recording Act. It allows county recorders to accept and record electronic documents. It is effective on December 31, 2005.

Chapter 101 – Financial Exploitation
For lawsuits involving allegations of violations of ARS 46-455 (physical neglect of vulnerable adults), attorneys fees are generally capped at two times the amount of compensatory damages. It amends ARS 12-570 in that any settlement or judgment against a nursing care institution involving ARS 46-455 must be reported to Department of Health Services.

Chapter 291 – Persistently and Acutely Disabled Persons
This bill amends ARS 36-543. For annual review and renewal purposes, persons adjudicated persistently and acutely disabled shall have the same review process already in place for those persons adjudicated gravely disabled.

Chapter 235 – Alzheimer’s Pilot Project
This bill extends authorization of the Alzheimer’s treatment assistive living facility demonstration pilot program from October 1, 2005 to December 31, 2007.

Chapter 309 – Property Tax Exemption for Widows
This bill amends ARS 42-11111 by increasing the income limits in order to qualify for the property tax exemption for widows, widowers and disabled persons. The income cap is increased from $13,200 to $25,000 for those with no minor or disabled children living with the widower and increased from $18,840 to $30,000 for those with minor or disabled children.

Chapter 93 – Restitution
This bill amends ARS 8-344 to specifically allow the estate of a victim of a crime to be notified of all criminal proceedings, to include sentencing and restitution.

Chapter 136 – Spyware
A new ARS 44-8101 et seq prohibits the transmission of spyware. The penalty is the greater of actual damages or $100,000 per violation. This in turn can be tripled if the violator has engaged in a “pattern or practice of violating this chapter.” ARS 44-8104.

Equally important to estate planners was legislation that was not passed. There is still no legislation regarding an Arizona estate tax, even though all states can no longer receive the death tax credit which has now been phased out in 2005 under IRC 2011. Many states, approximately 30 at last count, have passed their own estate tax statutes but Arizona has yet to act. Likewise, there was legislation introduced but not passed regarding same-sex marriage or civil unions.

Thomas Murphy is the founding attorney at Murphy Law Firm, which specializes in estate planning, probate and elder law.