Groundbreaking Perspectives

By Tara Jackson
Special to Maricopa Lawyer

I will never forget the day in 1987 my torts professor referred to a judge as “she.” I lost track of the discussion for several minutes as I tried to replace the image of a stern faced middle-aged man with a woman. I couldn’t do it. By then 40 percent of entering law students were women, but long held stereotypes are hard to break—even for those of us seeking to shatter them.

While I struggled to even picture a woman judge, Judges Mary Schroeder and Sarah Curley were already sitting on the bench. Schroeder began her judicial career in 1975 at the Arizona Court of Appeals. In 1979, she was appointed to the Ninth Circuit Court of Appeals. In 2000, she became the first woman to hold the chief judge position for the Ninth Circuit.

Curley started her judicial career more than a decade after Schroeder but there were still plenty of barriers left to be broken. In 1986, Curley became the first female judge of the District of Arizona’s Bankruptcy Court. In 2001, she rose to the position of chief judge, another female first.

I sat down with both of these trailblazers to discuss the obstacles they have overcome and the legacies they hope to leave.

Judge Schroeder: The biggest obstacle I had to overcome was being the only female associate in a major Phoenix law firm and having a baby. I overcame issues I had to face by being blessed with a healthy constitution, a healthy baby, a wonderful husband and support from some law firm partners who wanted to move women forward.

Judge Curley: In my case, it was shyness. I was the child that was hiding behind her mother when adults came to visit. I did not overcome this obstacle overnight. It took the patience and understanding of my parents and reading numerous articles as a young child and beyond. I also served as a mentor to a younger sister, allowing me to explore beyond myself and see what needed to be done for others.

TJ: Who are your role models and why?

Schroeder: Eleanor Roosevelt is my role model because she spoke out for the rights of all the people of the United States and did her best to inform her husband to advance the rights of all—especially women. It is because of Roosevelt that the first woman was appointed as an appellate judge of the United States.

Curley: My role models are women in my family. At the turn of the century, my grandmother and her twin brother ran a cheese factory. My grandmother’s brother had to act as the “front man,” since the public would not transact business with a woman. She left Canada in the early 1900s, as a single woman in her thirties, to attend medical school in America. Her struggles and determination have been an inspiration to me.

TJ: What do you think the influx of women in the legal profession has changed?

Schroeder: Not enough. Women have made the profession much more aware of the need to understand the human problems of clients and litigants in the courtroom. Women have also, to some extent, helped to reduce the stigma of the profession. As a result of a woman’s entry into the profession, there are different types of partnership levels and different forms of private practice.

Curley: I believe that women embrace diversity. Most of us have experienced some form of discrimination and realize how destructive such behavior can be. So, we intend to be inclusive, wanting all viewpoints and experiences to be considered and valued. This rich tapestry of thoughts, ideas and innovations has improved the legal profession.

TJ: What do you see as challenges to the legal profession?

Schroeder: There is no bigger challenge to our legal profession than making legal services affordable to all. Related to this is the need to educate the public about the law and our system of government. There is a great deal of ignorance about how hard we have to work to keep the freedoms we have.

Curley: Providing affordable legal services and regaining the confidence of the public in our profession. We need to provide more self-help centers, such as [the ones] at Arizona Bankruptcy Court and Maricopa County

In re Estate of Jung

See Court Watch page 4

Special to Maricopa Lawyer

By Tara Jackson

Proposed Budget Funds Court Improvements

By J.W. Brown
Maricopa Lawyer

The Trial Courts of Arizona in Maricopa County and its juvenile and adult probation departments are poised to begin the new fiscal year on July 1 with a pocketful of improvements and enhancements with funding from the County Board of Supervisors.

The projected $205-million budget tentatively provides for additional judges, commissioners and interpreters; expanded court security measures; consolidation of mental health cases; behavioral treatment for juveniles; and improved services and reimbursement for jurors.

“This budget allows the judicial branch to stay abreast of rising caseloads and expanding workloads that seriously impact a system weighed down by the unbridled population growth throughout Maricopa County,” said Trial Courts Administrator Marcus Reinkensmeyer.

The budget has been approved and signed by court and county officials, but at press time was awaiting final approval by the Board of Supervisors.

See Improvements page 11

Time Not Always of the Essence

As a beneficiary of his father’s will and of a deathbed codicil, waits until after the father’s death before signing the codicil as a witness. His is the second witness signature, necessary to make the codicil valid. Does the son’s failure to sign until after the father’s death invalidate the codicil? That question recently faced Division One of the Arizona Court of Appeals in In re Estate of Jung, No. 1 CA-CV 04-0272 (Ariz. App. Mar. 31, 2005).

On August 6, 2002, Bernard Jung called his sons, Marc and Ted, to his deathbed. They discussed changes William wanted to make to the will he had executed in 1980. Marc prepared a codicil, which Bernard signed in front of Marc and Bernard’s caregiver, Alison Scott. The caregiver signed the codicil as a witness right then, but Marc did not sign it at that time. A copy of the codicil was sent to Marc’s lawyer the next day; it did not have Ted’s signature.

Bernard died on August 8, 2002. Ted was shown a copy of the codicil on the eleventh and he received a copy on the fourteenth; neither contained Marc’s signature.

Better late than never

Marc filed an application to probate Bernard’s will and the codicil. In addition to Bernard’s and the caregiver’s signatures, the
A Tale of Two Attorneys

When Goofus initiates telephone calls during business hours, he has a secretary dial your phone number. When you answer, she asks you to “hold the line for Goofus.” Goofus is perfectly capable of dialing the phone himself, but likes to keep you holding while he checks stock quotes on the Internet. Goofus has not caught on to the fact that this method of placing a call often results in Goofus hearing nothing but a dial tone when he eventually picks up the phone for the call that he ordered his secretary to place.

Gallant dials the telephone himself. He calls you in advance of scheduling anything with you so that you both can find a mutually convenient time to accomplish the task.

Goofus schedules meetings, depositions, closings, and conference calls without checking your schedule. When you inevitably need to ask to re-schedule because he has unilaterally set the event at a time when you are in court, on vacation, or otherwise committed, Goofus demands “something in return.”

Gallant grants extensions to opposing counsel as a matter of professional courtesy.

Goofus liberally asks for extensions and, in fact, sometimes takes them without asking, but always “has to check with his client” before granting you a reciprocal extension.

Gallant refers cases outside of his firm’s practice area to the MCBA’s Lawyer Referral Service. He has that number—602-257-4484—and his speed dial. Goofus has a “thorough” approach to referrals and to all written communications. He sends each piece of correspondence via e-mail, facsimile, and regular mail, and then has his secretary call to confirm that you received his communiqué.

Gallant annually attends MCBA’s Film Fest, scheduled this year for June 1 through June 7 and June 22 through June 30. Goofus “doesn’t like sitting in a dark room with a bunch of other lawyers” and does his CLE on the Internet.

Goofus is usually “tired off” at something he perceives you have done, such as your failure to return one of his 3:30 a.m. telephone calls by 8:30 that same morning.

The only time that Gallant is teed off is when he brings a foursome and plays in the Maricopa County Bar Foundation’s charity golf tournament.

Goofus thinks golf is silly.

On a serious note, I would like to extend the MCBA’s appreciation and best wishes to Chief Justice Charles E. Jones, a champion of the Courts and justice in Arizona, on his June 10, 2005 passing of the gavel and his retirement as the Chief Justice of the Arizona Supreme Court. Chief Justice Jones has been a leader in the Arizona legal community since the 1960s, an active member of the Bar and supporter of the MCBA throughout his career, and a significant presence on the Arizona Supreme Court since his appointment in 1996. On behalf of the MCBA, thank you.

We also welcome and extend our support to incoming Chief Justice Ruff V. McGregor. The MCBA and I thank you for your support and we will be there for you as you continue the work of providing access to equal justice and court services to all Arizonans.

Don’t Look Back

Several years ago a friend wisely told me: “Don’t look back. You’re not going that way.” It was great advice provided at a time when I faced change and uncertainty in my life. As life would have it, unexpected changes have headed my way again. I have been asked to accept new surroundings, conditions, and responsibilities in my work environment. Thank goodness I am a paralegal; I am used to multi-tasking and adapting to new information and directions on an almost hourly basis!

As president of the Paralegal Division, I am faced with the added challenge of managing changes that affect members. My goal is to ensure that changes that are presented to the division during my presidency are positive and beneficial to members and future members. My desire is for division members to actively commit to this goal as well.

For so long, we paralegals have been promoters of change within the legal profession. We are now at a point where we are being asked to accept changes. For instance, there are new limitations being placed on many of us through FLSA classifications that conflict with increasingly substantive work assignments. There are also new players in the industry, such as certified legal document preparers, who are seeking recognition and acceptance by paralegals and attorneys.

As we expand our role in the legal community, the number of people who desire to work with and influence paralegals is ever increasing. Some form of change is inevitable.

We can choose to harness and direct it, or we can choose to preserve the status quo for as long as time and circumstances will allow.

I know the strong work ethic of paralegals, so I am sure we will choose to embrace our common identity and move forward together, taking the division and the profession to the next level of success. If you have been hesitant to step out of the comfort zone and create a new and better one, perhaps I can convince you with some straight-forward advice: “Don’t look back. You’re not going that way.”

Find a Home in MCBA’s Young Lawyers Division

The Arizona Republic recently reported that 350 people decide to make Arizona their new home everyday. Wow! For those of us who learned to walk in the desert, this seems staggering, but the miles of newly tiled rooftops attest to our growth. If you are an attorney new to Maricopa County, welcome! I think you’ll find attorneys in our neck of the woods are generally likable and that offices are a bit more relaxed than our cohorts on the east coast.

We have had a steady stream of young lawyers contact YLD to help them find their way in our growing legal community. Some of you come with jobs and just want to meet some new faces. Others come in search of a job and are eager to network. A third bunch (clearly destined for the pearly gates) really has the itch to volunteer because they were involved in law school organizations or in their former legal community.

Whatever your situation, we’d love to have you as a member of the MCBA YLD. Please feel free to join us for lunch at our noon meetings once a month (2nd Monday of every month) at the MCBA offices (3rd Street and Palm Lane in downtown Phoenix). Our board consists of attorneys from all walks of life in many different practice areas. We eagerly await your new ideas and energy. Please e-mail Geoff Cummings at gcummings@mcbabar.org, so we’ll know you’re coming.

YLD News & Notes: Thanks to Jonathan Wallace, Ben Slipher, Geoff Cummings, Maxine Polomski, Lamson College, the Arizona Court of Appeals, and the MCBA staff for their efforts in coordinating Law Week 2005. On another note, we’re really looking to add soldiers to our YLD volunteer brigade. We’ve got some dynamic leaders with great ideas, but could really use some more volunteers to help us with planning and staffing events. Your committee choices are plentiful: 5K Run (tentatively set for November), Domestic Violence, Membership & Marketing, CLE, Student Outreach, and much more.

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Errors will be corrected in a subsequent issue.

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Finance in Law: What You Need to Know to Help Your Clients

On May 11, the Maricopa County Bar Association along with MBA in a Day will present financial essentials from the client perspective, including financial statement preparation and analysis. The seminar will offer attendees the basics they need to effectively communicate with their clients about finance.

Maricopa Lawyer sat down with one of the seminar's presenters, Lenora Peppers, the managing director of Kick-Start Marketing, an international marketing firm for small- and mid-sized businesses. Peppers, who has an MBA-MIM from Thunderbird, The Garvin School of International School of Management, provides some insight on the seminar's value to attorneys as well as some trends between law and finance.

Maricopa Lawyer: Please provide a basic overview of the Finance Basics seminar and why it is valuable for attorneys to attend.

Peppers: The seminar focuses on the nuts and bolts of finance from the client perspective. We'll cover financial statement preparation and analysis, the language of finance and the components of the various statements. It's designed to give attorneys an overview of the concepts used in accounting and finance which can be used in communicating with and helping clients solve their problems, adding value to your practice, and increasing client retention and acquisition.

ML: Is it necessary as an attorney to be able to read and analyze financial statements? If so, why?

LP: It's definitely a value to your clients. It's important to your clients that you not only be able to read a balance sheet, income statement and cash flow statement, but also be able to see if something may be amiss and how that might relate to their legal situation.

ML: What is the current trend between attorneys and finance?

LP: We are seeing more people with advanced degrees such as law degrees returning to school to get an MBA in the full-time programs. They want to provide their clients with a well-rounded service and be able to speak the lingo of finance or financial theory. They want to be able to add value to their practice and their clients.

ML: What client expectations exist regarding attorneys handling/advising on financial matters?

LP: We're seeing that clients want their attorney to understand their overarching problems or point them in the right direction.

ML: What are ethical and legal implications of financial advising as an attorney? Do you need an MBA or the overview basics?

LP: It's not necessary to have an MBA to understand the basics of finance, but it is helpful for the client to know that the attorney understands the situation, can communicate on the issue, and solve the problem through tapping into various resources. This is the area that we'll be discussing in detail in the seminar.

Finance Basics: Tools to Help Your Clients, put on by MCBA and MBA in a Day, will take place on Wednesday, May 11, 2005 from 1 to 4:30 p.m. at ASU Downtown Center, 502 East Monroe in Phoenix. The cost to attend is $75 for MCBA member attorneys; $55 for MCBA paralegals and public attorneys; $105 for non-member attorneys and $75 for non-member paralegals and public lawyers. Self-study material is available for $75 for MCBA members and $105 for non-members. Attendees may qualify for 4 hours of CLE credit. For more information or to register, contact Mona Fontes at (602) 257-4200 x131 or mfontes@mcbabar.org. You may also visit www.maricopabar.org. ■

ABA House of Delegates Actions Affect Local Attorneys

In February, the American Bar Association held its mid-year meeting in Salt Lake City. The policy-making body of the ABA, the House of Delegates, met to discuss and debate several resolutions and recommendations pertinent to the legal profession and the rule of law in the United States. The results will impact attorneys practicing in Maricopa County in various ways.

Local impact

First, the ABA is consulted by Congress and federal agencies on legislation and policies as representing the voice of the legal profession. And the National Conference of Commissioners on Uniform State Laws consults with the ABA and submits its proposed Uniform Laws for approval by the House of Delegates.

Second, several states watch and often implement recommendations of the ABA. For example, the Arizona Supreme Court recently sought public comment on a proposed rule change that would implement the ABA Model Rule on Insurance Disclosure, which was passed by the ABA in August 2004 and would require professional liability coverage certification as part of the bar application.

As is required, the Nominating Committee of the ABA made its recommendation for president elect of the ABA at the mid-year meeting. It is virtually certain the person nominated will be elected in August 2005 and then become president in August 2006. The nominee is Karen J. Mathis of Colorado.

Recommendations

With regard to recommendations, the House of Delegates took several actions. While the following discussion is not a comprehensive account of everything considered by the House of Delegates, it provides the flavor of some of the topics most relevant to Arizona lawyers. In the area of immigration law, the ABA took a position supporting the repeal of annual numerical caps that result in undue delays in the granting of lawful permanent resident status to individuals who have already been granted asylum status in the United States. Due to these numeric caps, an asylee who applies today will not be able to obtain lawful permanent resident status for approximately twelve years.

In the area of criminal justice, the ABA passed a recommendation urging all federal, state, local and territorial governments to reduce the risk of convicting the innocent by ensuring that no prosecution should occur based solely upon uncorroborated jailhouse informant testimony.

The ABA also recommended that all states and territories adopt the Model Statute of Professional Responsibility (Federation of State Bar) to govern the accrual of actions for injury, illness or wrongful death based on exposure to asbestos. The ABA recommended regulation of screening vans and urged the federal government to undertake a study of the impact it has had in the causation of asbestos-related injuries and to identify the appropriate role of the federal government in the asbestos litigation crisis.

Resolutions

A topic currently being debated in legislatures around the country, including Arizona, in one form or another, is the ability of health care providers to refuse to perform functions or services to which they morally object. The ABA passed a resolution opposing governmental actions and policies that interfere with patients' ability to receive from health care providers in a timely manner: a) all relevant and medically accurate information necessary for fully informed healthcare decision-making; and b) information with respect to their access to medically appropriate care, as defined by the applicable medical standard of care. The purpose of this recommendation is to oppose broad statutory refusal provisions that allow health care providers to refuse to provide full services or complete medically appropriate information.

The ABA also adopted and recommended to all federal and state courts the ABA Principles Relating to Juries and Jury Trials dated February 2005. These Principles were submitted to the ABA by the American Jury Project, chaired by Patricia Lee Refo of Snell & Wilmer. The Principles cover dealings with a jury, from assembling a jury through jury deliberations and even post-verdict. These Principles both adopt and expand on the many jury reforms that have previously been adopted in Arizona. The ABA is set to hold its annual meeting in early August in Chicago. The Maricopa County Bar Association, through its delegate to the House, will continue to monitor and participate in the issues and deliberations coming before the ABA on behalf of its members.

Tim Hyland is a shareholder in Kunz Plitt Hyland Demlong & Kleifield and serves as the MCBA delegate to the ABA House of Delegates.
codicil attached to his application had Marc’s signature, which was dated August 6, 2002. Some months later, Ted filed a competing petition to probate the will; he asserted that the codicil was invalid, arguing that Marc had misdated the document and had perpetrated a fraud on the court.

Marc provided evidence of the following sequence of events. After Bernard and the caregiver had signed the codicil, Marc believed that it did not need his own witnessing signature to make it valid. But he signed it anyway, thinking, “I was there, I might as well sign it.” He explained that the documents faxed to his attorney and shown to his brother were copies that had been made before he, Marc, signed it. On August 7, 2002, Marc’s attorney informed him that he did not believe that the codicil was a valid testamentary instrument without a second witness’s signature. So Marc signed it that afternoon. Asked why he dated his signature August 6, he explained that that was the date he had witnessed his father sign the codicil.

Ted countered that it was likely that Marc had signed as a witness sometime after August 14, after Bernard had died. He argued that under Arizona law the codicil would be invalid if that was true.

Burden of proof

The judge found that Bernard had signed the codicil with Marc and the caretaker there as witnesses, but that only the caretaker had then signed it. He ruled that Arizona law invalidated the codicil if it was signed after Bernard died and that Marc therefore had the burden of proving that he had signed it before the death.

Since Marc could not meet that burden, the court found that the codicil was invalid and admitted only the will to probate. Marc appealed, arguing that the Arizona statutes did not require a witness to sign before the testator died.

The issue before the Court of Appeals was the meaning and application of A.R.S. § 14-2502(A)(3), which requires a will to “be [signed] by at least two people, each of whom signed within a reasonable time after the death.”  He explained that the documents faxed to his attorney and shown to his brother were copies that had been made before he, Marc, signed it. On August 7, 2002, Marc’s attorney informed him that he did not believe that the codicil was a valid testamentary instrument without a second witness’s signature. So Marc signed it that afternoon. Asked why he dated his signature August 6, he explained that that was the date he had witnessed his father sign the codicil.

Ted countered that it was likely that Marc had signed as a witness sometime after August 14, after Bernard had died. He argued that under Arizona law the codicil would be invalid if that was true.

But with the new statutory version, Kesler wrote, “the Legislature has now prescribed a time frame within which a witness must sign a will: within a reasonable time.”  He noted that a comment to the Uniform Probate Code, from which the Legislature had taken § 14-2502, specifically stated that a witness need not sign before the testator’s death.

“In light of the legislative history and the comment to UPC § 2-502,” Kesler concluded, “we hold that the Legislature has superseded Gonzales,” and therefore it would not matter if Marc had signed the codicil after Bernard’s death. Joining in his opinion were Judges Patrick Irvine and Jon W. Thompson.

***

Do as I do, not as I say

In a medical malpractice action, an expert testifies that in his opinion the defendant met the applicable standard of care. But the plaintiff has learned that the expert’s own practice was more exacting. He wished to bring out that point on cross-examination. Should he be allowed to point out that the expert’s own practice was more exacting than the standard of care he had laid out for the jury? In Smethers v. Campion, No. 1 CA-CV 04-0117, the trial court had rejected this line of cross-examination, but the court of appeals reversed, finding the information relevant impeachment evidence.

Gary Smethers sued Dr. Michael Campion and Southwestern Eye Center after LASIK surgery resulted in overcorrection of Smethers’ eyesight. This led to deterioration and fluctuation of his vision, requiring frequent changes to his eyeglasses prescription. He also suffered visual defects like glare, halos, and starbursts. He had to carry with him several pairs of glasses so that he could see in different lighting conditions.

Smethers blamed Campion’s failure to take accurate measurements of the shape of his eyes. Smethers had worn contact lenses, which change the shape of the cornea. But the shape returns to normal after several days of leaving them out. Smethers was wearing his lenses when he first went to Campion’s office; measurements were taken shortly after he took them out. The office instructed Smethers to leave his lenses out starting several days before the operation was scheduled.

Measuring error

On the day of the surgery, Campion did not take a new set of measurements. Instead, he relied on eleven sets of measurements that had been taken of Smethers’ eyes over the preceding nine years, including the measurement his office had taken shortly after Smethers took his lenses out.

Smethers sued Campion and Southwestern. His expert, Dr. Samuel Masket, testified that when LASIK is performed on people who wear contacts, the standard of care requires that the lenses be removed several days before the operation because the measurements must be based on the cornea’s natural shape. Masket testified that Campion had breached the standard of care by taking measurements only shortly after having Smethers remove his contacts, and by not measuring the eyes after the contacts had been out for several days. He opined that the failure to re-measure probably caused the overcorrection and the subsequent problems.

Campion hired Dr. Perry Binder, who testified at deposition that Campion had complied with the standard of care by relying on the previous eleven measurements without re-measuring. Binder also stated that in his own practice he would have remeasured before doing the operation; he requires his patients who wear soft contact lenses to leave them out for 72 hours before surgery.

Preach what you practice

Before trial, the defendants persuaded the judge to preclude evidence of the personal practices of either expert. The jury found for the defendants and Smethers appealed.

Campion argued that Binder’s personal practice was irrelevant to the standard of care. Judge Lawrence F. Winthrop sided with Smethers. He wrote that it was unnecessary to determine whether in all medical malpractice cases, an expert doctor’s own medical practices are relevant and admissible. But he found the evidence admissible here to impeach Binder’s opinion. The doctor had admitted that he urges his students to take the precaution of leaving contact lenses out for an extended period of time, even though, Winthrop noted, Binder “continued to insist that, in this situation, Dr. Campion was not required by the standard of care to take such precaution.” “We agree that how a testifying expert approaches a medical problem may be relevant and of assistance to the jury in determining what the standard of care requires in a similar circumstance.”

“More importantly,” he continued, “the jury is entitled to fully evaluate the credibility of the testifying expert, and the fact that an expert testifies that the standard of care does not require what that expert personally does in a similar situation may be a critical piece of information for the jury’s consideration.

This information is particularly critical. Winthrop continued, when “there was other evidence in the record—in the form of Dr. Masket’s testimony and the medical literature—that supported the position that Dr. Binder’s ‘personal practice’ was perhaps closer to reflecting the applicable standard of care than that espoused by Dr. Binder in his official standard of care opinion.”

Joining Winthrop in remanding for a new trial were Judges Susan A. Ehrlich and Maricopa County Superior Court Judge George H. Foster.

Thank You

Maricopa County Bar Association’s Estate Planning, Probate, and Trust Section would like to thank the following sponsors for its April 21, 2005 Judicial Reception:

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STEPHEN M. DICHTER (INCUMBANT)

for re-election to the State Bar Board of Governors

Steve has been an active member of the Board of Governors for 2 years. During that time, he has defended Arizona lawyers against public criticism when it has seemed right to do so and has championed the cause of an independent judiciary. Steve has no desire to ever become a high-ranking officer of the State Bar; consequently, he always says exactly what he really thinks. We like that about him (usually) and hope you will too.
May’s Ask-the-Expert is Michael York, state director of the Arizona Small Business Development Center Network, a community service of Arizona’s Community Colleges and the United States Small Business Administration. The network’s mission is to help small business owners and prospective owners succeed by providing workshops, seminars and individualized, confidential and no-cost business advising. According to York, creativity is necessary in solving difficult business problems. Pointing out that the creative part of our brain works non-linearly and even non-rationally, York explains how to tap into our mind’s creativity using strategies that allow for “out of the box” ideas.

**Q** How do I find a solution to a business challenge that seems insoluble?

Free the right side of your brain to explore every possibility. Do not evaluate the list of possible solutions that you come up with. Evaluating the ideas, using the left side of your brain, will come later.

The following story illustrates the importance of finding creative solutions. Two frogs fall into a bucket of cream. The first frog, seeing that there is no way to get any footing in the white liquid, accepts his fate and drowns. The second frog starts thrashing around in the cream doing whatever he can to stay afloat. Eventually, all his churning turns the cream into butter and he hops out of the bucket.

Here are some behaviors, attitudes and actions that will guarantee better solutions:

- **Forget logic.** Use right brain thinking techniques such as metaphors, analogies and “what if” questioning.
- **Challenge every assumption.**
- **Failure breeds success!** Don’t be afraid to make mistakes.
- **Be playful! Be foolish! Humor can contribute greatly to the creative process.**
- **Believe in your ability to be creative.** You will live up to your expectations.

The creative decision-maker is skilled in five areas of problem solving:

- The ability to overcome or sidestep mental blocks by de-labeling, checking assumptions and changing point of view.
- Being able to identify the problem by asking the right questions, prioritizing, and digging beyond symptoms to get to the root of the problem.
- Producing a plethora of ideas through brainstorming by using lateral and non-linear thinking techniques, such as mind-mapping.
- Evaluating solutions after establishing sound criteria and then measuring each alternative solution by those criteria (this is where the left brain goes back to work.)
- Implementing the solution and giving it time to work before re-evaluation.

**A**

How do I use the right side of my brain to find creative solutions?

When you are faced with an apparently insolvable problem, it’s often difficult to think through it in a logical, linear way. Have you ever found yourself trying to consider a problem and your mind keeps flitting from one aspect of it to another. It can be very frustrating! Well, there’s a perfect tool for you to use to capture all these different thoughts and then bring order and logic to them later. It’s called mind mapping. Mind mapping is a tool to free your right brain to work on a problem.

Here are six easy steps:

1. Write down a word or two that describes the main subject of the mind map in the middle of your workspace. Mind mapping is non-linear, so we need to leave room on all sides of the problem. Draw a box or a circle and write down a word or two that describes the main subject of the mind map.
2. Draw another circle or box above and to the right of your main subject. Write down an aspect of the problem. Keep adding circles or boxes to your diagram as you think of additional aspects of the problem that connect. It’s very important that you not try to do this linearly. Let your mind expand and flow and jump from one aspect of the problem to the next. Just connect each thought somewhere in the diagram.
3. Don’t reject or judge ideas. Try to work rapidly to let your mind explode with all the different ideas. Use different colored pens or highlighters to code key ideas and questions that could be involved in different aspects of the solution.
4. Don’t limit yourself to 8 1/2 x 11 paper. Use an easel, a white board, butcher paper, or anything else you can think of to give your ideas plenty of room to flow.
5. Keep your mind moving. If your thought process begins to lag, draw empty boxes and see your mind respond by thinking of new aspects of the problem or new possible solutions.
6. Don’t worry about the organization of the map. Organization and evaluation can come later. The main thing is to get all ideas on paper in a hurry.

Here are the advantages you will gain:

1. You will be able to capture all the myriad thoughts you have about your problem. You can follow a thought as far as it leads you without getting lost because you can always come back to the center of your map and start over.
2. You will be able to use the creative energies of other people to contribute to the solution. Mind mapping allows other perspectives and approaches to be mixed in without having to settle which way of viewing the problem is “right” or “wrong.”
3. You can leave “dead ends” for later. They do not become roadblocks as they might in more linear thinking frameworks.

Here are some behaviors, attitudes and actions that will guarantee better solutions:

- **Forget logic.** Use right brain thinking techniques such as metaphors, analogies and “what if” questioning.
- **Challenge every assumption.**
- **Failure breeds success!** Don’t be afraid to make mistakes.
- **Be playful! Be foolish! Humor can contribute greatly to the creative process.**
- **Believe in your ability to be creative.** You will live up to your expectations.

The creative decision-maker is skilled in five areas of problem solving:

- The ability to overcome or sidestep mental blocks by de-labeling, checking assumptions and changing point of view.
- Being able to identify the problem by asking the right questions, prioritizing, and digging beyond symptoms to get to the root of the problem.
- Producing a plethora of ideas through brainstorming by using lateral and non-linear thinking techniques, such as mind-mapping.
- Evaluating solutions after establishing sound criteria and then measuring each alternative solution by those criteria (this is where the left brain goes back to work.)
- Implementing the solution and giving it time to work before re-evaluation.

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Here are six easy steps:

1. Write down a word or two that describes the main subject of the mind map in the middle of your workspace. Mind mapping is non-linear, so we need to leave room on all sides of the problem. Draw a box or a circle and write down a word or two that describes the main subject of the mind map.
2. Draw another circle or box above and to the right of your main subject. Write down an aspect of the problem. Keep adding circles or boxes to your diagram as you think of additional aspects of the problem that connect. It’s very important that you not try to do this linearly. Let your mind expand and flow and jump from one aspect of the problem to the next. Just connect each thought somewhere in the diagram.
3. Don’t reject or judge ideas. Try to work rapidly to let your mind explode with all the different ideas. Use different colored pens or highlighters to code key ideas and questions that could be involved in different aspects of the solution.
4. Don’t limit yourself to 8 1/2 x 11 paper. Use an easel, a white board, butcher paper, or anything else you can think of to give your ideas plenty of room to flow.
5. Keep your mind moving. If your thought process begins to lag, draw empty boxes and see your mind respond by thinking of new aspects of the problem or new possible solutions.
6. Don’t worry about the organization of the map. Organization and evaluation can come later. The main thing is to get all ideas on paper in a hurry.

Here are the advantages you will gain:

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MCBA Welcomes Award-Winning Fiction Novelist to Phoenix

Novelist John Dalton is having a very good spring, and for good reason. In March, his debut novel, Heaven Lake, won First Place Fiction in Barnes & Noble’s 2004 Discover Awards, receiving a year’s worth of special promotion from the bookstore chain. (This promotion has helped past first place fiction winners such as David Guterson and his book Snow Falling on Cedars and Tracy Chevalier’s Girl with a Pearl Earring reach a large audience.) In April, Dalton learned that Heaven Lake won the prestigious Sue Kaufman Prize from the American Academy of Arts and Letters. Even before these awards, Heaven Lake began appearing on Best Books of 2004 lists including Publishers Weekly, the Chicago Tribune, the St. Louis Post-Dispatch, and Pages magazine.

Heaven Lake follows Vincent Saunders, a young Christian volunteer from middle America, who arrives in Taiwan to open a new ministry house and is soon presented with an extraordinary proposition: travel across the U.S. to meet and marry her on behalf of a mainland China, find a young woman he has never met and marry her on behalf of a successful Taiwanese businessman. Novelist Mark Dunn, one of the judges for the Barnes & Noble award, described Dalton’s writing as being “[g]raceful and evocative without being labored. Dalton’s prose establishes his credentials as a first-rate storyteller, and as an equally gifted translator of the language of the fragile human soul.”

Maricopa Lawyer recently sat down to ask Dalton about the effort that went in to writing the novel.

John Dalton: I was fortunate not only to get accepted at the University of Iowa Writer’s Workshop but also to arrive there at just the right time in my life. I was 27 years old. I’d lived and traveled a bit and had some unique experiences to draw from. At Iowa I was schooled in the aesthetics of good writing, particularly the notion that storytelling begins with the text, with meaning, sense and clarity, and only after these immense demands have been met does the work merit discussion in terms of character, plot, and theme.

Maricopa Lawyer: How would you describe the experience?

John Dalton: It was a very long journey. Most struggling novelists write several books they are unable to publish before finally breaking into print. I just kept writing the same novel over and over again. Talent is important, but what most people don’t understand is that writers create and expand their own talent over the course of many years by pushing themselves toward more elaborate and ambitious projects. Heaven Lake, partly because it was my first novel, took me a long time to get right. I wanted the novel to be many things: harrowing journey, spiritual quest, thriller, love story. It was an enormous effort. But it was also the most profound pleasure, the greatest fun, I’ve ever known.

Maricopa Lawyer: What prepared you for the eight years it took to write the novel?

John Dalton: My first funding came early on with a James Michener Award, which is given through several university writing programs, including Iowa. Michener was that very rare best-selling author who wanted to use his success to help emerging writers. I also received two fellowships at the Fine Arts Work Center in Provincetown, Massachusetts, which gave me an apartment in Provincetown, a monthly stipend check and plenty of time to get work done. These awards are specifically given to writers who’ve published or will soon publish a book. At a good colony all the menial tasks of daily life are taken care of for you. At MacDowell, for example, you’re served breakfast and dinner in a community dining room with other writers, visual artists, composers and filmmakers. Naturally there’s lots of great conversation and exchange of ideas. Each resident gets a secluded studio tucked away in the New Hampshire woods. Lunch is prepared by a gourmet chef and then brought to your studio door in a basket. Your stay is funded through donations and endowments, though as you begin to establish yourself as a working artist, it’s expected that you give back to the colony.

Maricopa Lawyer: What’s next?

John Dalton: It’s colonies. Colony writers are one of the few great perks in a very uncertain career. After several weeks in a colony you become hopelessly spoiled. But with that kind of attention it’s possible to get a lot of work done.

Maricopa Lawyer: What’s next?

John Dalton: I’m spending much of May promoting the paperback of Heaven Lake. I’m also at work on a second novel, this one set in the Midwest at a summer camp for mentally handicapped adults. It’s a different subject matter from Heaven Lake, but in terms of memorable characters and compelling story line I very much want it to be the same kind of book. In August I will join the writing faculty at the University of Missouri-St. Louis where I’ll teach student writers in the Master of Fine Arts program.

John Dalton will read from Heaven Lake at the Barnes & Noble Booksellers at Desert Ridge Mall, 21001 N. Tatum Blvd. in Phoenix, on Wednesday, May 25, 2005, beginning at 6 p.m. After the reading, the Maricopa County Bar Association will host a members-only reception for Dalton at Salute’s Ristorante (also at Desert Ridge Mall). Contact Amy Hicks at (602) 257-4200 x 128 or ab Hicks at mcba@bar.org to attend. You may also visit www.maricopabar.org for more information.
A Peek into the Life of the Hon. Susan Bolton

Plant DNA, European debates and book club meetings—such is the life of the Honorable Susan Ritchie Bolton.

Bolton, well known and respected for her role as a U.S. District Court judge, lives quite the interesting life.

Bolton grew up back east in Pennsylvania. After beginning college at Pennsylvania State University, she moved somewhat west to finish her undergraduate studies at the University of Iowa, where she stayed to attend law school. Immediately after graduation, she moved to the real west and has been living in the Arizona desert ever since.

The bench and the bar

Bolton possesses a strong presence in Arizona’s legal community. Beginning as a law clerk for the Arizona Court of Appeals, Bolton went on to spend eleven years in private practice. As a trial attorney focusing on commercial litigation, she spent a lot of time in court, which allowed for an easy transition in her next role as an Arizona Superior Court judge, which she took on in 1989. Leaving the private sector to become part of the bench enriched her life with a variety of challenges that continue to keep her growing and learning.

After spending another “term” of eleven years as a state judge, Bolton became a federal court judge in 2000. Embodying the problem-solving nature of being a judge, Bolton thoroughly enjoys the array of cases brought before her. Her move to a U.S. district court has provided many similarities to her previous role, though as of now, she has yet to experience the succession of firsts that came about in her time as a state judge.

Plant life

Bolton had a landmark case come her way in 1992 involving Palo Verde tree seed pods. Though it may seem unifying to describe tree seed pods as exciting, it was that and more when Bolton allowed plant DNA to be admitted into crime scene evidence.

Bolton still gets animated when telling the details that stemmed from a Palo Verde tree; how University of Arizona plant geneticists had to first determine if the seed pods were unique to the trees and then try to match their DNA results to a specific tree and pods. Though it may seem unfitting to describe tree seed pods as exciting, it was that and more when Bolton allowed plant DNA to be admitted into crime scene evidence.

Changing ways

It seems as though Bolton has made a major career move every eleven years. It is going on five years since she took on her federal judge role and when asked where she sees herself in another six, she makes it very clear she wants to be right where she is now—ending any pattern that may have existed.

And for the state of Arizona, that is a wonderful pattern to break!

Arizona the beautiful

When asked how Arizona’s judicial system compares to other states, Bolton says that although she has only practiced in this state, she couldn’t imagine a better bench than the one in Arizona. She describes the “hardworking, dedicated bench” as “very progressive and open to change.”

Bolton has been a member of the Maricopa County Bar Association for the last 25 years. She finds its local aspects valuable to attorneys who practice in Maricopa County and especially likes its CLE seminars, for their convenience and the opportunity they give to attorneys to learn what judges expect by specific department, be it civil or criminal. Bolton is also a proponent of the MCBA Bench-Bar committee, which she has been actively involved with in the past and sees as mutually beneficial to the courts and attorneys.

Life well lived

Bolton makes the most of her spare time. Along with a group of female lawyers and judges, Bolton has been traveling to Europe every other year. Since their first trip in 1992, they have not repeated locations and do not intend to.

As if traveling overseas was not enough, a book club originated on their trip to Spain, and the women meet regularly to discuss diverse reads. At these meetings, there is constant debate over which trip was the best one taken, but Bolton thinks they can all agree that the best food was eaten in Italy.

Bolton also spends time up in the mountains of northern Arizona with her husband and two Bouvier dogs. She received her first Bouvier years ago from incoming Supreme Court Chief Justice Ruth McGregor and is now onto her third and fourth ones.

For more information, visit www.maricopacourts.org
TheEffectandLegalStatusoftheUSAPatriotAct
1-4:30 p.m., ASU Downtown
CLE: 3 hours general

Learn the substantive provisions of the USA Patriot Act and current status of constitutional challenges to the Act.

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

Arizona Homeowner Associations: How to Collect Assessments and Enforce Restrictions
1-4:30 p.m., ASU Downtown Center
CLE: 3 hours including 1 hour of ethics
Learn how to properly enforce restrictions, rules and regulations of Homeowners Association as found in their Governing Documents.

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

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), 502 E. Monroe, Phoenix; and the Arizona Club, 38th 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.

2 Maricopa County Air Quality Department - Changes in the Wind!
11-4:30 p.m., MCBA
CLE: 1 hour general
Attendees will hear first hand about the newly created Maricopa County Air Quality Department from its newly appointed director Robert Kard.

Cost: MCBA member attorneys, $32; member paralegals and public lawyers, $27; non-member attorneys, $42; non-member paralegals and public lawyers, $32. Lunch provided only for those whose registration and payment is received the day prior to the seminar.

4 Outside vs. Inside — How to Best Serve the Corporate Client from the Client’s Perspective
1-4:30 p.m., ASU Downtown
CLE: 3 hours including 2 hours ethics
A panel of in-house counsel will discuss their views on how outside counsel can best serve in-house counsel and the corporate client.

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

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

Learn the nuts and bolts of finance from the client perspective.

Co-sponsored by the MCBA and MBA in a Day

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

Arizona State Bar Course on Professionalism
12-30:5 p.m., ASU Downtown Center
CLE: 4.25 hours of Professionalism/Ethics
Presented by the MCBA, this program qualifies to meet the requirements for all new attorneys who are required to take the Course on Professionalism.

Cost: MCBA member attorneys, $90; member public lawyers, $75; non-member attorneys, $90; non-member public lawyers, $75

25 Estate Planning Probate and Trust Section (A), 11 a.m.

MCBA’s Criminal Law Section Presents...
What’s going on in Rule 11 Court?
1-4:30 p.m., ASU Downtown
CLE: 3 hours ethics
Learn about current ethics opinions, how to get and keep clients you want, know when to say no, and limiting your involvement in making decisions for your clients.

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

26 Estate Planning Probate and Trust Board Meeting (A), 7:30 a.m.

The New Family Court in Maricopa County - Mega-Analysis of Current Research in Child Custody
9 a.m.-12 p.m., ASU Downtown Center
CLE: 3 hours general
Learn the changes to Family Court in Maricopa County and the current Child Custody research.

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

27 CCD Luncheon: How to Get the Most Out of Your Collection Agency in Arizona
11:45 a.m.-1 p.m., University Club
CLE: 1 hour
Cost: CCD members, $20; non-CCD members, $30
Applications Sought from Attorneys Interested in Serving as Commissioners

Attorneys interested in redirecting their careers to a more “judicial” arena are invited to submit an application for commissioners’ positions with the Trial Courts of Arizona in Maricopa County.

Applicants must be at least 30 years of age, licensed members of the State Bar of Arizona and have engaged in the active practice of law for at least five years immediately preceding appointment. Assignments may be to Initial Appearance Court, Regional Court Centers and various departments of the Court, including Criminal, Civil, Family, Juvenile, Probate, Mental Health and Justice Courts in various Valley locations.

The position is fulltime, but the Court may also appoint a successful applicant to a part-time assignment.

Commissioners are paid up to 80 percent of a Superior Court judge’s salary. The recruitment, which opened on April 25, closes on May 20. Interviews are tentatively scheduled for June 27. Applicants from this recruitment may be selected to fill other vacancies within the following six months.

Interested applicants can get additional information by contacting Andrea Griego at (602)506-4473. The application form and instructions are available at: http://superiorcourt.maricopa.gov/openJobs.

Applications are also available in hard copy at Judicial Branch Human Resources, 101 W. Jefferson, East Court Building, 3rd Floor (Law Library), Phoenix AZ 85003 between 8 a.m. and 5 p.m., Monday through Friday. The application is also available on disk by providing the human resources staff with a virus-free, formatted blank disc.

An original application with 16 copies must be received by 3 p.m., Friday, May 20.

Pat McGroder, a trial attorney with Galagher & Kennedy, P.A., has been inducted into the International Society of Barristers.

The International Society of Barristers, an honor society with membership limited to 600 outstanding trial lawyers chosen by their peers, is dedicated to excellence and integrity in advocacy, to the preservation of the adversarial system and of the right to trial by jury, and to the encouragement of young lawyers to enter the field of trial practice.

McGroder (J.D., 1970, UA) has 35 years of experience of trial experience.

Susan E. Klemmer, an associate at Greenberg Traurig LLP, has joined the board of the American Liver Foundation, Arizona Chapter.

The American Liver Foundation (ALF) is the nation’s leading nonprofit organization promoting liver health and disease prevention. The Arizona Chapter is led by a voluntary board of directors and offers up-to-date information and support to individuals with liver disease and their families, friends, health care professionals and the local community.

Klemmer (J.D., 1998, UA) works in the firm’s business/finance department.

Barbara Dawson, a partner at Snell & Wilmer LLP, has been named a Fellow by the American Bar Foundation.

The Fellows is an honorary organization of practicing attorneys, judges and law teachers whose professional, public and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession. Established in 1955, the organization encourages and supports the research program of the American Bar Foundation.

Dawson (J.D., 1998, University of Iowa) practices in matters involving complex commercial claims, including handling contract, fraud, taxation, and class action issues.

Mark K. Briggs, a partner in Quarles & Brady Streech Lang LLP, has been named the new Chairman of the Board of Directors for the Arizona Humane Society.

The Arizona Humane Society is the state’s largest nonprofit animal welfare and protection agency. Annually, their shelters take in more than 30,000 unwanted, sick, abused and injured animals, with a mission to build healthy relationships between people and animals.

Briggs (J.D., University of Iowa, 1994) practices in the areas of corporate finance and securities, mergers and acquisitions, and international transactions for clients in a variety of industries.

Greg Fairbourn, a partner at Bonnett, Fairbourn, Friedman & Balint, P.C., has become a Fellow at the American College of Trial Lawyers.

The College, founded in 1950, is composed of trial bar members from the United States and Canada, and fellowship is extended by invitation only. Lawyers must have a minimum of 15 years trial experience before they can be considered for fellowship. There are currently about 5,500 members in the United States and Canada.

Fairbourn (J.D., ASU) has been practicing law for over 30 years.
McCain Introduces Legislation Affecting Arizona Indian Tribes

By Joan Dalton
Maricopa Lawyer

On March 7, 2005, Senator John McCain introduced the Native American Omnibus Act of 2005 (Senate Bill 536). The measure contains 19 provisions, some of which are technical amendments to existing law, while others serve to extend expiring authorizations. Four of the Act’s provisions appear to be written specifically with Arizona Indian tribes in mind.

As he introduced Senate Bill 536’s provisions, McCain explained that section 106 of the Act is a technical amendment to the Act of August 9, 1955, and would “allow binding arbitration in all contracts and not just leases on the Gila River Indian Community reservation.” If enacted, the amendments would take effect as if included in the Act of August 9, 1955.

A second provision, the Colorado River Indian Reservation Boundary Correction Act, (Section 112 of the Act), “corrects the south boundary of the Reservation by reestablishing the boundary as it was delineated in the original survey,” said McCain.

In a press release issued March 7, 2005, McCain commented that “[t]he return of the reservation lands to the Colorado Indian Tribes corrects an injustice that has lasted nearly 90 years.” Should this measure pass, approximately 15,000 acres of land that was stripped from the Colorado Indian Tribe’s reservation in 1915 will be restored.

The third provision of the Native American Omnibus Act of 2005 that will seemingly affect Arizona’s tribes is section 132, which focuses on border preparedness on Indian land. McCain stated that this provision of the Act would “enhance tribal first responder capabilities, provide assistance for aerial and ground surveillance technologies and communications capabilities, and facilitate coordination and cooperation with federal, state, and local tribal governments in protecting the border.”

“While [f]ederal and [s]tate law enforcement resources may supplement tribal efforts, tribal police, [and] fire and emergency services provide the first and often only response because of their access to the border. A tribe’s proximity to the border and its responsibility to the community for public safety and welfare require that they respond,” said McCain.

McCain said a fourth provision, (section 211), “will permit the Navajo Nation’s Suge Memorial Hospital to be considered a tribal contractor under the Indian Self-Determination Act, which will allow the hospital to obtain the benefits of coverage under the Federal Tort Claims Act and secure VA discounts.”

Provisions with general applicability to all Indian tribes include topics such as Indian financing, tribal justice, the definition of Native American, Indian arts and crafts, the Native American Programs Act of 1975, Indian education provisions, Indian land leasing, and probate reform.

McCain chairs the Senate Committee on Indian Affairs.

Thank You

Maricopa County Bar Association’s Construction Law Section would like to thank the following Corporate Sponsors for their support of its Popevis v. Beazer Homes Seminar on April 7, 2005:

- Koeller, Nebeker, Carlson & Haluck, LLP
- Jennings Strouss and Salmon
- Lombard Consulting Services, Inc.
- Artisan Catering
The law firm Lodmell & Lodmell, P.C. welcomed Ike Z. Devji as its new managing attorney and Ashley B. DeStefano as an associate.

Devji (J.D., 2000, ASU) is an asset protection analyst and attorney who brings a variety of experience from contract law and commercial litigation to the position.

DeStefano (J.D., 2003, Pepperdine) will work with the firm’s clients to implement integrated asset protection and estate planning services. Prior to joining Lodmell & Lodmell, DeStefano worked in the mortgage servicing industry and for several marketing ventures.

Flavia Campbell has joined Lewis and Roca LLP as an associate.

Campbell (J.D., 1998, Pontifical Catholic University of Rio De Janeiro) will practice with the firm’s Intellectual Property Practice Group. Prior to joining Lewis and Roca, Campbell she was a trademark attorney in Rio de Janeiro, Brazil.

Kenneth M. Frakes has joined Rose Law Group, PC, where he will focus on transactional real estate work, including purchase agreements, lease documents, and development agreements.

Frakes (J.D., ASU) also has a background in representing contractors and engineers in construction and commercial litigation.

Wendy N. Weigand has joined the law firm Gust Rosenfeld P.L.C., where she will practice in the area of commercial litigation, with an emphasis on construction litigation, breach of contract and insurance.

Weigand (J.D., 1993, Cleveland-Marshall College of Law) is admitted to practice in Arizona, Ohio and Illinois.

Deborah R. Scott has joined the Snell & Wilmer LLP law firm as of counsel. Scott (J.D., 1988, ASU) will practice multi-party complex litigation in the administrative and regulatory arena and government relations associated with public utility regulation.

She was previously the director of the Arizona Corporation Commission’s Utilities Division.

### Improvements

Continued from page 1

One significant change that is financed in the new budget is Presiding Judge Designate Barbara Mundell’s planned consolidation of the Mental Health Court Department. Hearings to determine mental competency of criminal defendants, cases involving civil commitments of mentally ill individuals and other matters involving persons with psychological problems that may prevent them from being able to care for themselves would be incorporated in a single court department.

“A consolidated Mental Health Court Department would address the issues of early identification, increased communication between the court that deals with this population and the increasing problem of recidivism by combining the administration of the civil and criminal departments,” notes the budget analysis report.

“This would allow for a more effective sharing of information and collaborative decision-making and provide more supervision and treatment services to reduce the number that are returned to Mental Health Court,” the report also noted.

Superior Court Judge Karen O’Connor presides over the Mental Health Court and has the responsibility to implement the consolidation effort.

The Juvenile Probation Department is getting funding to expand its residential treatment center, Youth Recovery Academy. Over $1.5 million is earmarked to provide residential accommodations for 24 female offenders. Previously, only male offenders had access to residential treatment. Services for the juveniles provide for their physical, emotional, psychiatric, substance abuse and academic needs.

Before the 2004-05 budget was adopted last year, the Adult Probation Department was hit hard by staff resignations. Significant increased funding helped the department recoup some of its staff losses. To continue the improvements, the county budget staff endorsed additional funding for another 19 probation field officers.

“We gratefully acknowledge the Board of Supervisors’ continued support of staff compensation issues, new court facilities and resources for critical justice system services,” Reinkensmeyer noted.

Additional highlights of the new budget include:

- Subject to the Governor’s approval, two additional judges to be assigned to Family Court, bringing the total number of judges on the Superior Court bench to 93. The additional two Family Court divisions “would meet the Court’s obligation to ensure efficient and effective processing of legal disputes.”

- A Family Court Commissioner to decide modifications and enforcement issues after dissolution of a marriage. It is anticipated that the additional commissioner will help assure timely resolution of family disputes.

- An additional DUI Commissioner for felony DUI Court.

- Immediate addition of two interpreters to meet the increased demand on the Court Interpretation and Translation Services staff.

That provides assistance to the court, the county’s four indigent defense departments, the County Attorney’s Office and the Adult and Juvenile Probation Departments. Continuing interpreter needs will be monitored and evaluated throughout the year to further address meeting the demand.

- An additional Northwest Regional Court Center Commissioner for felony case processing. Currently there is only one commissioner at the NW center.

- E-Courtroom expansion to the Northeast Regional Court facility that will open for business in September.
Computer Parts Replacement:
The Good, the Bad and the Ugly

There is good and bad to write about this month. I'll start with the bad.

Bad support
Contrary to what their public relations people say, Dell Computer Corporation is still using offshore technical support for its new computers. Apparently you can buy upgraded support that allows you to talk to qualified people in the United States but if you take pot luck you may end up with an unqualified person offshore.

Dell has always been highly regarded for the quality of its technical support but my experience with my most recent Dell purchase has been nothing short of terrible. Long story short, I bought a new high speed Dell WorkStation and had problems with it from the get-go. I spent a few hours straightening everything out after she got back from a hunting trip with her husband.

She called me back in a few days and told me that she had "upgraded" my problem and that I would be able to discuss it with one of the top tech support folks. I was given an 800 number to call. The fellow who answered my call seemed to be reading computer screens to me as we talked about the problem.

Final solution
After four hours of discussion and literally taking apart my entire computer, he arrived at the conclusion that I did not have a hardware problem. Instead, he assured me, I had a software problem and he could fix it.

At that point I was tired and wasn't prepared to argue. At his direction, I went through the process of restoring the boot information on the hard drive. It seemed to work that day but the next morning the hard drive died again. I called my friend at the ABA desk and pleaded with her to please have somebody send me a new hard drive. She did and the hard drive has worked fine since arriving.

The good
The good news is that the people at customer support are located in Texas and have access to the inner workings of the Dell Computer Corporation.

The bad
The bad news is that much of the initial technical support now offered by Dell comes from people like the fellow who made me take my computer apart and put it back together. He appeared to have very little technical training and a limited capacity to even read what was on his computer screen.

The ugly
I finally was so frustrated that I asked the tech guy where he was. He told me he was in Manila. Suddenly the vision of low paid and low skilled offshore tech support raised its ugly head.

This is not the first time that this has happened with Dell and I have made a decision that I will no longer purchase Dell equipment when I can find comparable equipment from a company offering skilled tech support based in the United States. Of course that decision is a company offering skilled tech support based in the United States. Of course that decision is an individual one that is fraught with political and moral implications. I don't intend to preclude you to about it. I just offer to inform you of the facts I know.

...
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In April’s Maricopa Lawyer, the featured Ask-the-Expert, Divorce Financial Analyst Michael Black’s telephone number was incorrectly listed. His correct telephone number is 480-425-0154.
High-tech manufacturing, such as computer and electronic product manufacturing, was one of the largest contributors to growth in Arizona, Idaho, Minnesota, and New Mexico for 2001-2002. For the fourth quarter 2004, Arizona ranks thirteenth in state personal income growth at 2.6 percent in-line with the national average.

In 2002, Maricopa County had a total personal income of $95,618,598 which ranked first in the state and accounted for 66.7 percent of the state total according to the Bureau of Economic Analysis. Given today’s current economic environment, business trends in Arizona are expected to continue with the national average.

**Bush Nominee for Ninth Circuit Judgeship Under Scrutiny**

By Joan Dalton  
Maricopa Lawyer

U.S. Senator Russ Feingold (D-Wis.) has asked for an investigation as to whether William Gerry Myers III, a controversial President George W. Bush nominee being considered a second time for a Ninth Circuit judgeship, lied when he told the Senate Judiciary Committee that he was not aware of the terms of a contentious settlement between a Wyoming rancher and the Bureau of Land Management.

The settlement agreement was drafted and signed while Myers was the top lawyer at the Interior Department. But during confirmation hearings, Myers claimed no knowledge of the terms of the settlement. The agreement forgave Wyoming rancher Frank Robbins for sixteen federal grazing violations, provided Robbins with a new grazing allotment and a special recreation permit to run his dude ranch, and precluded local and state offices from citing Robbins for future violations. The BLM voided the settlement in January 2004, and Robbins sued BLM to reinstate the agreement. The case is pending in federal court in Cheyenne.

During Senate confirmation hearings, Feingold asked Myers whether he had been briefed on the terms of the settlement by Myers’ politically appointed subordinate—Robert Comer. While Myers had specifically authorized Comer to make a settlement, Myers told Feingold that he and Comer “had brief discussions [ ] several times,” but Comer “did not brief me on the terms of the settlement.” Instead, said Myers, Comer “told me he was continuing to work on the settlement in the hope of resolving the disputes between the rancher and the BLM.”

Now a report and supporting documentation by Robbins’ lawyer, Karen Budd-Falen, suggest that Myers “had full knowledge of the [ ] settlement and all of its terms” before the settlement was finalized. A November 13, 2002 fax sent by Comer to Myers and other government officials asked if they “wanted to make any other changes if they “wanted to make any other changes.”

Additionally, Myers’ calendar records show that he and Comer discussed the settlement agreement on November 21, 2002. Myers said during Senate testimony that Comer simply told him that he was “still negotiating.”

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**Civil rights icon dies at age 86**

A man who challenged the internment of 120,000 Japanese-Americans died of respiratory failure March 30, 2005. In 1942, Fred Korematsu, a Japanese-American whom many Americans regard as a civil rights icon, was convicted of violating President Roosevelt’s executive order by failing to report to a detention camp during World War II. He appealed his conviction, but in a 1944 decision, Korematsu v. United States, the United States Supreme Court ruled that the internment of Japanese-Americans was necessary due to national security concerns.

Korematsu’s conviction was not overturned until nearly 40 years later. In 1988, the United States government apologized to Japanese-Americans for their detention. Ten years later, then President Bill Clinton awarded Korematsu the country’s highest civilian honor—the Presidential Medal of Freedom. When making the award, Clinton underscored the fact that “[i]n the long history of our country’s constant search for justice, some names of ordinary citizens stand for millions of souls—Plessy, Brown, Parks. To that distinguished list today we add the name of Fred Korematsu.”

**Senate Government and Accountability Reform Committee abandons effort to impose Senate Judiciary Chairperson in judicial nominating commissions; turns instead to human cloning**

On March 30, 2005, the Senate Government and Accountability Reform Committee adopted a strike everything amendment to HCR 2057 that would forbid human cloning in any form in the State of Arizona. Senators Albert Hale and Richard Miranda voted against it.

**Amendment to Rule 7 of the Uniform Rules of Procedure for Commissions on Appellate and Trial Court Appointments ordered effective April 4, 2005.**

On March 29, 2005, the Arizona Supreme Court issued an order amending Rule 7 of the Uniform Rules of Procedure for Commissions on Appellate and Trial Court Appointments. The following revisions to Rule 7 became effective April 4, 2005.

Rule 7(a) now requires applications to be filed with the Administrative Office of the Courts rather than as previously filed with the clerk of the Supreme Court.

Rule 7(b) clarifies that the six month retention period for applications is calculated from the application deadline date as it is stated on the first page of the judicial application. Similarly, Rule 7(b) is amended to allow supplemental material, in addition to the application, to be returned to the applicant at the applicant’s request. Rule 7(b) also provides that when an applicant states in writing that he or she does not wish to be considered for any subsequent vacancies occurring within the six-month retention period, no application material previously provided by the applicant will be provided to any of the Commissions. Finally, Rule 7(b) establishes that applications and supplemental material provided by an applicant or third parties that have not been returned to an applicant will be destroyed at the end of the six month retention period.

While there is no longer a presumption that information provided to the Commission by the applicant is confidential, Rule 7(d)(2) is amended to read that information will remain confidential if it is:

- The applicant’s home address, information regarding the applicant’s family, and any information provided to the Commission in response to the personal and confidential information requested in section II of the application form;
- Information provided in writing or orally to the Commission by third parties regarding an applicant, and the third party’s identity (unless stated in writing by the third party that the information may be made public);
- Notes of the individual Commissioners that are created for their personal use and not published to other members of the Commission;
- Any information that is provided to a member of the Commission after a promise of confidentiality; and,
- Any information obtained by or submitted to the Commission that is made confidential by law.

Information that will be made available to the public pursuant to Rule 7(d)(1) includes:

- The applicant’s name, occupation, employer, relevant work history, and any information provided in response to the public information section of the application (section I); and,
- Any information that is specifically authorized for release by its source.

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**Arizona vs United States**

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<th>United States</th>
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</table>
Justice Delayed

By Christopher Johns
Maricopa Lawyer

M aybe it’s because I grew up under the grace of Brown v. Board of Education; my earliest impression of judges was that they were courageous individuals who enforced the law even in the face of misguided majorities. What democratic nation, after all, could endure when people of color were shackled under a legal system of imposed legal inferiority?

I was aware, of course, that some judges were not so courageous. A half century earlier, before the Brown decision, American law under Plessy v. Ferguson was predicated upon the assumption that African-Americans and whites were inevitably different as a matter of the natural order of the Universe. Judges were told they could not change that fact even if they wanted to.

Judges empowered Jim Crow as the law of the land, and many judges and lawyers were content to let institutionalized racism persist. But courageous judges prevailed. They exercised independence.

Today, Tom DeLay, the U.S. House of Representatives Majority Leader, as well as many state legislators, intimate that Brown v. Board of Education and other decisions like it are instances of judicial activism. For many politicians, judicial activism is defined as the simple invalidation of plainly unconstitutional laws passed by legislatures. Under their broad definition, every act of a court is “activist.” Consequently, courageous judges are under attack.

You don’t have to be an astute legal observer to see that judicial activism is usually dependant upon whose ox is being gored. For example, if the Rehnquist conservatives are not outright activists, at the very least, in many cases they have been unable to exercise judicial restraint.

What bothers me most are not the ceaseless attacks on the separation of powers embodied in our courts, but the apparent ease with which these cheap shots are achieved. Who will stand with the courts? Judges cannot do it alone.

I’m convinced that the courts are worth fighting for. The vast majority of people working in our courts—and certainly the judges—are dedicated to creating and managing one of the best court systems in the world.

Political opportunists like Tom DeLay or journalistic hacks like Bill O’Reilly don’t want court reform, but judicial puppets to uphold their agenda.

Some six decades ago history saw the result of the lack of judicial independence. In the Third Reich the Reichstag could intervene in any case. The judges of the time did not resist corrupt laws.

In a book written in 1991, by Ingo Muller, called “Hitler’s Justice,” the author found only one judge under the Nazis who challenged the German legal system’s political prostitution. That judge, Lothar Kreysig, despite his active resistance to Nazi tyranny, was allowed to retire in 1942 with a full pension. But the others were too afraid to be independent.

In the movie “Judgment at Nuremberg” (1961), one of my favorite scenes is when the presiding tribunal judge, played by Spencer Tracy, says that a “judge’s responsibility is to stand for justice when standing for something is most difficult.”

These are difficult times.

Christopher Johns is a public defender in Maricopa County. He is also a frequent guest lecturer, freelance writer and editorial chair of the Maricopa Lawyer Editorial Board.
Volunteer Lawyers Program Thanks Attorneys

The Volunteer Lawyers Program thanks the following attorneys and firms who accepted cases during the past three months to assist 110 low-income families. Each attorney receives a certificate from the Maricopa County Bar Association for a CLE discount.

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Sole Practitioner
Vincent R. Mayr
Sole Practitioner
Jennifer W. Shick
Brooke A. Sams—2 cases
Kathleen M. O'Donnell
Holly L. Marshall
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Richard Rufatto
Bryan Cave
Michael T. Sheridan
Sole Practitioner
Ralph Strebel
Winsor Law Firm
Stephanie A. Stromfors
Bishop Law Firm

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Quarles & Brady Streich Lang
Kenneth Burford
Hastings & Hastings
James Condo
Snell & Wilmer
Sandria Creta—2 cases
Quarles & Brady Streich Lang
Elizabeth J. Farhart
Snell & Wilmer
Ronda R. Fisk
Osborn Maledon
Judy Flanagan
Sole Practitioner
Kimberly Grouse
Snell & Wilmer
Stacy Y. Hannert
Quarles & Brady Streich Lang
Sheila E. Harmer
Skeens & Anderson
Donald J. Karl—3 cases
Quarles & Brady Streich Lang
Emily B. Kile
Sole Practitioner
Geoffrey M. Trachtenberg
Leventhal & Cohen
Nancy Tribbennessee
ASU Office of General Counsel

Guardianships of Incapacitated Adults:
Christine Asimou
Sole Practitioner
Suzanne Goldman
Sole Practitioner
Catherine J. Leas
Sole Practitioner
John C. Lincoln
Sole Practitioner

Home Ownership Issues:
David Alney
Skousen Skousen Callibrandsen Patience
Donald Alvarez
Alvarez & Gilberet
Barry C. Becker
Sole Practitioner
Frank W. Busch III
First National Bank of Arizona
Ronald W. Carmichael
Carmichael & Powell
Andrew Halaby
Snell & Wilmer
Warren Luccitelli
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Moral of the story:
I wanted to tell you this story because it has become such a rare experience in the online world. I have found Newegg to be completely deserving of its very high ranking both in terms of product quality and aggressive competitive pricing. But most important is its integrity and concern for its customers. William Lazaro didn’t sound like a Hoosier, but he sure is one in his heart!

You can’t go wrong with Newegg, and the list of companies I can say that about seems to be getting very short. I believe that companies like Newegg deserve our support and the companies like Dell that shortchange us and cut corners by using rude, incompetent offshore support ought to be condemned. Or at least I can stop buying from them!

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