New Family Court Administrator Appointed

Mary Lou Strehle has assumed responsibilities as family court administrator for Superior Court in Maricopa County.

In announcing Strehle’s appointment, Marcus Reinikensmeyer, administrator of the judicial branch in Maricopa County, explained that she was the top choice for the position because of her ability to serve the court with dedication, intelligence and creativity. She has excelled in every assignment she has had with the court.

During her tenure as a court official, Strehle has performed progressively complex and demanding assignments—having provided administrative expertise on a regional and local level. She also worked in interim assignments with Juvenile Court, Justice Courts and Human Relations.

She approaches her new assignment with an understanding of the job at hand.

“The biggest challenge is to ensure consistency and to institutionalize the improvements that have been made under (Presiding Family Court) Judge Norman Davis’ leadership, assisted by my predecessor, Mary Bucci,” Strehle said.

“My most important goal is to do what I can to improve upon those initiatives in Family Court’s pursuit to find better and more efficient ways of delivering service to the public,” she added, noting “I am both humbled and honored by the show of confidence by the court’s leadership in my ability to serve the court in this capacity.”

Past assignments include serving as a regional administrator with responsibility for Superior Court’s daily operations at its Southeast Facility in Mesa, while also overseeing the administration of five Justice Courts in the East Valley. She also helped implement programs for the Early Disposition Court and the Regional Court Center within the Southeast Facility.

Strehle also was tapped to assist other courts facing operational problems, serving the limited jurisdiction courts as the Interim Court Administrator for the Scottsdale City Court and the Guadalupe Municipal Court. Her tasks included implementing solid business practices and procedures.

In 2004, Strehle served as Trial Courts human resources director. The biggest challenge in this capacity was to consolidate all human resource functions into the Judicial Branch.

“Working tirelessly to improve upon those initiatives in Family Court and Justice, Strehle has performed progressively complex and demanding assignments,” Judge Michael D. Jones said. “I am very pleased and proud that our ‘therapeutic’ Mental Health Court is now a national model.”

Jones was honored for his work in the Mental Health Court. The program began in 2002 and is a specialty court within the Superior Court Criminal Department. The court serves seriously mentally ill or developmentally disabled individuals who

See Jones page 10

Lid Still Loose on Criminal Law Hot Topic

By Daniel P. Schack
Maricopa Lawyer

The Arizona Supreme Court recently weighed in on today’s hottest topic in criminal law: Blakely v. Washington. The high court issued opinions that put some of the worms back in that can, even if the lid hasn’t yet been tightly secured.

Blakely v. Washington, 542 U.S. 296 (2004), extended the court’s recent expansion of the scope of the right to a jury trial, including the seminal Apprendi v. New Jersey, 530 U.S. 466 (2000). Blakely held that the jury generally must find any facts used to impose an aggravated sentence beyond the maximum sentence that the judge may impose in the absence of additional findings.

Erring ways

One Blakely issue is how the appellate court should review an error when the defendant did not object at trial. The court addressed it in State v. Henderson, No. CR-04-0442-PR (Ariz. July 8, 2005), in an opinion authored by Chief Justice Ruth V. McGregor.

See Court Watch page 4

Judicial Branch Grand Opening

The dedication and grand opening for the Judicial Branch of Arizona in Maricopa County Northeast Regional Court Center will be at 9:30 a.m. on Sept. 13, at 18380 North 40th Street in Phoenix. The newly constructed court facility, located just east of State Route 51 at the Union Hills Drive exit, will feature 12 Superior Court courtrooms and four Justice Court courtrooms. The facility is the first built from the ground up to include both Superior Court and Justice Court facilities in one building. The Clerk of the Court, the Family Violence Prevention Center and the Self-Service Center will also be housed in the facility.
T

he fall television season is upon us. With no celebrity trials and with the television viewing public realizing that many lawyers just are not as quick to solve crimes, adopt the latest couture, or exercise their libidos as the actors being used to portray attorneys (okay, with the possible exception of William Shatner), the Maricopa County Bar Association has been approached for technical assistance in developing reality television shows. In fairness to our membership, we want to preview these concepts for you before you see them on your flat panels at home.

“$277!” Teams consisting of a senior partner, a mid-level partner, a junior partner, a senior associate, a mid-level associate, a junior associate, and a paralegal travel first class around the globe—west to east, with the goal of billing 27 hours per day for seven days. In a twist, actual work must be performed and value or unit billing will be grounds for disqualification. This concept has been in development and actually cast for several years with the hold up being the identification of clients to provide and pay for the work and the travel.

“Ultimate Cage Match Fighting” Westlaw, Lexis, and Lois Law representatives do battle with Google personnel over the bookmark rights for public sector law departments in Maricopa County. Branded coffee mugs, pens, and catered lunches may be used during the matches.

“May It Please the Court” A twelve episode, fast track series where two teams of lawyers justify, speedily, and inexpensively litigate a case without discovery disputes, without seeing to exceed page limits, and without demanding a court reporter in the e-courtroom.

“Scanners” Six legal assistants vie to find the one working computer scanner that will allow them to file documents with the federal court. The winner will receive one year use of a computer monitor larger than 13 inches and the opportunity to work with an attorney during that year who must say thank you after every successful ECF filing or be forced to do the filings themselves.

“Nullify This” Lawyers actually respond to written questions submitted by jurors during trial and propose plain English instructions for deciding the case.

“CC Fear Factor” Hidden cameras record the multi-tasking shenanigans of attorneys participating in conference calls. The tentative subjects of the calls include scheduling discussions regarding depositions, broadcast taxation seminars, and nonprofit board of directors meetings.

The Best Way to Celebrate Paralegal Day in Arizona

I

t’s official. Governor Napolitano has proclaimed September 23, 2005, as Paralegal Day in Arizona. I can think of no better way for Arizona’s paralegals to celebrate their honorary day than to attend the MCBA Paralegal Division’s sixth annual Arizona Paralegal Conference. As part of the celebration, Arizona Attorney General Terry Goddard will formally present the division with this year’s Paralegal Day Proclamation.

The September 23 conference will take place at the Phoenix Airport Marriott and the event will run from 8 a.m. until 4:30 p.m. This year’s CLE portion of the program includes the following highly anticipated speakers, who will be sharing their knowledge and insight into these timely and favored legal topics:

• Stephen W. Szoradi, Information Technology Manager, Quarles & Brady Streich Lang LLP and Linda G. Sharp, Esq., MBA, Kroll On Track: E-Discovery—Working Through the Legal and Technology Issues
• Tamara S. Herrera, Esq., Arizona State University College of Law: Legal Writing—More than Mere Words
• In addition to offering these continuing legal education sessions, the conference will serve as the paralegal division’s forum for presenting its annual paralegal awards, honorary awards, and student scholarships. Conference attendees will also benefit from the chance to network with peers as well as legal vendors who routinely work directly with paralegals to make their jobs easier and more enjoyable. Finally, every registrant will enjoy the chance to win one of dozens of door prizes, ranging from restaurant and retail store gift certificates to sports tickets, a PDA and a fully-loaded laptop.

I am certain that the above-mentioned activities and events are enough to interest any professional paralegal in Arizona in signing up for Arizona Paralegal Conference 2005. If you have not yet done so, please be sure to register for this fantastic CLE and networking event and celebrate your day—Paralegal Day.

Domestic Violence Awareness Month Right Around Corner

D

did you know that in Arizona, every five minutes, a police officer responds to a domestic violence call? Home is not the only place where we should be concerned. Sadly, the problem is spreading to our workplaces, where people are expressing their anger at work—husbands and boyfriends commit an estimated 13,000 acts of violence against women in the workplace every year. We even have 12 attorneys in the Maricopa County Attorney’s Office Family Violence Bureau who specialize in prosecuting crimes committed by and against sons, daughters, mothers, fathers, boyfriends, girlfriends, and other partners. Domestic violence is a sad reality of our current era, but also an entirely preventable one.

So YLD is doing something about it and has been for quite awhile. This year, our Domestic Violence Committee, led by Julia Acken of the Attorney General’s Office, planned a Mother’s Day Dinner for all items collected to the shelters. Last year, through the generosity of several companies and attorneys, the Necessities Drive supplied deodorant, soap, shampoo, Con-Air hair dryers & curling irons, and other goods to more than 200 women. This year we hope to help more families, and are including food items as well as baby necessities and clothing for women & children.

What can you, young lawyer or not so young lawyer, paralegal or legal secretary, do to help us out? Easy. Contact Mona Fontes at mfontes@mcbabar.org with your donation of goods (preferably new), women’s clothing, or cash (it works, too) and we’ll make sure it gets into the right hands.

YLD Notes: Our Statute of Limitations Guide has been updated and is available in September. Impress your supervision by getting your grubby little hands on these helpful guides that lay out statute of limitations rules in every conceivable area of practice.
Quarles & Brady Streich Lang and Bryan Cave Join MCBA 100% Club

Quarles & Brady Streich Lang LLP and Bryan Cave LLP recently joined the growing list of MCBA 100% Club law firms. The club, which recognizes firms with 15 or more attorneys reaching full attorney membership in the association, was launched a year ago. As part of the club, the two firms receive a certificate of membership and public recognition for their commitment. Other benefits of membership include CLE materials for their law libraries, special advertising rates in the Maricopa Lawyer and invitations to exclusive MCBA 100% Club events.

Through a joint effort between the Maricopa County Bar Association’s board of directors and Quarles & Brady Streich Lang’s managing partners and marketing department, the Milwaukee-based law firm’s Phoenix office registered 27 attorneys to reach full membership. In joining the MCBA 100% Club, Quarles & Brady Streich Lang demonstrates a commitment not only to its clients and the practice of law, but to the legal community as well as the community-at-large. With more than 100 practicing attorneys, the firm becomes the largest member of the club.

Bryan Cave LLP registered the seven remaining attorneys needed to reach full membership of the firm’s more than 70 attorneys, demonstrating its commitment to the legal community and the professional development of the firm’s attorneys. The Maricopa County Bar Association thanks all of the MCBA 100% Club firms for their ongoing dedication and support by making it a priority to have full attorney membership in the organization:

2005 MCBA 100% Club Firms
Quarles & Brady Streich Lang LLP
Bryan Cave LLP
Perkins Coie Brown & Bain PA.
Ryley Carlock & Applewhite
Osborn Maleden
Stinson Morrison Hecker LLP
Burch & Cracchiolo, PA.
Jennings, Haug & Cunningham, LLP.
Tiffany & Bosco PA.
Community Legal Services
Robbins & Green, PA.*
Warner Angle Hallam Jackson & Formanek PLC
Koeller, Nebecker, Carlson & Haluck, LLP
Kunz Plitt Hyland Demlong & Kleinfeld
Meyer, Hendricks & Bivens, P.A.*

Inaugural 100% Club Member
*100 Percent Paralegal Membership

For more information, contact Amy Jean Hicks at 602-257-4200 ext. 128 or abickel@mcbabar.org.

Arizona Paralegal Conference 2005
Sponsored by the MCBA Paralegal Division

“RAISING THE PARALEGAL BAR”
Friday, September 23, 2005
Registration: 7:00 a.m. - 8:00 a.m.
Program: 8:00 a.m. - 4:30 p.m.

PHOENIX AIRPORT MARRIOTT, 1101 North 44th Street, Phoenix

FEATURED TOPICS
- ESTATE PLANNING AND LIVING WILLS
- Managing Your Future Today
- SOX (SARBANES-OXLEY ACT)
- Corporate Governance and its Effect on You (Ethics)
- E-DISCOVERY
- Working Through the Legal and Technology Issues
- LEGAL WRITING
- More Than Mere Words

Includes:
- Continental Breakfast and Buffet Lunch
- Many chances to win fabulous door prizes
- Meet vendors serving legal professionals
- 6 Hours of Continuing Legal Education Credit (1 hour of ethics) for Paralegals

Registration Fees:

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Register online at www.maricopaparalegals.org

MCBA Announcements

Domestic Violence Necessities Drive 2005
The MCBA Young Lawyers Division will be holding its annual Domestic Violence Necessities Drive on October 21, 2005. Donations are being accepted now through October 14. The Domestic Violence Committee is seeking to collect monetary contributions as well as donations including: toiletries, women’s clothing, baby and children’s necessities, and nonperishable food items. For more information, and to donate or volunteer, please contact Mona Fontes at (602) 257-4200 x131 or mfontes@mcbabar.org. You may also visit www.maricopabar.org.

2005 Leadership Institute
Are you interested in serving on Maricopa County Bar Association’s Board of Directors? Do you currently sit on a nonprofit board? Learn what you need to know to prepare for board leadership at the second annual MCBA Leadership Institute. This two-part series is scheduled for October 21 and October 28. Watch for additional details in the October issue of the Maricopa Lawyer and at www.maricopabar.org.

MCBA Annual Meeting
Mark your calendars now. The Maricopa County Bar Association 2005 Annual Meeting will be held on Tuesday, November 15 at the America West Arena. More details to come in the next Maricopa Lawyer and at www.maricopabar.org.

Arizona Paralegal Conference, Friday, September 23, 2005

Address: ________________________________________________
Name: ________________________________________________
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PAYMENT INFORMATION

Check # __________ (make payable to MCBA)
VISA/ Master Card Card # ____________________________ Exp. __________

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REFUND POLICY AND CANCELLATIONS: Refunds, less a $25 fee, will be issued only if the Paralegal Conference Liaison receives your cancellation in writing or by fax no later than 5:00 p.m. Friday September 9, 2005. After this date, no refunds will be given. If you have a paid reservation but did not attend, you may request written materials be sent to you free of charge. If you have a disability, please call ahead so we may accommodate your needs.
An error may be structural. A structural error "deprives the defendant of basic protections without which a criminal trial cannot reliably serve its function as a vehicle for guilt or innocence." Structural errors result in automatic reversal.

Other errors are trial errors. Their proper standard of review depends on whether the defendant objected. If so, the court conducts a harmless error review: the state has the burden of showing beyond a reasonable doubt that the error did not affect the outcome. If the defendant did not object, the court conducts a fundamental error review. The defendant must show that "the error...goes to the foundation of his case, takes away a right that is essential to his defense, and is of such magnitude that he could not have received a fair trial."

McGregor held Blakely errors are to be reviewed for fundamental error. She noted "that prior appellate decisions have not consistently described the showing necessary to establish fundamental error," and acknowledged that one of the court's own decisions "may have contributed to the confusion on this issue."

"We granted review in this case in part to dispel any confusion created by prior decisions," McGregor wrote. "To the extent that any prior decisions are inconsistent with today's holding, we disapprove of them."

Fundamentally correct
Justice Andrew D. Hurwitz filed a concurring opinion. He reluctantly agreed that fundamental error analysis applied. "Were we writing on a clean slate, I would conclude that all.Apprendi error is structural, for the reasons explained by Justices Jones and Feldman in their separate opinions in State v. Ring, 204 Ariz. 534, 65 P.3d 915 (2003) and its progeny."

Hurwitz also opined that the difference between harmless error and fundamental error is academic. "The major conceptual difference is that under fundamental error analysis, the defendant bears the burden of proving prejudice, while under harmless error analysis, the burden is on the [s]tate."

Because a reviewing appellate court will reverse for fundamental error, the burden is on the [s]tate."

"The major conceptual difference is that under fundamental error analysis, the defendant bears the burden of proving prejudice, while under harmless error analysis, the burden is on the [s]tate."

 justice wrote, "To the extent that any prior decisions are inconsistent with today's holding, we disapprove of them."

Foul statute
Justice Michael D. Ryan, writing for a unanimous court, noted that the Arizona Constitution established a liberal workers' compensation system as an alternative to common law tort suits against their employers. Under it, "neither the employee's nor the employer's negligence would affect compensation."

The drug-free workplace statutes ran afoul of this feature.

The case hinged on whether the two subsections "impermissibly define legal causa tion by requiring proof that the presence of alcohol or illegal drugs in a claimant's system did not contribute to the industrial accident."

Under the constitution, Ryan wrote, "an employee demonstrates legal causation by showing that a necessary risk or danger of employment caused or contributed to the industrial accident in whole or in part." He explained that the constitution "requires compensation if a necessary risk or danger of employment partially caused or contributed to the accident."

Ryan noted that the statute "denies compensation to an injured worker unless the worker proves that a necessary risk or danger of employment wholly caused the accident."

This was impermissible: the constitution "does not permit the legislature to limit legal causation in that manner," he concluded.}

Aggravating exceptions
The court resolved what is perhaps a more fundamental issue in the Apprendi-Blakely cases in State v. Martinez, No. CR-04-0435-PR (Ariz. July 8, 2005). Under Apprendi, "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." This raises what might be termed a tipping-point issue: If the jury finds (or the defendant admits) a fact that exposes the defendant to a possible aggravated sentence, may the trial judge aggravate the sentence with additional facts that the jury does not find? In other words, must all aggravating factors be submitted to the jury?

This issue split the Court of Appeals. In the opinion that the Arizona Supreme Court had under review, State v. Martinez, 209 Ariz. 280, 100 P.3d 30 (App. 2004), Judge Jon W. Thompson, joined by Judges Maurice Portley and Daniel A. Barker, ruled that Apprendi and Blakely are satisfied if the jury finds or the defendant has admitted at least one aggravating factor: "[A] jury need not find every aggravator upon which a sentencing judge relies." In State v. Estrada, 210 Ariz. 111, 108 P.3d 261 (App. 2005), Judge Philip L. Hall, joined by Judge Ann A. Scott Timmer, agreed.

Judge Donn Kessler dissented in Estrada. His opinion prevailed in State v. Manning, 209 Ariz. 475, 104 P.3d 204 (App. 2005), where Judge Jefferson L. Lankford, joined by Judges Patrick Irvine and Patricia K. Norris, held that "the decisions of the United States Supreme Court on point yield a clear direction that not just one, but all facts that can be used to increase punishment must be found by the jury."

And in State v. Alire, 209 Ariz. 517, 105 P.3d 163 (App. 2005), Judge Peter J. Eckstrom, joined by Judges Joseph Howard and J. William Brammer, Jr., held that the judge may find aggravating factors only if there are no mitigating factors.

Tipping point
The Arizona Supreme Court held essentially that Apprendi and Blakely establish a tipping point. McGregor, again writing for a unanimous court, noted that the court had not "remove[d] from a trial judge the traditional sentencing discretion afforded the judge, so long as the judge exercises that discretion within a sentencing range established by the fact of a prior conviction, facts found by a jury, or facts admitted by a defendant."

"Once a jury finds the facts legally essential to expose a defendant to a statutory sentencing range," McGregor concluded, "the sentencing judge may consider additional factors in determining what sentence to impose, so long as the sentence falls within the established range."

Workers' complications?
We move now to the workers' compensation system established in the Arizona Constitution and the legislature's attempt to prevent workers from recovering compensation if alcohol impairment or the use of illegal drugs contributes to their on-the-job injury. The Supreme Court addressed this issue in Grammatico v. Industrial Commission, No. CV-04-0197-PR, consolidated with Komalestewa v. Industrial Commission, No. CV-04-0364-PR (Ariz. Aug. 10, 2005).

David C. Grammatico, who installed metal trim on building exteriors for AROK Inc., was injured when he fell while walking on the 42-inch stilts that he used for his work. He broke a wrist and fractured a knee in the fall. His claim for benefits was denied because he tested positive for illegal drugs: marijuana, amphetamine, and methamphetamine. He admitted having smoked marijuana and having ingested methamphetamine on his two days off before the day of his injury.

Austin Komalestewa worked for Stonerose Pedigree Seed. While trying to fix a conveyor belt that had jammed, he got his arm got caught in the belt. He suffered serious injury. His claim for benefits was denied because test results showed alcohol in his blood shortly after the accident. He admitted having had four mixed drinks the night before the accident.

Illegally bound
The claims were denied under a statutory scheme that allows employers to establish drug-free workplaces. Under A.R.S. § 23-1021(D), "an employee's injury... is not compensable... if the employee fails to pass... a drug test for the unlawful use of any controlled substance," unless the employee proves that the use of an unlawful substance "was not a contributing cause of the employee's injury." Under A.R.S. § 23-1021(C), "[a]n employee's injury...is not compensable... if the impairment of the employee is due to the employee's use of alcohol... and is a substantial contributing cause of the employee's personal injury."

In Grammatico v. Industrial Commission, 209 Ariz. 10, 90 P.3d 211 (App. 2004), Division One held that the legislature had overstepped its constitutional bounds in enacting this legislation. In Komalestewa v. Industrial Commission, 209 Ariz. 211, 99 P.3d 26 (App. 2004), Division Two had upheld the legislation. The Arizona Supreme Court accepted petitions for review in both cases. It sided with Division One.
Ding Dong Dell: The Emperor’s Clothes

For years, Dell Computer Corp. (now Dell Inc.) was at the top of the heap. The company sold more products and had higher profits than most anybody in the industry. It actually ran a lot of people out of business with aggressive pricing and quality service. But that was then and this is now. Last week, The Wall Street Journal reported that Dell had record sales, but its profits were down. The stock dropped 3 percent on the news. Sales up, stock down? What’s happening here? I have an idea and it comes from personal experience: declining product quality, declining levels of customer support, offshore strategies and overly aggressive price cutting.

You might have read just a year ago, that Michael Dell retired as the chief executive officer of Dell Computer Corp. and turned the company over to its then president, Kevin Rollins. Rollins had been Dell’s right hand man for many years. Dell’s focus was upon creativity and customer service, and that was how he built the company.

Counting beans

Rollins, on the other hand, was renowned as a tightfisted money man, a bean counter if you will, who kept Dell’s creativity in check. They made a good team but with Dell out of the picture, Rollins has instituted many cost cutting procedures such as offshoring customer service operations and reducing the quality of customer support. At the same time, he cut prices; for example, dramatically reducing the price of a computer that sold a year ago for 450 dollars to just 299 dollars. Dell Inc. has sold a lot of those discounted computers. Apparently, Rollins believes that you can lose money on every sale but make it up with volume. It used to be that Dell was at the very top of the list in terms of consumer appreciation for the quality of its products and the high level of product support. Since Rollins has taken the reins, my experience has been that Dell consistently drops the ball in that respect. I base my opinion upon three transactions that have occurred within the last year.

Three strikes

It all started with the purchase of a high-end workstation computer that turned out to be a lemon. I spent endless hours with off-

See Computing page 6

Cleaning up the Mess: Editing for Subject and Verb Placement

As a law student and a law firm associate, I cringed when I saw these words written in the margins of my memoranda and briefs. I was never sure what was awkward about the offending sentence or how to fix it. Now, I understand that one of the most common problems with awkward sentences is that the subject and the verb are too far apart, which hinders a reader’s comprehension of the sentence.

It should go without saying that all clear sentences contain a subject and a verb; a reader expects these grammatical clues when he reads. For a reader, understanding the subject (who) and the verb (what the “who” is doing) is key to understanding what the writer is trying to say. None of the other information in a sentence will make sense to a reader until the reader knows “who is doing what.”

In legal documents, the biggest problem with sentence comprehension is when too many words or phrases intervene between the subject and the verb. When this happens, a reader may no longer remember who the sentence is about by the time he reads the verb. A reader has to reread the entire sentence to find the subject and put it together with the verb. This is tiresome for a reader, and it likely results in poor comprehension.

Here is a simple example of a poorly constructed sentence, with the subject and verb highlighted:

This poor sentence construction comes as “received” on March 20, arrived on April 2.

Although Dale claimed he sent the March shipment on time and Long Freight logged it as “received” on March 20, the shipment arrived on April 2. Dale claimed he sent the March shipment on time, and Long Freight logged it as “received” on March 20. The shipment arrived on April 2, however.

These simple edits go a long way to ensuring good, clear comments.
Computing
continued from page 5

One of the hallmarks of phishing is an attempt to get consumers to disclose personal information such as bank account numbers. I felt secure in my assumption because I had had no transaction with Dell that would generate a $15 dollar charge. I hung up the phone.

Past due

It turned out, however, that the fellow from India was not doing international Internet phishing, but was in fact attempting to collect a $15 dollar late fee on the account that I had already paid by American Express. I won’t go into all of the gaudy details, but the bottom line is that Dell continues to charge me a $15 dollar late fee for every month that I have not paid. The original late fee and the subsequent late fees on the original now amount to about $45 dollars, and I’m starting to get aggressive telephone calls from debt collectors using automated telephone calling machines and a nasty voice. Since I never had an actual balance that could incur the original late fee, the following late fees are—aside from being illegal—just plain wrong.

involved a GPS system that I bought for my handheld computer, thinking I could save a bundle over the cost of a built in system in my car. Unfortunately, the GPS system that Dell sold for my nice little Axim x50 pocket computer didn’t work. I immediately notified Dell and asked for a return of goods, otherwise known as RMA, number so that I could return the product to the company under its total satisfaction guarantee. I got no response.

A few days later, I tried again, this time to a different e-mail address listed on its Web site. Again, I got no response. I tried a third time with the same result and was finally forced to initiate another chargeback on my credit card.

Both of my chargebacks resulted in American Express securing RMA numbers for both products so that I could return them. I did so and at this writing, while the products have been delivered to the proper return warehouse, I have not received credit on my American Express account for the products.

In not so good company

When I go on the Internet, I learn that, sadly, I am not alone. The deterioration in Dell customer service is a constant theme. Ten years ago, when Apple Computer went down the same ill-conceived path, they virtually dropped off the edge of the earth. It was only the return of Steve Jobs and his remarkable vision that brought them back to profitability. I don’t know how bad things have to get at Dell before Michael Dell returns. But I bet he has enough of an interest in the company that he built that he will come back, just as Jobs did.

We shall see what happens to Dell, and to Rollins, but in the meantime all of us have concerns about where to purchase computers. Over the years, PC Magazine customer satisfaction surveys have indicated an increasing respect for the quality and service offered by local providers. I have come to the conclusion that the amount of money saved by purchasing computers online or through the mail is not worth the trouble fixing problems associated with low quality machines.

Locally grown

At the same time, I have been impressed by the value of high quality service from local concerns, as expressed by the magazine’s readers. A few years ago there was very little competition at the local level. But now that the general knowledge of computer technology is so widespread, there are many local technology concerns that can provide you with high quality products and service at a very competitive price.

You may have to check around a bit to find companies that have good reputations for product quality and customer support but they are out there, and when you find them, I suggest you that you get to know your local geeks. That skinny kid who used to skateboard in your driveway is probably more knowledgeable about computers than most so-called experts were 10 years ago. She has also grown up and might be running the computer store just down the street.

At the moment that seems like your best bet. Just like Jojo in the Beatles song, it may be time for you to go home.
The Motivating Factor: A World of Difference

Paralegal Amy Davis possesses a strong appreciation for education. While still in high school, she was already attending community college and continued taking evening courses while working at law office as a runner and a receptionist during the day. She later transferred to Arizona State University, graduating with concurrent degrees in political science and sociology.

Davis now works at Rake & Catanese, P.C., where she specializes in high exposure plaintiff litigation such as quadriplegia, brain injury, and wrongful death with a focus on complex product liability and medical malpractice.

Professionally done

According to Davis, a Boston native who moved to Arizona as a child, it was the professionalism of the legal environment that motivated her to continue in the field. “I continued to educate myself in the legal field and attend various seminars, which resulted in my advancement into a paralegal position.”

Dedicated to her career path, she obtained her paralegal training certificate through the University of Arizona in conjunction with the Center for Legal Studies. Davis also has certified legal assistant and civil litigation specialist designations from the National Association of Legal Assistants as well as the Paralegal Advanced Competency Exam registered paralegal designation from the National Federation of Paralegal Associations.

Davis has always aspired to attend law school, though the realization that her undergraduate studies were depriving her of time with her daughter prompted her to postpone that endeavor. She still hopes to continue her graduate education, but for now, her roles as paralegal and mother provide her with satisfaction.

Davis joined the Maricopa County Bar Association’s Paralegal Committee in 2001 and played an integral role in its transition into a bar division, serving on nearly every committee. Davis is currently president-elect of the division. In addition, she is involved in the Arizona Paralegal Association and has served as chair of its Certified Legal Assistant Committee.

Working together

With her extensive experience, it is probably wise to ask Davis what she considers the most beneficial aspect of the relationship between lawyers and paralegals.

“The paralegal gains valuable education and experience through his or her work with the attorney.”

And the most challenging aspect? Davis suspects it is “the limits placed on paralegals in terms of the work they are capable of performing within the boundaries of the ethical rules.”

She feels one of the most misunderstood facts about paralegals is what qualifies someone to assume that title. “A paralegal must possess legal education and work experience to perform substantive legal work that has been customarily performed by attorneys.”

There is no doubt Davis is qualified as a paralegal.

Davis feels the best lesson she has learned in her career is the importance of effective communication and exceptional organizational skills. “Both are paramount to success in this profession.”

Returning the favor

Her greatest professional accomplishment thus far?

“The ability to give back to the legal community through assisting others in the profession”—and assist she does.

Last spring, Davis became adjunct faculty at Phoenix College in its paralegal studies program and has also been administering the certified legal assistant examination for the National Association of Legal Assistants for the past two and a half a years. She is member of the American Bar Association, recently becoming involved in its Standing Committee on Paralegals, where she serves as a site team representative in consideration of ABA-approval of a local paralegal program.

Davis credits the uniqueness of Arizona’s paralegal community to its pride in the profession and by the way it demonstrates integrity in seeking to provide pathways to success for others.

Davis has achieved both personal and professional growth as a result of her active participation in the paralegal community.

“This involvement has provided me with a sense of value and has made a difference in my life as well as the lives of others.”

Hidden signs

A little known fact about Davis? Despite her outgoing nature, few people know she has a passion for sign language. It was actually this passion that pushed her to enroll in college while still in high school and it became her foreign language elective at Arizona State University.

“I often still sign to music while driving alone and I would eventually like to volunteer as an interpreter.”

In addition to investing in education and her career, Davis enjoys raising her teenage daughter, who has obviously inherited her mother’s drive—in addition to being an exceptional student, she is also an accomplished gymnast.

And the secret to this paralegal’s success? “Motivation and enthusiasm applied to any task I undertake.”

It is not very hard to see that her formula makes all the difference in succeeding or failing.

Dear Editor,

Julio Laboy (whose article appeared in last month’s Maricopa Lawyer) is correct in intimating that not everyone agrees with Los Abogados’ demand of calling upon Maricopa County Attorney Andrew Thomas to reconsider his decision not to prosecute Patrick Haab (something Thomas has said he will not do).

I am troubled by the innuendoes made by some that the Haab case decision and those who support it are tainted by racism.

In an Arizona Republic article, Arizona State University law professor Orde Kittrie quoted Sheriff Arpaio’s statement that “you can’t point a gun at someone because of the color of their skin,” a statement also made by attorney Anthony Bustamante in Laboy’s article. Kittrie also lamented the actions of the participants in the Minutemen Project, suggesting that their actions could lead to an outbreak of lynching.

I have been an Arizona lawyer for 41 years. I am a fourth generation Arizonan; my family has been here for over 120 years. I was born and reared in a small rural community in which Mexican-Americans comprised roughly 40 percent of the population and still do. My father’s business employed many Mexican-Americans, and many remain friends. I learned to speak Spanish mostly from working with Mexican-Americans.

I have an affinity for the Mexican people and empathize with Mexicans and other Hispanics who have found it necessary to come to the United States to find work and provide for their families. I support meaningful change in our immigration laws such that those who wish to come to our country can do so without fear of being forced to leave—provided they live here peaceably, obey our laws and are willing to work. I believe a way should be found for them to obtain privileges that are not necessarily linked to citizenship, like driver’s licenses.

However, I also believe that it is appropriate to support enforcement of our immigration laws until and unless they are changed. Failing to do so constitutes a subversion of our laws and has created a national security nightmare. Most importantly, I abhor the accusations by some people and groups that those who so believe are racists.

I have a great disdain for Mexico’s government and believe it has done little to improve conditions such that its citizens don’t have to leave home to find work. In 1973, while serving as deputy assistant secretary for enforcement of the U.S. Treasury, I met with the Mexican attorney general in Mexico City on various border-related matters. While there, a high-ranking Mexican official told me, informally, that, in his opinion, it had not been for the ability of Mexico to send its poor and unemployed to the United States, there most certainly would have been another Mexican revolution.

That was 32 years ago, and migration from Mexico to the U.S. was a trickle compared to now. Moreover, since then not one single Mexican president, from Echeverria to Fox, has been able to achieve meaningful improvement of the economic conditions of Mexico—at least not so as to keep Mexicans from having to leave Mexico to find work. Moreover, the suspicion is that the GOM doesn’t want to do anything that might stem the flow of dollars from its “exports” back to Mexico. The Pew Institute has reported that those dollars now comprise the second or third largest source of external income for the Republic of Mexico—a golden goose that is not about to be killed by the politicians of Mexico.

I do not doubt or dispute the bonafides of Los Abogados and the others insofar as they have made strictly a legal argument that Thomas has misinterpreted the law. I do believe, however, their credibility must be questioned if they insinuate that those who support the Arizona Republican, and others insofar as they have made strictly a legal argument that Thomas has misinterpreted the law. I do believe, however, their credibility must be questioned if they insinuate that those who support Thomas’ decision or who believe in the enforcement of our immigration laws have racist motives. To do so can only damage the support of the thousands of Arizonans who feel as I do.

Sincerely,
Brent F. Moody
Phoenix, AZ
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 (ASU/D), 302 E. Monroe, Phoenix; and the Arizona Club, 39th 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.

**September 2005**

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

7  Family Law Meeting (Fresh Start), 5:30 p.m.

12  YLD Board (A), noon

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

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

13  VLP (A), noon

Scottsdale Bar (Scottsdale Athletic Club), noon

MCBA Executive Committee (A), 7:30 a.m.

Environmental Board (A), noon

Business Development: Growing Your Practice Using Ethics-Based Marketing Tactics
1 p.m. to 4:30 p.m., ASU Downtown
CLE: 3 hours ethics
Growing your practice can be difficult. Have you ever wondered what the right business development tactics are for you? And what about the role ethics plays in business development? This seminar focuses on growing your business using strategic and tactical initiatives. You'll walk away with a list of how to's that you can easily do. Presented by MCBA and MBA in a Day.
Cost: MCBA member attorneys, $32; MCBA member paralegals and public lawyers, $27; non-member attorneys, $42; non-member paralegals and public lawyers, $27

Solo Practitioner Section (A), 5:30 p.m.

Hayzel B. Daniels Bar (B), 6:00 p.m.

15  Complex Litigation Cases from Filing to Final Judgment
11:30 a.m. to 1 p.m., ASU Downtown
CLE: 1 hour per session
This intermediate seminar will include a view from the bench as well as that of a panel of practitioners instructing you on how to handle complex litigation cases, from filing to final judgment.
Cost: MCBA member attorneys, $75;

member paralegals and public lawyers, $55; non-member attorneys, $105; non-member paralegals and public lawyers, $75

Personal Injury/Neg Section (A), noon

Public Lawyers Board (B), noon

MCBA Board (A), 4:30 p.m.

20  What’s Going on in Rule 11 Court? An Overview
Noon to 1:15 p.m., SEF, 222 E. Javelina
CLE: 1 hour general
In the past few years, the Maricopa County Superior Court has implemented several changes to the way competency determinations pursuant to Rule 11 of the Arizona Rules of Criminal Procedure are made. This one-hour seminar and luncheon will give criminal practitioners an overview of the changes in Rule 11 Court, including new hearing procedures and time limits for restoration. Practitioners will learn valuable information about how to navigate this little-known area of criminal practice while enjoying a delicious lunch.
Cost: MCBA member attorneys, $175 (before 9/15/05) / $200 (after 9/15/05); Paralegal non-member, $225 (before 9/15/05) / $250 (after 9/15/05); MCBA student division member, $50; student non-division member, $75

LRS Committee (A), noon

CCD Board (A), 4:30 p.m.

Bankruptcy Board (B), 5:30 p.m.

22  Estate Planning/Trust Board (C), 7:30 a.m.

Doing Business in Mexico – The Right Way!
1 to 4:30 p.m., ASU Downtown
CLE: 3 hours general including .5 hours ethics
This basic seminar will cover the right way to do business in Mexico. Topics include legal and tax pitfalls and strategies for making sure you get paid, and Inbound and outbound tax and reporting issues.
Co-Sponsored by the MCBA and Scottsdale Bar Association
Cost: MCBA and Scottsdale Bar member attorneys, $75; member paralegals and public lawyers, $55; non-member attorneys, $105; non-member paralegals and public lawyers, $75

23  2005 Arizona Paralegal Conference: Raising the Paralegal Bar Registration: 7 to 8 a.m.
Program: 8 a.m. to 4:30 p.m., Phoenix Airport Marriott, 1101 N. 44th Street, Phoenix
This year’s conference will include topics on Estate Planning and Living Wills, the Sarbanes-Oxley Act, E-Discovery and Legal Writing. Price includes continental breakfast and buffet lunch plus chances to win fabulous door prizes.
Cost: MCBA paralegal division member, $175 (before 9/15/05) / $200 (after 9/15/05); Paralegal non-member, $225 (before 9/15/05) / $250 (after 9/15/05); MCBA student division member, $50; student non-division member, $75

27  Estate Planning Legislative Update
7:15 to 8:30 a.m., ASU Downtown Center
CLE: 1 hour general includes breakfast
This intermediate seminar will feature a comprehensive review of recent Arizona legislative changes affecting trust and estate lawyers including a discussion of the status of the revised Arizona Trust Code and its controversial provisions.
Cost: Estate Planning Section members, $25; MCBA member attorneys, $30; non-member paralegals and public lawyers, $25; non-member attorneys, $40; non-member paralegals and public lawyers, $30

Employment Law Board (C), 11:30 a.m.

Litigation Board (A), 5:30 p.m.

28  Criminal Law Section (C), 7:30am

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Kurt M. Brueckner, a partner with Titus, Brueckner & Berry, P.C., has been named the chairman of the board of directors for the Scottsdale Area Chamber of Commerce.

The Scottsdale Area Chamber of Commerce exists to provide value added member services; to engage in business development that includes attraction, retention, expansion, workforce development, and recognizes the critical role of redevelopment; to shape public policy that governs the business environment; and to strategically facilitate the building of community vision.

Brueckner (J.D., 1980, UA) has experience in transactional and litigation matters involving securities, real estate, mergers and acquisitions, finance, intellectual property, corporate law and commercial litigation.

Donna Catalfio, an attorney at Gallagher & Kennedy, P.A., was named an Up-and-Comer Attorney by bizAZ.

Catalfio (J.D., 2000, ASU) practices environmental and intellectual property law. In addition to her law practice, Catalfio has extensive experience as an environmental consultant.

bizAZ, a local, bimonthly magazine, recognizes up and coming in law on an annual basis. bizAZ’s mission is to provide Arizona’s business leaders with idea-driven strategies that help them outsmart and outperform the competition.

Keith Galbut, an attorney at Galbut & Hunter, A Professional Corporation, was also selected as an Up and Comer Attorney by bizAZ.

Galbut (J.D., 2003, ASU) focuses on business formation and transactional law. Galbut also possesses a financial and economics consulting background and has a Masters in International Management and MBA from Thunderbird, Garvin Graduate School of International Management.

For its selection of Up-and-Comer Attorneys, bizAZ considered factors such as what the attorney’s standout factor was, their biggest accomplishment and future goals.

Scott Hauert, director of paralegal studies at Phoenix College, was appointed to the American Bar Association’s Standing Committee on Paralegals Approval Commission. He will serve a three-year term.

Members of the commission are responsible for conducting site visits of schools seeking ABA-Approval/re-approval and making recommendations to the ABA Standing Committee on Paralegals.

Hauert (J.D. University of Dayton) previously served as a Deputy Maricopa County Attorney and as a judicial clerk to the Supreme Court of Arizona and the Arizona Court of Appeals. He is a current MCBA Paralegal Division Board member.

Paul E. Burns an attorney with Steptoe & Johnson LLP, has been named as an adjunct professor of law at the Arizona State University College of Law.

In his role, Burns will be teaching patent litigation and biotechnology licensing and litigation to students seeking their juris doctorate degrees, as well as to students in the master of laws program in biotechnology and genomics.

Burns (J.D., 1984, Boston College) focuses primarily on intellectual law and technology-related matters. He also serves as chair of the Arizona chapter of the Licensing Executives Society.

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Paul E. Burns
has joined the firm as an associate.
Ms. Frick is licensed to practice law in Arizona and Minnesota.
She will be practicing family law and estate planning.

Barbara A. Frick

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Maricopa Lawyer 9 • September 2005
Managing Law Firm Growth in an Expansive Economy

This month’s expert is Mark Dioguardi, a senior shareholder with Tiffany & Bosco, P.A., a Phoenix law firm providing a wide range of legal services to the business community. The firm represents domestic and foreign clients on a local, national and international basis. Dioguardi has 25 years of experience in real estate law, including the areas of development, acquisitions and dispositions, finance, leasing, and entitlements.

Dioguardi provides an applicable formula for managing law firm growth in today’s economy.

Q How does a law firm capitalize on growth in an advancing economy and what is required to manage such expansion?

A A law firm is like any other business in a growth economy. It can seize the opportunity to expand or struggle with its existing capacity and likely experience staff burnout and decreased client satisfaction. And, if you do expand to meet your clients’ needs, you still face many hurdles, including attracting and retaining talented personnel in a booming economy and finding the space to put them.

Part of the formula for success in dealing with the challenges of growth includes:

(a) planning
(b) getting ahead of the curve
(c) flexibility

Plan. First, collect data. Ask your existing clients how much they expect to use your services in the coming years. Keep in mind they may underestimate so as not to feel responsible if they do not meet their own projections. Another way to approach it is by asking them how much they expect their own business to grow. Apply that percentage of growth to the amount of legal work the client gave you last year. Spend time with your clients to understand what is going on in their businesses. Their focus may be moving into new areas that require significantly less or more legal support. Develop your own evaluation of your clients’ probable growth rate, then estimate your own firm’s growth over the next one, three and five years. Ask your partners to do the same.

Get ahead of the curve and act on your estimates! It can take at least six months to hire an attorney from the time you make the decision until the new attorney is working at his/her desk – more time than most firms realize. You have to initiate the search, identify and interview the candidates, arrange for your partners to meet the best ones, then negotiate an offer with the selected candidate (and, in this time, possibly lose the leading contender to another firm, therefore having to start the process over again). Also, allow one month for the candidate to give notice at their current firm.

The new recruit will need to be trained and become acclimated to your firm and your clients’ work before he or she is functioning efficiently and effectively. If you wait too long to start this hiring process, there will either be at least a six-month period of time where you are doing the work of two or more attorneys, or your clients are going to be unhappy with the level of service they are receiving from you. A similar hiring process applies to paralegals.

And while it can be six months or more to hire an attorney, if you do not already have sufficient space, it can take a year to 18 months to solve that problem. You have to find the space, negotiate the lease and await the build-out. Planning for space needs should be an ongoing process, taking into consideration your department’s and firm’s three- to five-year growth plan, if not more.

Be flexible. Good legal talent is in especially high demand. Offering flexibility in your work environment allows you to compete for the best candidates. Some attorneys may have family demands that make it tough for them to bill the traditional 1,800-hour to 2,000-hour minimum. These attorneys, including some heavy hitters, may be willing to accept less than top compensation in return for the ability to have a more flexible and less demanding work schedule. Also, you should use expansion as an opportunity to develop your firm’s breadth, not just its depth. As an example, included among the attorneys who have recently joined my real estate law group is a former environmental engineer, a CPA and a title insurance underwriter. Each is an experienced real estate transactional attorney, but they also bring specialized capabilities to our team.

Everyone has to choose their own path, but growth can be beneficial in ways you did not initially anticipate. It can be financially, as well as personally and professionally, rewarding. Expanding to meet your clients’ needs can help you make them more successful, and possibly create more business for you. Expansion can also free up more time to work on a complex legal assignment, thus ensuring the highest quality work. What’s more? Maybe you’ll have extra time to spend on the golf course or with your children before they are all grown and gone.

Mark Dioguardi can be reached at (602) 255-6017 or via email at mdd@TBLAW.COM. Tiffany & Bosco, P.A.’s Web site is www.TBLAW.com.

Jones continued from page 1

have been sentenced to probation as a result of a criminal conviction. The goal of court is to rehabilitate the participants so they can function in the community as law-abiding residents.

“Judge Jones’ leadership has promoted court initiatives addressing the therapeutic needs of the mentally ill within the confines of our legal procedures,” Mental Health Judge Carey Hyatt said. “His dedication and determination have propelled the expansion of these problem-solving, therapeutic courts throughout all jurisdictions and will result in the development of a Mental Health Court Department within the court in the near future.”

Jones was appointed to the Superior Court Bench in 1995. From 1988 to 1995 he served as a Superior Court commissioner. He is a past president of the Maricopa County Bar Association.
Joseph Clees. L. Eric Dowell, Tracy Miller, Kerry S. Martin, Christopher M. Mason, Leah S. Smith and Pavneet Singh Uppal have joined the new Phoenix office of Ogletree Deakins Nash Smoak & Stewart, P.C.

Clees (J.D., 1984, Villanova University), Dowell (J.D., 1987, University of Missouri-Kansas City), Miller (J.D., 1991, Harvard University), Martin (J.D., 2001, Indiana University), Mason (J.J.D., 1999, UCLA) and Smith (J.D., 2001, UCLA) practice labor and employment law.

Uppal (J.D., 1993, University of Texas) practices in the areas of labor and employment, litigation, and employee benefits law.

Leslie Ann Haacke has joined the law firm of Jennings, Strouss & Salmon as a member.

Haacke (J.D., 1987, Brigham Young University) focuses on securities, civil and commercial litigation and appellate law. Haacke has been practicing law in Phoenix for the past 15 years.

Benjamin Shiffer has also joined Jennings Strouss & Salmon, as an associate.

Shiffer (J.D., 2003, ASU) practices commercial litigation law and has counseled clients in connection with commercial litigation cases involving product liability, insurance defense, and transactional real estate.

Randi Morrison was recently appointed to vice president, general counsel and secretary at CSK Auto Corporation, parent of CSK Auto, Inc. She previously served as assistant general counsel of the NYSE publicly-traded company headquartered in Phoenix.

Morrison (J.D., 1989, Washington University) has been with the company since 1997. Prior to joining the company, she served as in-house counsel at Venture Stores and Del Webb Corporation.

Ryan M. Wackerly has joined Tiffany & Bosco, P.A., as an associate in the firm’s employment/labor law department.

Wackerly (J.D., 2001, Ohio State University) will be assisting with the prosecution and defense of employment/labor and commercial litigation matters. Prior to joining the firm, he worked at Lorber, Greenfield & Polito, L.L.P. and was a former assistant public defender for the City of Tucson Public Defender’s Office.

Gallagher & Kennedy, P.A., has welcomed Ty Fields, Kelly C. Mooney and Nancy Casbeer Pohl as associates.

Fields (J.D., 1997, UA) practices in real estate transactional law. He possesses a solid background in contract law, having worked as general counsel for Ribomed Biotechnologies, Inc. and contracts manager at American Express Global Procurement Division. Fields also served as an attorney in the U.S. Navy Judge Advocate General Corps.

Mooney (J.D., 2002, UA) specializes in tax law with an emphasis on federal taxation of individuals, businesses, estates and trusts. She returns to Gallagher & Kennedy after earning her L.L.M. in Taxation at the University of San Diego.

Pohl (J.D., 2001, Tulane University) focuses on real estate transactional law and has experience representing corporations and individuals in a variety of real estate, corporate and tax law issues. She earned an L.L.M. in Taxation at New York University.

Michael Mason has joined Greenberg Traurig as an associate in the labor and employment department.

Mason (J.D., 2002, ASU) focuses his practice in the area of labor and employment issues, litigation and class action matters.

If you are interested in serving as one of Arizona’s Lawyer Representatives, please send a resume and letter explaining your qualifications and interest in the position to:

William M. Demlong, Co-Chair
Arizona’s Lawyer Representatives to the 9th Circuit
Kunz Plitt Hyland Demlong & Kleifield
3838 North Central Avenue, Suite 1500
Phoenix, Arizona 85012-1902

Applications should be received by October 15, 2005

If you have any questions, feel free to call the Co-Chairs
Tara Jackson (602/776-5908) or
William Demlong (602/331-4245)
OPINION

You're On Line for Discipline

By Jack Levine
Maricopa Lawyer

I have as much distaste for unethical lawyers as anyone. However, the State Bar's decision to make a lawyer's past disciplinary record permanently available on the State Bar's "Find a Lawyer" and "Member Finder" Web site sections, instead of on a temporary "Lawyer's Recently Disciplined" site, without full consideration of a lawyer's subsequent record and contributions to the Bar and the community is misleading to the public. It may cause good practitioners to be disqualified for service who may otherwise be currently ethical and well suited to represent clients.

Furthermore, in my opinion, the State Bar's new policy is disciplinary overkill. While it punishes currently ethical lawyers who have been disciplined, it doesn't recognize unethical lawyers who have not been disciplined.

Many lawyers agree with the proposition that if a lawyer is guilty of an ethical violation it should be made public for a limited time. There are, however, many lawyers who have been disciplined for relatively minor violations. In that situation public disclosure of the lawyer's discipline should be for a limited duration. Moreover, an ethical violation of a decade ago, or even several years ago, does not mean that a lawyer is currently unethical. Conversely, absence of a disciplinary record does not prove a lawyer is ethical.

Furthermore, the Board's disciplinary program appears to unfairly target solo practitioners; while prominent, connected lawyers and law firms are not usually subject to the same scrutiny. Lawyers representing individuals in the emotionally charged practice areas of family law, personal injury or criminal law who do not receive an occasional bar complaint are probably not heavily enough involved in their practice.

There are lawyers who believe the State Bar's disciplinary system is out of touch with the day-to-day problems of representing clients. Some clients, for example, use the threat of filing a bar complaint to influence the lawyer's actions or as leverage in fee disputes. Additionally, from my observation, lawyers are rarely exonerated in disciplinary matters once a probable cause finding is made. Instead, lawyers are required to prove their innocence beyond a reasonable doubt.

One reason lawyers are held in low esteem by the public may not be because of the unethical conduct of those disciplined by the bar, but by reason of the conduct of the bar's "establishment" lawyers who are rarely disciplined even for ethical violations of monumental proportions.

A sole practitioner who mistakenly overdraws a trust account by a small amount does not compare with lawyers who delay reporting a firm member's plundering of guardianship accounts of the firm's elderly and vulnerable clients. There have been many other examples of high profile lawyers who have engaged in other forms of serious misconduct and have been treated differentially by the bar.

I believe that instead of permanently stigmatizing lawyers who may now be entirely ethical, valuable and contributing members of the bar; why not remove any remnants of a members' disciplinary history from the "Find a Lawyer's" Web site after a discipline-free record for a reasonable period of time? Such a policy would still protect the public; it would recognize a lawyer's efforts at rehabilitation, and it would permit the public to make decisions about selecting a lawyer based on current information that may more correctly reflect a lawyer's present moral and ethical character.

Jack Levine is a solo practitioner. For the past 18 years he has devoted a part of his practice to providing pro bono legal services to members of the Brain Tumor Support Group at St. Joseph's Hospital. Levine was disciplined in 1993 for an alleged Rule 11 violation and in 1999 for late payment of taxes.

POINT

Profession and Public Win with Discipline on Web

By Helen Perry Grimwood
Special to Maricopa Lawyer

Soon, when lawyers or a member of the public search for an Arizona lawyer on the State Bar Web site, it will be easier to find discipline final orders issued against a lawyer. After more than two years of research, debate and a thorough vetting process, I am proud to announce the State Bar has developed a solution that balances our charge from the Arizona Supreme Court to enhance the profession and to protect the public.

It's important to note that all of the orders to be posted on the Bar's Web site are final orders, preceded by due process and an opportunity for a full adversarial hearing before an impartial hearing officer. The process includes appeal rights to the Supreme Court's disciplinary commission, and, ultimately, to the Supreme Court. The standard of proof is clear and convincing evidence.

Discipline orders have long been public information under Arizona Supreme Court Rules. Anyone can access them by calling the State Bar, visiting its office, or reading a page "deep" on our Web site. In fact, most orders are already on the Supreme Court's Web site; they just haven't been linked to the place on our Web site where all look for one another and where the public looks for us. What makes some practitioners uncomfortable is that it now will be easier for the public and referring attorneys to learn this information because it can be viewed on the "Find a Lawyer" or "Member Finder" portions of the Bar's Web site all the time.

Before adopting this policy, the Board of Governors examined the issues and process closely. The board sought input and listened to many ideas and concerns from attorneys. It talked to lawyers in person, held online chats, listened to lawyers representing attorneys being investigated by the Lawyer Regulation Department, and even slowed down our process when some lawyers said we were moving too fast.

Some wanted more information to be published. Others wanted less. In the end, the board decided to post only final discipline orders actually imposed after full due process. The board-approved plan (see box below) allows consumers and attorneys to make informed decisions about the lawyers they choose to consult. Note, however, that diversion orders are not considered discipline and will not be posted. Dismissals will not be posted. Mere charges will not be posted. Presently, probable cause orders will not be posted.

I believe the board's decision is fair to lawyers and the public. It decided against posting diversion orders which are largely voluntary and are reserved for minor, unintentional "technical violations" that do not injure the public or clients, and can be handled best with education and training. Likewise, most minor complaints that do not result in final orders of discipline are not posted. The board also decided against posting final orders of informal reprimand, primarily because they are reserved for less serious misconduct and historically have not been published in Arizona Attorney magazine.

The final discipline orders posted fall into a different category. Referring lawyers and potential clients need to know about certain misconduct so that they can evaluate the significance of discipline history.

The board's decision to post discipline history is not unprecedented. At least 15 other state bars report similar information online. Some other professions are ahead of us, for example, the medical profession and the Arizona Register of Contractors report similar information.

The State Bar believes in the accountability of the legal profession and the transparency of our lawyer regulation process. It's the right thing to do and will help the profession improve its reputation.

The fairness of lawyer regulation is in our rigorous due process. It can be challenging to self-regulate, but with excellent staff and board oversight, the Board of Governors is confident that the lawyer regulation system deals fairly with attorneys and protects the public.

Our profession is measured by how it deals with colleagues who violate the rules of professional conduct. It's natural to hide blemishes, but the board is acting with integrity, after full consideration of all interests and based upon a thorough understanding of our discipline system.

Posting on the Web is a decision that will serve the profession and the public.

Helen Perry Grimwood is president of the State Bar of Arizona.

COUNTERPOINT

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<tr>
<th>Type of Discipline</th>
<th>Duration of Publication on Lawyer Finder</th>
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<tr>
<td>Disharment</td>
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<td>Suspension</td>
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<td>Interim suspension</td>
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<td>Reinstatement</td>
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<td>Probation</td>
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<td>Restitution</td>
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<td>Costs</td>
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<td>Contempt</td>
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<td>Disability order</td>
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<td>Administrative suspension</td>
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Legal scholars and bloggers formulate questions for John Roberts

A group of over 100 academics believing “that the Senate’s explicit authority to give its Advice and Consent to judicial nominations includes the power to consider nominees’ beliefs about the Constitution and the role of the courts in interpreting it,” have formulated the following list of ten questions to put to Supreme Court Justice nominee John Roberts:

1. Do you believe in employing a canon of construction? If so, is there a particular canon to which you subscribe?
2. Do you believe it is appropriate for the Supreme Court to recognize constitutional principles that were not expressly written in the Constitution or explicitly recognized by the framers?
3. What rights, if any, do you believe are protected by substantive due process?
4. Do you believe there is a constitutionally protected right to privacy, and, if so, under what circumstances does it apply?
5. Do you believe with the tiers of review currently employed under Equal Protection jurisprudence and the way they have been applied? Explain.
6. What in your view are the limits on the scope of Congress’ power under the Commerce Clause and section 5 of the Fourteenth Amendment?
7. What do you believe is the appropriate scope of state sovereign immunity and the Eleventh Amendment?
8. Define “judicial activism” and describe your views on it.
9. Do you believe there are judicially enforceable limits to the president’s power as Commander-in-Chief in times of national crisis? If so, what are those limits?
10. In Korematsu v. United States, the Supreme Court upheld the constitutionality of evacuating Japanese-American citizens on the West Coast from their homes during World War II. What lessons do you believe the Court should draw from Korematsu and the World War II experience?

The questions were part of a letter sent to the Senate Judiciary Committee urging senators to give careful consideration to nominees’ views about the Constitution.

In contrast, Internet bloggers like Howard Bashman (How Appealing blog), believing in having a little more fun, held contests aimed at formulating the most ridiculous questions to be put to the nominee. A sampling of these more irreverent entries follow.

1. If you were chief justice of the Supreme Court along with John Souter, Terrence Thomas, Anthony Scalia, Nino Kennedy, Ruth Day O’Ginsberg, John Paul Jones, William Brennan, and your former boss Bill Rehnquist, and a case involving abortion and capital punishment came before you on an appeal from a panel upon which you sat, and you believed you would be committing a mortal sin by hearing the case but not deciding it, and you’d gone duck-hunting with counsel for appellants but the Founders and the French would agree with the other side, would you recuse yourself if your wife had signed but not been involved with drafting one of the amicus briefs?
2. If an endangered pregnant Southwestern arroyo toad were arrested for eating a single French Fry on the DC Metro while en route to obtain an illegal third trimester abortion, would your Catholic beliefs force you to recuse yourself from the case? Furthermore, would the fetus qualify as a protected class under the 14th Amendment, or would you apply rational basis review as you did in Hedgepeth, thereby condemning the hapless toad to a lengthy stay in the DC detention center and depriving the mother of the right to control her reproductive destiny?
3. Explain the plaid pants?
4. Do you think O.J. did it?
5. Did you ever sit on a panel with Judge Wapner?
6. In your view, which member of the Senate Judiciary is the biggest dolt?

After the winner of Howard Bashman’s contest (see question number one, supra) learned of his victory, he blithely typed on his blog titled Unused and Probably Unusable: “when you set out to make the maximum number of factual errors, solecisms, and unintentional-looking flubs you possibly can, you are only competing against yourself. Aspire to do the best you can do, and just see where you’ll go!”

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A Dry Heat

For the lawyers of Maricopa County, the summer of 1916 was hot. No hotter than normal for their chosen jurisdiction, but memorably hot. The bar suffered at least two casualties to the heat that summer that would be sorely missed.

The citizens of southern Arizona in this era before air conditioning and before swamp coolers took some pride in their ability to adapt to the scorching summer heat. Distant relatives could not understand how anyone could survive the months of 100 degree plus temperatures. Ingenuity and pride, in equal parts, helped those unfortunate enough to have to spend the summer “in town,” to amble through the season. The ability of residents to adapt the pace of their lives to the climate was reflected in the frequent postcard to the folks back home stating that the coyotes still chased rabbits in the Arizona summer, but they both walked.

Escape

A number of the wives and families of the area’s legal fraternity were part of the lucky annual mass migration to mountain retreats of northern Arizona or coastal resorts in Long Beach, San Diego, or Santa Barbara. Train fare to the coast could be had for under $25, and fine resort lodgings cost $1.50 per day. Beach diversions and coastal breezes, or tennis in the pines, cooled and entertained these escapees from the Valley of the Sun. Whenever possible, the summertime bachelors left behind would make weekend trips or shorter vacation visits to these cooler locales. Nearly everyone who could afford to leave made these migrations for at least a portion of the summer.

Only those compelled by extreme motivation came to Phoenix in summer. Much of the business community suspended operations or operated at a reduced capacity. For example, hotels would close entirely or shut down the upper floors. When Tommy Howard, the elevator operator at the state capitol, took his vacation to northern Arizona in August, state officials (if any were in town) and voters were obliged to climb the long stairs to conduct government business on the upper floors.

Diversions

On the other hand, certain enterprises thrived in the summer months. The Ford Hotel on Washington and Second Avenue had a busy soda fountain and Donofrio’s Candy and Ice Cream Store on the south side of Washington near First Avenue, provided delicious temporary relief from the rising temperatures (Arizona had passed a prohibition amendment a few years earlier, so a cherry phosphate or a cool root beer were the peak of legitimate liquid refreshment). Ice companies like Crystal Ice worked overtime to deliver their valuable wares in 50 and 100 pound blocks.

The Carnegie Public Library (now the Arizona Women’s Hall of Fame) had a busy July in 1916—over 3,000 patrons used the reading rooms, checking out over 6,000 books. Readers enjoyed the newest publications, including Roberta of Blueberry Gardens; Rich Man, Poor Man; Return of Dr. Fu Manchu; and Zane Grey’s Border Legion. That month, the library collected fines of $27.37 and bought $8.55 worth of new books.

Departure from precedent

Until the summer of 1916, many of the county’s attorneys had participated in the mass communal migration because, as a rule, no cases were heard in Superior Court during July and August. Unfortunately for the local community in general, and County Attorney Clyde M. Gandy, in particular, Judge Frank S. Lyman announced in early July that the court would depart from precedent and remain in session throughout the summer to address a heavy docket. Gandy was in court every day in July—he and his assistant prosecuted more than twenty cases without a loss, and obtained guilty pleas from almost ten other defendants. Judge Lyman still found time for a few weeks on the coast, but County Attorney Gandy was lucky to get away for a weekend camping trip.

Adaptation

The demise of the court’s summer holiday—the first casualty of the summer of 1916—meant many local attorneys had to take steps to adapt to their warmer environs. Most public buildings of 1916, including restaurants, hotels, the courthouse and offices, had the benefit of simple electric fans, either the large ceiling type or smaller portable appliances. Unfortunately, the primary effect of these fans was to stir the superheated air like a convection oven, rather than to generate the desired cooling. Movie theatres furnished patrons hand-powered cardboard fans—each with an advertisement for a nearby ice cream parlor.

Phoenix’s summertime bachelors of the bar certainly must have frequented the swanky American Kitchen restaurant on the east side of Central, north of Washington—a short walk from the courthouse. Diners were aerated by an arrangement of large flat fans on the ceiling of the main dining room, attached to each other by a cord that pulled them back and forth.

The lobby of the elegant Adams Hotel, the meeting place for the community’s prominent attorneys and citizens, was cooled by fans blowing across a huge block of ice and by an evaporative device using cool, 55 degree water from the hotel’s deep well. Department stores like The Boston Store or Korrick’s New Yorker (department managers took semi-annual trips to New York to keep up on the latest fashions) attempted with varying degrees of lack of success to cool their stores using systems with water saturated coal and large fans. Besides fans and cool drinks, the only other relief from the heat was the various bathing opportunities. From inglorious skinny dipping in the Town Ditch, to enjoying the inviting pools of Riverside Park and the
exclusive Phoenix Country Club, swimming was a summertime imperative.

Even if the community’s legal luminaries could cool their sweating brow during the day, they still had to come to grips with the sweltering nights that would rob them of much needed sleep and eventually dull their keenly honed analytical skills. Efforts to maintain a reasonable sleeping schedule usually fell into three categories. Former Tucson attorney Ralph Bilby (one of first four graduates of University of Arizona’s law school and first to pass the bar) described comforting his wife and first child by keeping a wet sheet in front of a fan. Variations on this “Pneumonia Method” (named for its frequent consequences) included wetting sheets, placing them on the sweltering mattress, then sleeping naked in the wet sheets directly in front of an electric fan.

A second method, the “Milkman’s Delight Method,” called for sleeping nude, or at least scantily clad, on porches—wherever a breeze might present itself. Morning newspaper delivery and milkmen positions became popular employment opportunities in the summer. This approach was used on the balconies of the finer hotels. In a variation, firemen at Central Station and Firehouses Numbers One and Two were permitted to cut holes in the roofs of their stations and sleep on the flat roofs. Each of the stations was fitted with sliding poles, so as to not hamper the men’s efficiency in attending night fires.

The “Campout Method,” involved bedrolls, mosquito netting and backyard conversations with neighbors through the oleander hedges.

If all else failed, it was only a six hour, scenic, if somewhat rough and steep, drive to Prescott via the old Black Canyon Highway. Not too much to ask for a decent night’s sleep.

Heat wave

In addition to the loss of their annual respite from the trials of the Superior Court, the local legal community mourned more seriously the loss of Judge Edward H. Kent, a noted local attorney and former chief justice of the Territorial Supreme Court. After surviving 14 summers in Phoenix, Kent was a victim of a torrid heat wave that claimed hundreds of victims in the Midwest. Kent, attorney for the Santa Fe Railroad, died in the Blackstone Hotel in Chicago on July 30, 1916, of “hemorrhage superinduced by heat.”

Kent was mourned by the Maricopa County Bar Association at a special meeting on the occasion of his funeral. As a token of “our grief, our respect and our affection,” the MCBA drafted resolutions for the record of the Superior Court of Maricopa County and the Arizona Supreme Court, recognizing the judge’s contributions and character. The resolution noted that “[h]e was a man of fine and liberal education and was greatly learned in the law. He was dignified, courteous and considerate as a judge. His integrity was never questioned. He sought always to be impartial and that his judgment should be just. As a practitioner, his attitude toward the court was deferential and dignified, toward his opponents, courteous and affable, toward his clients, devoted and loyal.” High praise even in those simpler, more civil times.

Summer 1916 in Maricopa County—before the United States entered The Great War, before the Depression, before we became an “asphalt island,” before swamp coolers, and before air conditioning—was a time and place we have trouble visualizing, but with a little iced tea and a wet swimsuit, on a summer evening in the back yard behind our oleander hedges, we can just catch a glimpse before we step back into our air conditioned world.