Marriage, Religion and the Right to Judge

By Daniel P. Schaack

Maricopa Lawyer

U
less you’ve been sleeping—Rip Van Winkle-like—for some time, you know the ado about the institution of marriage and who should be allowed to enter into it. Division One of the Arizona Court of Appeals entered into the fray some months back when it held constitutional a state law refusing the right to marry to same-sex couples. Sandherst v. Superior Court, No. 1 CA-SA 03-0150 (Ariz. App. Oct. 3, 2004).

Recently, the court faced another constitutional implication of Arizona’s law limiting who may marry. In Cook v. Cook, No. 1 CA-CV 03-0727 (Ariz. App. Jan. 13, 2005), the court addressed the validity of a marriage between closely related persons.

The Commonwealth of Virginia allows first cousins to marry. Alan and Peggy Cook, first cousins, were married there in 1984. They conceived a child two years later, and in 1989, they moved to Arizona. Unlike Virginia, however, Arizona law generally does not allow marriages between first cousins, proclaiming them “prohibited and void.” A.R.S. § 25-101.

When the Cooks moved here, state law recognized their marriage. A.R.S. § 25-112 provided: “Marriages valid by the laws of the

Inside...
Is Arizona’s Judiciary being attacked? See page 10.

Recognizing Class Action Litigation. A CLE no attorney should miss. See page 12.

Court Makes Progress on Strategic Plan

When Chief Justice Charles Jones steps down from the Arizona Supreme Court in May, current Vice Chief Justice Ruth McGregor will assume his role and Justice Rebecca White Birch will become the new vice chief justice. With the transition a few weeks away, the justices reviewed the court’s strategic plan with an eye on what has been accomplished and what the future will hold.

The mission to “provide a system where citizens have reasonable access to the court system” has been set in place, said McGregor.

Improvements have been made by reducing criminal case backlogs, expediting family court case processing, upgrading court technology, expanding judicial education programs and providing better accountability to the public.

“I think we are beginning to see some of the fruits of the labor that will bring much credit to the people in Superior Court and [the way] they are putting together procedures and programs to enhance their operations,” Jones said.

Both Jones and McGregor are satisfied with the accomplishments they have made, although they recognize the effort is ongoing and needs to be regularly reviewed and updated, and amended.

Pointing to Jones, McGregor said, “People have to recognize the progress we have made under the chief justice: the reengineering of coming to fruition, getting criminal ingredients for improved access to the judicial branch of government.

“We have spent many hours and days studying the technological systems that are in place and the advances that are available and vital just to keep pace,” noted Jones.

As he looks back at improvements in the judicial branch during his tenure, Jones said it is with the feeling “that when you leave, things are at least as good or perhaps a little better than when you found them.” Inspite of successes Jones cautioned that the law is never settled.

“We are governed by the times and new issues, and though we have been a nation now for more than two centuries, there have always been and always will be new issues and challenges.”

Though he has made no definite future plans, Jones does not plan to simply become a legal professional practicing in Maricopa County, you have undoubtedly heard of the Maricopa County Bar Association. Founded in 1914, MCBA is Arizona’s oldest bar association, as well as the largest voluntary bar in the state.

What is MCBA’s commitment to me?

MCBA is dedicated to providing its members with outstanding career, leadership and community service opportunities. With its numerous programs and events, MCBA provides an inclusive environment for private and public attorneys, judges and paralegals to connect and learn from one another.

What benefits does MCBA offer?

Legal professionals who belong to MCBA are better informed, connected and positioned to take their careers to the next level.

Quality publications to keep you updated and informed about local, state and national legal news:

See MCBA Member Benefits page 3.

Supreme Court Chief Justices Ruth McGregor and Charles Jones

Maximize Your Legal Potential through the Maricopa County Bar Association

By Kathleen Brieske

Maricopa Lawyer

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s a legal professional practicing in Maricopa County, you have undoubtedly heard of the Maricopa County Bar Association. Founded in 1914, MCBA is Arizona’s oldest bar association, as well as the largest voluntary bar in the state.

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It’s Just Lunch

I n its ongoing crusade to promote professionalism and civility among its members, the Litigation Section of the Atlanta Bar Association is encouraging lawyers to take their adversaries to lunch this month. Fulton County Daily Report, February 7, 2009.

Having abandoned my New Year’s resolution to eat light and healthy, I decided to move on to the next opposing counsel. He had been regularly bringing his lunch or snacks to our depositions (which wreaked havoc with the exhibits). In lieu of incurring the expense of having a second videographer focus a camera on him during the depositions, I suggested to him that we have lunch at 11:30 a.m., so he could get his eating out of the way, and then we would start the deposition at 1:00 p.m. He accepted, but insisted on the “usual stipulations,” and because I don’t really know what those are, I agreed to them.

The resulting lunch was not good. Opposing counsel would not agree to allow me to pay for his lunch, stating that could create “an appearance of impropriety.” But he would also not agree to a simple split of the check, arguing that he should not have to pay one-half of the cost of my iced tea, while he drank water. He then demanded that because I initiated the lunch, I must pay all of the waiter’s tip, which he wanted characterized as an “appearance fee” rather than a gratuity.

These discussions, which he insisted be resolved before we ordered, took from 11:50 a.m. (he arrived 20 minutes late) until 12:40 p.m. Nonplussed by the fact that my client’s HR director was expecting to begin her deposition at 1:00 p.m., upstages in his office, he insisted that the time we had spent discussing “preliminary and pre-order matters” could not be counted against his lunch time.

He then repeated his objection to the “form” of my lunch order. When I asked why, he smirked, “assumes facts not in evidence.”

When the food finally arrived, I thought that I would get a bit of a respite from hearing opposing counsel yammer. I politely encouraged him not to talk with his mouth full. He responded angrily by threatening to call the judge if I did not stop objecting to his manners or “gesturing” with my fork.

At 1:30, when I finally insisted that we leave for the deposition, counsel angrily shoved his plate forward and threw his napkin down. He bellowed that he was reserving his right to continue this lunch until such time as my client produced supplemental disclosures and he had the opportunity to subpoena and review the personnel file of the restaurant’s chef.

I then concluded that I should practice my lunching skills with a non-adversarial person, before calling opposing counsel No. Three. I proposed lunch to a judge assigned to a division where my law firm has no pending cases. Showing appropriate deference, I called the judge’s judicial assistant and requested that the judge set the time, day, and place. At the JA’s request and apparently pursuant to a Local Rule, which I cannot locate, I lodged a form of Order setting the lunch.

The judge was skeptical that we could go “off site” in the 90 minutes that she had scheduled for lunch, so we ate at the Court House Canteen. It may be the only place in this town where you can still choose between tuna fish goulash and an El Rancho “mystery meat” patty with a side of cottage fries left over from breakfast.

I should have been suspicious when the judge brought her own brown bag lunch. But I did not draw the most reasonable inference regarding the cafeteria food because I was distracted by the judge’s protracted pronouncements on soy, Splenda, and her modified Atkins dietary restrictions.

Food aside, we had a pleasant lunch. We spoke about the rigors and benefits of merit selection of judges, the importance of restoring adequate funding for the courts, and the good works of the MCBA’s Bench Bar Committee. As we cordially said goodbye at her chambers, she pressed her leftover barbecue tofu on me and stated that she would take our conversation “under advisement.”

The folks in Atlanta may be having better luck with this lunch-a-lawyer program. If you’d like to give it a try, see the Marketplace insert in this paper for dining suggestions and MCBA member discounts.

Mentoring Reinforces Your Own Career Worth

A aron and Lynne (real names substituted for any fake names I could’ve drummed up) are enthusiastic and smart (don’t tell them I said that) newer prosecutors in my office whom I have been assigned to mentor. Bigger offices will usually offer some kind of formal mentoring process, but regardless of office size, this message is for all “no longer brand new attorneys” who have more than a year or so under their belts—find a mentor.

Having a mentor is like having a touchstone at work. It makes you explain things that you should know cold (when in doubt, disclose!) and makes you think through things you’re still learning yourself (if an officer investigating a fatal crash calls you at 3 a.m., remind her that she can get a blood sample from the suspect pursuant to statute only if she has probable cause to believe the person caused the crash, whew, go back to sleep). Having a mentor might seem like a time-drain; an “oh, I should really do my own work rather than address a question I’ve answered 12 times this month” kind of job, but alas, there’s more long-term gain at stake. It keeps you grounded on one hand and injects fresh thoughts on the other.

Recently Lynne developed a new chart to use for her closing arguments that is much easier for jurors to read and understand than the tattered one I’ve been using for two years. I plan to steal it soon.

But even better than any substantive legal chart is taking the time to talk with them about non-work stuff like Aaron’s new baby joys and woes (he’s a first-time dad), or Lynne’s fabulous trips to Chicago and NYC (she’s quite the jetsetter). It’s plain fun. Be a mentor.

YLD News: Thanks to Jennifer Ratcliff, Julie LaFave, Erin McGuinness, Geoff Cummings, MCBA staff, the MCBA board, and the entire 2005 Barristers Ball committee for all their hard work (it’s a year-round effort these days). Now we’re looking to tackle the rest of our 2005 agenda: Law Week (May), Domestic Violence Necessities Drive (October), SK Run (hopefully fall), and more. To volunteer, please e-mail Geoff Cummings at gcummings@mcbar.org.
Technology Levels Courtroom Playing Field

By Michael Yarnell
Special to the Maricopa Lawyer

"Don't simply retire from something; have something to retire to."
Harry Emerson Fosdick, American Clergyman 1878-1969

While passing age 60 is cause enough for reflection, thinking back on the last 13 years of service on the Maricopa County Superior Court bench fond memories of an outstanding and rapidly growing trial court, filled with dedicated and outstanding judges and staff. My memories are also filled with respect and appreciation of the many excellent lawyers in our community.

Allow me to share some musings about judges, lawyers, and technology.

Technology has not only transformed the way courts and lawyers do business, it has leveled the playing field and increased the availability of equal justice to all litigants.

In October 1991, the only computers at the courthouse were first-issue IBM desktops for word processing. The "computer network" was just beginning to emerge. Some lawyers had started using word processing equipment, but many relied on the electric typewriter and the relatively new development of plain paper copy machines. A court division’s case management system consisted of thousands of 8” x 5” note cards full of handwritten and typewritten notes.

Today, digital sound and video recording of the record (sometimes including real-time screen – displayed court reporter text, PowerPoint presentations to the jury), electronic filing and indexed legal briefs, and constant e-mail communications are all becoming common. The Maricopa County Superior Court now has a Web-based case management system that tracks all case activity, retrieves and displays to the public at no charge all minute entry decisions and scheduling orders, and in many departments, allows a judge to view on her desk screen any pleading filed in the case. Every lawyer, and every judge, has instantly available on the Internet a law library larger than any physical library in existence.

An outstanding judge or lawyer in today’s environment must embrace, use stay abreast of available technology. I once thought an excellent judge was someone who knew the law, read the legal briefs, and ruled promptly. Becoming an excellent judge requires much more than this. The judge who aspires to excellence must learn to do more than read, listen, consider and rule. He or she must learn to create, nurture and maintain a safe, neutral, fair place for all to be heard—both in fact and as perceived by all stakeholders. The development of judicial demeanor and an understanding of human nature and conflict are keys to this learning.

In the same vein, I once thought an excellent lawyer was someone who knew the law, wrote a first-class legal brief, and fought hard for his or her client giving no quarter. The bar has recognized that becoming an excellent lawyer requires much more than this. The lawyer who aspires to excellence must understand the real needs of his or her client, have an appreciation for the big picture, and act in a courteous and professional manner to all—even the opposition. The development of listening skills, maturity, judgment and courtesy are keys to this learning.

All judges, lawyers and clients, indeed all members of our society, are by necessity keys to lifelong learners. The way we do business and our need for lifelong learning has changed. At the same time, the conflict resolution system has seen rapid change. Full-blown trials are increasingly expensive, yet sometimes necessary. The volume of filed cases is up, while the number of trials is down. Private settlement conferences, arbitrations and arbitration proceedings are increasingly common.

Lawyers—indeed every member of our legal community—need to become problem solvers, not problem makers. It is my hope to make some contribution to those efforts.

JudgeMichaelYarnellretiredfromtheSuperiorCourtbenchinJanuary.Whileonthe bench, he served as co-chair of the court’s technology committee. He continues working in the legal profession, including mediation, arbitration and legal education.

Yarnell can be reached at 602.553.1010 or michael@michaelyarnell.com His Web page is: www.michaelyarnell.com

Juvenile Court Administrator Joins Management Team

By J.W. Brown
Maricopa Lawyer

Sheila James-Tickle, an expert in criminal justice and sociology, has joined Arizona Superior Court as the Juvenile Court administrator.

“Her experience is perfectly matched for the challenges and issues facing Juvenile Court,” said Marcus Reinikensmeyer, Trial Courts administrator. Tickle joined the court on February 28. She came from the Department of Economic Security, Training Unit. Prior to relocating to Phoenix, she served as director of the Family Court of St. Louis County (Missouri), director of programs for United Church Neighborhood Houses (St. Louis) and division director for Children’s Home and Aid Society of Illinois (East St. Louis). [continued from page 1]

MCBA Member Benefits

• Maricopa Lawyer, a monthly newspaper filled with current legal and judicial information
• Marketplace, a dining, entertainment and professional services guide offering member discounts

Dynamic CLE program offering a variety of educational options at a discounted price:
• Members save $10 per CLE credit, eventually paying for membership itself!
• Over 60 relevant and current courses offered annually, most available as self-study
• CLE Film Fest, allowing credits to be earned through the month of June
• Transcripts of MCBA CLE course work sent to members at no cost

Eleven practice area sections and four divisions of law fulfilling all legal needs:
• Educational programs and social events relevant to individual areas of practice
• Exposure to a wide pool of experts, fostering leadership and practice development opportunities
• Ample opportunity to network and make connections for professional and career enhancement

Meaningful community service opportunities:
• Lawyer Referral Service, providing the public with a free 30-minute legal consultation
• Law Week, educating the public on the role of law, including free legal advice
• Volunteer Lawyers Program, a pro bono project MCBA jointly provides with Community Legal Services
• Barristers Ball and Silent Auction, a fundraising event for a designated beneficiary

She has a Master of Arts degree in sociology from Southern Illinois University and a Bachelor’s degree in criminal justice from the University of Hartford, Connecticut.

The previous Juvenile Court administrator, Carolyn Edlund, retired in December, and an immediate recruitment began to hire her replacement. Mary Lou Strehle, a seasoned member of the court management team, filled the vacancy in the interim.

“Strehle again has proven her versatility and dedication to the court by taking on the challenge of filling in where the court needed her,” Reinikensmeyer said.

J.W. Brown is the communications director for Superior Court in Maricopa County

MCBA Testimonials:

“I have been a member of MCBA since I started practicing law in Arizona. It has been beneficial, not only because MCBA is suited to focus on the interests and concerns of the lawyers in Maricopa County, but also because participation exposes one to the many very good lawyers who are interested in making positive contributions to the legal community.”

• John Bouna, Chairman, Snell & Wilmer

“The primary value of membership to me is that it is an opportunity to serve the profession and the community. Professional involvement at MCBA level has tangible, direct, positive impact on the local community and on the quality of lawyers in this area.”

• MCBA Board Member and Superior Court Commissioner Glenn Davis

“If you take advantage of the many opportunities to be active, MCBA is a bargain for enhancing your practice. Your membership dues sustain our community-based programs, such as the Lawyer Referral Service, which provides access to justice to all members of our community.”

• Jay Zweig, MCBA President and Shareholder, Gallagher & Kennedy

For those who are MCBA members, thank you for your ongoing participation. For those who are not, please join the thousands of legal professionals who, like you, are the most dedicated, informed and prepared in their field.

For more information contact Membership Services Director Amy Hicks at (602) 257-4200 x128 or ahicks@mcbabar.org

The Maricopa County Bar Foundation is now accepting applications for its 2005 grants. Funds are available to groups that further MCBF’s mission of enhancing the rule of law and the system of justice in Arizona. The Foundation focuses on programs that relate to the administration of justice; ethics in the legal profession; legal assistance for the needy; the encouragement of legal research, publications and forums; and the education of the public.

Court Watch
continued from page 1

place where contracted are valid in this state."
In 1996, however, the legislature amended § 25-112 to withhold Arizona recognition of out-of-state marriages "that are void and prohibited by § 25-101."

Dissolvable differences
Alan Cook subsequently filed a dissolution action. He later moved to dismiss his own action, arguing that there was no marriage to dissolve. The trial court disagreed, held a trial, dissolved the marriage, awarded custody, and entered property-distribution orders. Cook appealed, repeating his argument that there was no valid marriage in Arizona to dissolve.

The Court of Appeals first had to decide which state's laws to apply to determine the marriage's validity. Judge Daniel A. Barker noted that courts generally apply the law of the jurisdiction where the wedding was celebrated, instead of the law where the divorce occurred. This rule, Barker wrote, is subject to the principle that "the power to define a valid marriage is vested in this state's legislature and not in the legislature (or judiciary) of another state, nor in the judiciary of this state."

Consequently, the general rule applies unless there is a strong policy in the forum state that dictates otherwise. Barker held that sections 25-101 and -112 provided the strong policy dictating that Arizona, not Virginia, law should be applied. He called this holding "particularly apt given the importance of marriage and the present divergent views on that subject."

"Marriage is a foundation stone in the bedrock of our state and communities," Barker wrote. Nevertheless, "[t]here are strongly divergent views on what the scope of marriage should be among the fifty states." "Unless constitutionally required," he continued, "Arizona should not be held hostage to the policies of another state on a subject so vital to the welfare of our state and communities," Barker felt constrained, if possible, to construe Arizona's marriage laws not to invalidate the Cooks' union. To do so required the court to construe A.R.S. §§ 25-101 and -112 not to retroactively invalidate the Cooks' union, and that is what he did.

"We can give effect to the legislature's use of the word 'void' in the 1996 amendments by applying that term to exclude vested rights in existing marriages as we have described them," Barker wrote. "Had the legislature chosen to nullify existing marriages (thus having the retroactive effect described)," he continued, "it could have expressly stated so. It did not."

Joined by Judges Maurice Portley and Jon W. Thompson, Barker concluded that the Cooks' marriage was valid. It followed that the Superior Court had properly dissolved the marriage.

A defense attorney's cross-examination that delved into the plaintiff's religious beliefs backfired when Division Two reversed a defense judgment, calling the evidence irrelevant and prejudicial, Kelley v. Abdo, No. 2 CA-CV 2004-00525 (App. Jan. 28, 2005).

Lona Kelley sued Dr. Joseph Abdo for medical malpractice and Cobre Valley Community Hospital for negligent supervision when breast-reduction surgery that Abdo performed on Kelley led to him later removing both of her breasts. After the operation, Kelley experienced complications, and Abdo believed that she had developed necrotizing fasciitis, a potentially fatal infection. He operated again and removed all of the tissue that he determined was necrotic—essentially all of her breast tissue. It turned out that there was no necrotizing infection, and Kelley sued.

Kelley included a claim for emotional distress. She testified on direct that her former husband had begun drinking after the operation and that his drinking had become an embarrassment for her when she took her children to services at her Mormon church.

The hospital's attorney pounced on this testimony. Professing not to criticize her, he elicited testimony that she had lost her faith in God after the divorce. She had joined the Wicca religion. He had her explain that Wicca is a pagan religion because "we do not believe in God," and that she believed in reincarnation. This was all elicited over her counsel's objection, which the trial court overruled.

Religious prejudices
On appeal, Kelley argued that the examination into her religion had violated Article 2, Section 12 of the Arizona Constitution, which provides that no person shall "be questioned touching his religious belief in any court of justice to affect the weight of his testimony." She also relied on Evidence Rule 608, which precludes "[evidence of the beliefs or opinions of a witness on matters of religion . . . for the purpose of showing that by reason of their nature the witness's credibility is impaired or enhanced."

Abdo and the hospital argued that Kelley had opened the door to the evidence, asserting that she had improperly implied to the jury that she followed a religious, Mormon lifestyle and did so in a deliberate improper effort to enhance her credibility, a significant ploy in the predominantly Mormon community where the trial took place. Writing for the Court of Appeals, Judge M. Jan Flórez concluded that defense counsel "grossly misstated Kelley's testimony." She explained that in response to questions concerning the problems that her former husband's drinking had caused, Kelley had "simply answered truthfully that she had been taking her children to the Mormon church and that her former husband's drinking had been difficult and an embarrassment in that setting."

"Kelley did not testify that she was currently taking her children to the Mormon church," Flórez wrote, "or that she maintained, or even had maintained, a religious Mormon lifestyle." Thus, Kelley's testimony had not opened the door of inquiry into her religion. Even if it did, Flórez held, the cross-examination had exceeded the scope of what was necessary to counter her testimony.

Flórez also noted that Kelley admitted that she had left the Mormon faith. But under defense counsel's questioning, she was forced to testify that she "lost her faith in God" and joined the Wiccan religion and took a Wiccan pledge; his questioning also required her to explain the Wiccan belief system, including the fact that it is characterized as a pagan religion. "None of this was necessary," the judge wrote, "to correct any feared impression that Kelley was a practicing Mormon at the time of trial." It was irrelevant and, therefore, inadmissible," she concluded.

Biased effects
Even if the evidence were relevant, Flórez opined, the prejudicial effect outweighed its relevance. She also quoted a Kansas opinion at length noting that: "As to the possible prejudice generated, the idea of witchcraft has generated terror and contempt throughout American history. Before this country was formed, the first laws of the Massachusetts Bay Colony listed idolatry and witchcraft among capital offenses. Even in our culture today, satanic imagery associated with witchcraft continues... It seems evident that our culture associates witchcraft with Satanic worship and other evil practices. Any mention of a defendant's involvement with witchcraft is highly prejudicial."

Judge Peter J. Eckerstrom joined Flórez's opinion. Judge J. William Brammer, Jr., dissented. He agreed that the trial court had erred in allowing the cross-examination, but he believed that the error was not prejudicial enough to warrant a new trial.
The Coming of Paperless Offices

I have talked about the paperless office for years. It is finally getting close to reality by virtue of new and improved hardware and software. Let’s start with the software.

Free is good

Fifteen years ago, the Courtroom Project beta tested a then-new product called Adobe Acrobat. The basic principle behind Acrobat was the need to be able to reproduce and distribute documents in their original format no matter what computer operating system was used. The market strategy was to first distribute basic software that allowed anybody, anywhere and with any computer, to read documents created in Acrobat.

At that time and for many years following, most documents were transferred over the Internet or local area networks in so-called “native format” (i.e., WordPerfect) and would often appear strangely formatted and sometimes very difficult to read. Acrobat was designed to address that problem.

Non-accepting legal world?

However worthy the goal, the early versions of Adobe Acrobat suffered from a number of faults. As a result of those defects, Acrobat never really gained the acceptance that it should have.

For example, in the early days of electronic court filing, Acrobat was but one of many file formats that courts found unacceptable. The variety of file formats commonly used among lawyers created problems for courts and agencies seeking to embrace electronic documents and filing.

At the same time, however, the market strategy adopted by Adobe was beginning to bear fruit. The free Adobe Reader software allowed anyone to read a document created in Acrobat whether they had the full software or not. Over the years, 500 million copies of Acrobat Reader have been installed on computers around the world.

In many areas of business and government, Adobe Acrobat became the de facto standard for distribution of documents. The Acrobat format (PDF for portable document format) provided many advantages because of its ability to faithfully reproduce such things as color, non-text images, photographs and drawings.

In the legal world, however, the use of the PDF format could not seem to gain critical mass. Legal work was predominantly text-based. Whether that text appeared in precisely the right font or formatted precisely the way it was created was, in many ways, not important to lawyers. Adobe Acrobat’s strong suit was not the way it handled text.

A new time, a new purpose

That was last century. In 2003, Adobe introduced Acrobat 6.0 with many new and improved features extremely valuable to lawyers. And this year, Adobe has introduced Version 7.0, bettering the product even more.

Acrobat now does a fantastic job of working with text. It has become a wonderful collaborative tool, providing a very simple electronic format for editorial comment. It has also become a powerful tool for Internet based research by virtue of its ability to capture Web pages with a click of a mouse button.

In addition, every Acrobat document that is created in text form contains a built-in high speed search engine. For example, a copy of a statute that you have copied from the Internet in Acrobat format can be instantaneously searched without using any additional software.

Scanning away paper

Of course, not all documents are sent in electronic format. While most of your internal documents are created in electronic format, most documents probably still go in and out of your office on paper. For those documents, traditional photocopying and filing has been the order of the day.

Now, however, there is a rapidly growing practice of document management that scans those papers into PDF format the minute they arrive in the office. Even a document that arrives electronically gets put into PDF format. Once the document has been converted into a PDF document, it becomes extremely easy to circulate it to anyone who needs to see it—whether they are in your office or not. To read the PDF document, simply download and install the free Adobe Reader from www.adobe.com.

If paper is still the order of the day, the PDF document can be printed every bit as efficiently as the original could be copied, probably even at lower cost. But unlike paper, copies of the PDF document can be easily made searchable by a process built into the Adobe Acrobat software. And the PDF document can be edited and shared electronically.

And there’s more

The new Acrobat products (6.0 and 7.0) can also serve as presentation systems, very much like PowerPoint. While it does not have the bells and whistles that PowerPoint has, Acrobat is more than satisfactory for most things lawyers do in the office. If you want to collaborate on the creation of a document with your staff and colleagues, it is a simple matter to display the materials tened first offenders, like Thomas Tolleson and Ramon Fernandez, to six months in jail, suspended sentence, and a fine of $200 for possession of liquor. Those charged with sale of intoxicants faced stiffer penalties of over a year in jail; while still operators, like Sam Rhodes and Mary Williams, fared worse, with jail time of around 15 months and fines of up to $350.

In a rare “not guilty” verdict returned on the Saturday prior to the end of the session, jurors in Federal Court determined that George Sweringen had not had liquor in his possession. A California jury a year later reached the same verdict in a similar case after drinking the government’s evidence! To the judge’s amusement, the jury supplemented their verdict in Sweringen’s case with two special “riders.” First, the jury announced that it was “unable to decide the status of Mt. Ranier as compared with Mt. Tacoma.” Apparently, in a nod to Neterer’s home state, the jury in its deliberations had taken up the ongoing debate between the citizens of Tacoma and Seattle regarding the name of Washington’s notable peak, but without reaching a verdict. The second rider requested “special dispensation for the 13th juryman,” a dog that had been befriended by court attendants and that had sat in an alternate’s chair in the jury box during trial.

Quicker times

Neterer may have been relieved by the routine of the October session in Phoenix after dealing in August with the stress of what was to become his most celebrated decision. In Best Foods, Inc. v. Wilch, 34 F. 2d 682 (D.C.I.D. Idaho, 1929), the erudite judge catalogued the ancient and sacred history of cows and their importance to the evolution of mankind, with reference to fourth century B.C. hymns, Greek poetry, and quotes from Caesar and Herbert Hoover, to support his

Federal Judge Witness to Courthouse Dedication

With ominous financial news from Wall Street filling the Phoenix papers, Judge Jeremiah Neterer of Seattle boarded a plane for home via Los Angeles on Monday, October 28, 1929. His three-hour afternoon flight to L.A. from Phoenix in Standard Airline’s new Fokker Tri-Motor F-10, left from the just-built air field called Sky Harbor. The newest of Phoenix’s three airports, Sky Harbor boasted the only regularly scheduled interstate flights to and from Phoenix and was located only three miles from the judge’s courtroom in the Federal Building on the northwest corner of First Avenue and Monroe Street.

The judge, born in a log cabin in northern Indiana during the Civil War, had just finished presiding over the October calendar for the Phoenix Division of the U.S. District Court. Phoenix’s own Judge F. C. Jacobs (a lawyer from Globe prior to his elevation to the Federal bench in 1923), was out of town hearing a case in California, and the unending stream of federal prohibition and internal revenue cases would not wait. When Neterer called the session’s first case on October 14, the docket consisted of 73 cases; 61 involved prohibition violations and 9 charged with related violations of the Internal Revenue Act.

Fighting thirst

The “War on Booze,” the dominant moral crusade of the early 20th century, was in its 16th year in Arizona, with little to show, other than full jails and busy courts. Men and women of all ethnicities were persistent and generally successful in their efforts to satisfy the Arizona public’s illicit thirst. Neterer spent the last few days of his time in Phoenix receiving verdicts and passing sentences for violations of the “Dry Law.” The judge sen-
What is spyware?

Spyware has quickly become the latest villain on the Internet. Spyware is used as a general term to describe a program that surreptitiously monitors your actions on your computer. Sometimes it is referred to by the more innocuous term "adware", which typically implies that its intent is strictly related to advertising. While annoying, this variety is usually harmless and its main intent is to market to you. I will use the term spyware to include the entire assortment of applications designed to track what you're doing on your computer. Spyware in its ugliest form can perform such things as keylogging, in which the program logs your keystrokes and then reports them back to the interested party; or loading Trojan horse programs that provide a backdoor for hackers to access your computer. Spyware in its ugliest form can also affect computer performance. Although individually they will typically not require a significant portion of your computer’s resources, there can be a very noticeable slowdown if several of these pesky programs are running in the background while you work.

These issues aside, spyware can also affect computer performance. Although individually they will typically not require a significant portion of your computer’s resources, there can be a very noticeable slowdown if several of these pesky programs are running in the background while you work. These programs can also play havoc with an Internet connection's throughput speed, particularly with dial-up connections, as they can be continuously communicating your surfing activities without your knowledge.

Is there any hope?

Although you may have been the lucky recipient of spyware if you have ever downloaded a "freeware" or "shareware" application, while these programs can represent a real bargain, lurking in the EULA (End User License Agreement) may be language committing you to accept the spyware as a part of their free download. The most unscrupulous spyware manufacturers can pass along their programs when you simply visit a particular Website. This is called a drive-by download and the unsuspecting computer user has done nothing other than visit the offending site.

Unfortunately, there's no sure-fire way to ensure you never get spyware, but here are some precautions you can take:

- Always keep your Windows operating system updated. Some spyware takes advantage of flaws in Microsoft's Internet Explorer browser. By keeping Windows and, in turn, Explorer updated regularly, you can mitigate the chances of this occurring.

- Consider using an alternative browser, such as Mozilla's Firefox. Firefox is free and may be a sensible choice, especially if you frequently visit unfamiliar websites while doing research or for other reasons. Because of Microsoft's Internet Explorer's prevalence as the de facto browser, it has become the target of more than its share of hackers, virus writers, and spyware.

- Consider purchasing or downloading a spyware blocker and/or removal tool. Ad-Aware and Spybot Search & Destroy are two well-known, and free, removal applications. While there is no guarantee that they will identify all spyware, keeping them updated and running them regularly will certainly improve their ability to locate spyware. Be sure to read their user guides prior to using them.

- Carefully read any EULAs before downloading freeware to check for mention of spyware downloads. At least then you can make an informed decision about whether or not to allow the software developer to load a spyware application onto your computer. Keep in mind, too, that if you later remove this piece of spyware, the freeware application may no longer work.

How can I avoid it?

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Q Is there any hope?

Probably the best advice given when it comes to spyware is to take all reasonable precautions and make sure you have a backup plan for restoring your computer software and data in the event you become the victim of spyware that cannot be easily removed. The majority of the spyware lurking out there has no malicious intent; it is just a matter of finding it and removing it from your computer periodically to keep your system running smoothly.
Assignment rotations of Arizona Superior Court judges are being done in a three-phase schedule that will stretch into the fall. A variety of events are key factors of the timing for changes to become effective. Retirements—of Judges Stephen Gerst, Robert Gottsfeld and Barbara Jarrett—will trigger some of the earliest moves. And the opening of the newest regional court facility—in the Northeast Valley at Union Hills and State Route 51—will relocate six Superior Court judges (and three Justices of the Peace) as soon as construction is completed. Occupancy is expected in September, and the move-in will close the “rotation season.”

The majority of changes are planned for June, during the annual Judicial Conference, a mandatory three-day event that provides the least disruptive opportunity for both physical moves and assignment changes.

Over the past few years, Family Court has been the first assignment for newly-appointed judges, and the majority of changes are planned for June, during the annual Judicial Conference, a mandatory three-day event that provides the least disruptive opportunity for both physical moves and assignment changes.

“This historically, one perk of being the presiding judge is the ability to choose your assignment after leaving the office,” she said. “I have done every assignment, including both juvenile and family, and my favorite assignment has always been civil. It is the calendar on which I am probably best qualified. All other things being equal, it would be the assignment I would take. But things are never quite equal.”

Campbell said that he and Presiding Judge Designate Barbara Rodriguez Mundell “agree with the Chief Justice’s (Charles Jones’) recommendation that the best interests of the court require that the family and juvenile departments both have assigned senior and junior judges as every other department of the court. This year, senior judges will show the younger judges what ‘service above self’ means.”

Not all judges with a lot of seniority on the bench welcomed the idea. Campbell said he decided to set the example by assigning himself to Family Court. On July 1, he will acquire the calendar currently handled by Judge Edward O. Burke. In turn, Burke is moving to a criminal calendar—which currently is handled by Judge Jeffrey Hotham.

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Key among the rotations that begin April 1 will be Judge James Keppel’s move downtown from his criminal calendar in the Southeast Court Facility in Mesa to a suite on the fifth floor of the East Court Building. The move is in preparation of his assumption of responsibilities as presiding criminal court judge, currently managed by Ballinger.

After the move downtown, Keppel will work closely with Ballinger and Associate Presiding Criminal Judge Thomas O’Toole before assuming the criminal presiding assignment. O’Toole remains in Criminal Court on the special assignment calendar presently assigned to Wilkinson.

Several additional changes are planned for Criminal Court.

Judge Brian Ishikawa has been tapped as associate presiding criminal court judge. His calendar—in Southeast—will be assumed by Judge David Udall, currently on a Family Court assignment criminal calendars.

Final changes involve Judges John Foreman and Roland Steinle assuming special assignment criminal calendars.

Gubernatorial appointments of judges to fill the vacancies created by retirements will affect timing of other assignments in Civil and Family Courts.
2 to 4:30 p.m., ASU Downtown
CLE: 2 hours
This seminar covers general conditions of contracts. Join us as we cover: “Contract documents” defined, the “Time is of the Essence” clause, performance period, scheduling and notice of provisions, liquidated damages, implied duties of the parties and more.
Cost: MCBA member attorneys, $50.00; member paralegals and public lawyers, $35.00; non-member paralegals and public lawyers, $50.00; same-day registrations/payments, $15 additional.

Using Technology for Your Deposits and Courtroom Presentations
1 to 4:30 p.m., ASU Downtown
CLE: 3 hours
It is estimated that over 10,000 court and hearing rooms in North America are using digital audio and video recording to capture, store, retrieve, access and transcribe the official court record. These technologies are rapidly becoming accepted for the legal market. This seminar will focus on how these technologies can help you and your practice. Attendees will also learn how you can protect deposition transcripts, audio files of the depositions and all the exhibits scanned, in PDF format, on a CD.
Cost: MCBA member attorneys, $75.00; member paralegals and public lawyers, $55.00; non-member attorneys, $105.00; non-member paralegals and public lawyers, $75.00; same-day registrations/payments, $15 additional.

Paralegal Career Day (Phoenix College), 8 a.m.

CLA Review Course, 9 a.m.

ML Editorial Board Meeting, 5:15pm

Scottsdale Bar, noon (Scottsdale Athletic Club)

MBCA EC Meeting, 7:30 a.m.

Environmental Law Section, noon

Public Lawyers Division Social, 5:30 p.m.

Paralegal Board Meeting, 5:30 p.m.

Bank Section Meeting, 5 p.m.

LRS Committee Meeting, 5 p.m.

Personal Injury / Negligence Board Meeting, noon

PLD Board Meeting, noon

MBCA Board Meeting, 4:30 p.m.

MCBF Board Meeting, 7:30 a.m.

Task Force Brown Bag, noon

ADR for Families: In and Out of the Courthouse
2 to 5 p.m., ASU Downtown
CLE: 3 hours
Join our distinguished panel as they discuss how ADR affects families. Topics covered will include: recent changes in the court and specifically Resolution Management Conferences, ADR for family cases, private mediation, the lawyers role, and an overview on how lawyers can best prepare for it.
Cost: MCBA member attorneys, $75.00; member paralegals and public lawyers, $55.00; non-member attorneys, $105.00; non-member paralegals and public lawyers, $75.00; same-day registrations/payments, $15 additional.

Class Action Litigation: Understanding the Basics and Recognizing Opportunities
9 a.m. to 12:30 p.m., ASU Downtown Center
CLE: 3 hours
If you are interested in helping individual and business clients when they have been victims of a class action claim (i.e. consumer fraud, securities fraud, or in a business setting, price fixing or market allocation) then you should attend this instructive, practical and entertaining seminar. Our presentation will cover Federal Rule 23 requirements, typical class action defenses, typical class action cases, how to identify class action claims, counseling clients to avoid being victimized by class action schemes, class action politics and national vs. state certification.
Cost: MCBA member attorneys, $75.00; member paralegals and public lawyers, $55.00; non-member attorneys, $105.00; non-member paralegals and public lawyers, $75.00; same-day registrations/payments, $15 additional.

Write a Letter!
We welcome letters to the editor. Letters generally should be no more than 300 words long. Maricopa Lawyer reserves the right to edit all letters for length. Letters to the editor can be e-mail to kbrieske@mcbabar.org or mailed to: Editor, Maricopa Lawyer, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, 85004.
Taylor Young, an attorney at Osborn Maledon, P.A., has been appointed to the Phoenix Arts and Culture Commission by the Phoenix mayor and city council.

The Phoenix Arts Commission was created in 1985 to protect, enhance, serve and advocate excellence in the arts in Phoenix and to raise the level of awareness and involvement of all city residents in the preservation, expansion and enjoyment of the arts.

Young (J.D., 2000, ASU) practices in the areas of appellate litigation, commercial litigation and intellectual property.

Gerald Morales, a partner at Snell & Wilmer LLP, has been elected chairman of the Associated General Contractors (AGC) Labor and Employment Law Council, beginning May 2005.

The AGC Labor and Employment Law Council is a network of experienced attorneys who regularly represent AGC Chapter or contractor members in labor and employment legal matters. Created in 1983, the group was founded to be a forum in which to develop and share information regarding legal developments affecting the construction industry.

Morales (J.D., Tulane University) practices employment, employment benefits, and international law.

Lori V. Berke, a shareholder at Shughart Thomson & Kilroy PC, has been elected a fellow of the Foundation of the Federal Bar Association. She currently serves as the president-elect of the FBA’s Phoenix Chapter.

The Foundation of the Federal Bar Association, chartered by Act of Congress in 1954, serves the federal legal community through its efforts to advance the science of jurisprudence; promote and improve the administration of justice; and facilitate knowledge and understanding of the law.

Berke (J.D., 1993, William Mitchell College of Law) practices in the areas of governmental and public entity liability, commercial litigation, professional liability, construction defect litigation, personal injury and product liability.

Sybil Taylor Aytch, a paralegal at Quarles & Brady Streich Lang LLP, has been appointed to serve on the ABAs Standing Committee on Paralegal Approval Commission.

The Approval Commission conducts intensive review and on-site evaluation of paralegal educational programs. Programs that meet ABA Guidelines foster high quality paralegal education, training and the development and maintenance of educational standards.

Taylor Aytch is a past president of MCBA’s Paralegal Division.

Donald L. Myles, Jr., Jay P. Rosenthal and Randall H. Warner, all of Jones, Skelton & Hill, P.C., have been appointed Judges Pro Tem for Maricopa County Superior Court, Civil Division.

Myles (J.D., 1982, Southwestern University) practices in the area of insurance bad faith, professional liability, construction and products liability litigation. Rosenthal (J.D., 1981, St. John’s University) practices in the areas of commercial, governmental, tort and insurance litigation. Warner (J.D., 1992, UA) practices in the areas of federal and state appeals and commercial litigation.

Mark Harrison, Robert Bartels and Anoma Phanthourath have been selected by the Arizona Chapter of the American Jewish Committee as recipients of its 2005 Judge Learned Hand Awards.

Harrison (L.L.B., 1960, Harvard Law School), of Osborn Maledon, will be given the Community Service Award for demonstrating sustained contributions to the advancement of equality and democratic principles.

Bartel (J.D., Stanford University), a professor at ASU Law School, will receive the Public Service Award for his sustained contributions to the advancement of equality and democratic principles through work in the non-profit and public sectors.

Phanthourath (J.D., 1998, UA), of Shughart, Thomson & Kilroy, PC, will be presented with the Emerging Leadership Award, a tribute to an attorney practicing 10 years or less who has demonstrated a commitment to the values of community service.

The Honorable Thomas Zlaket, the Honorable Jesse Filkens, and the Honorable Kevin Gover have been appointed to the Tonto Apache Appellate Court. This is the first Appellate Court judicial panel for the Payson-based tribe, which received federal recognition in 1972.

Zlaket is the former chief justice of the Arizona Supreme Court and has a demonstrated record of favorable opinions for the respect of the sovereignty of Native Americans in Arizona. Filkens, a member of the Ramapough Mountain Indians (recognized in New Jersey and New York), presently serves with the Yavapai Apache Tribe and is a former judge of the Maricopa County Superior Court. Gover is a member of the Pawnee Tribe of Oklahoma and the former Assistant to the U.S. Secretary of Interior during the Clinton era.

The Tonto Apache Trial Court is headed by the Honorable Tao Etpison, chief judge and a member of the San Carlos Apache Tribe.
Controversial Judiciary Bills Working Their Way through Legislative Process

By Jack Levine and Joan Dalton

With the legislative session in full swing, a number of anti-judiciary bills have been introduced and are now working their way through the legislative process. Representative Chuck Gray (R), District 19, wants Arizona Superior Court judges to choose their own presiding judge instead of the Arizona Supreme Court making the selection.

At a recent hearing before the House Judicary Committee, Gray argued that the Supreme Court has too much power under the present system and that it effectively silences lawyers and judges who would otherwise speak out against shortcomings in the legal system. The result, according to Gray, is a judicial system where dissent is stifled because “no one wants to step on those big toes.”

Gray pointed out that the Arizona Supreme Court selects its chief justice and Superior Court judges should have the same right. Gray further argued that his bill (HCR 2013) would result in more local control by judges who are in a better position to select a presiding judge than the Supreme Court. Further, Gray urged that passage of his bill would provide checks and balances to our system and more independence for the judiciary because presiding judges “would not be beholden to the Supreme Court for their appointment.”

Widely unaccepted

The bill drew sharp criticism at the hearings from Chief Justice Charles E. Jones, from Pinal County’s Presiding Judge William L. O’Neil, and from Maricopa County Superior Court Judge Edward P. Ballinger.

Jones pointed out that “at one time we had fifteen different county courts. We found that this did not work well and because of this we developed our present unified court system.” According to Jones, the House bill “would seriously undermine uniformity in the court system.” Jones told the committee that “without uniformity the reforms of the criminal docket in Maricopa County and the recent reforms in the family court would not have been possible if the presiding judges [of each county] owed their appointments to their fellow judges rather than to the Supreme Court.”

Ballinger, who also spoke in opposition to the bill on behalf of the Arizona Judges Association, told the Judiciary Committee that “if the presiding judges in all of the counties were elected by their peers and each were permitted to go their own way, we would no longer have a unified court system in Arizona.”

In a “turn the tables” argument, O’Neil reminded the House Committee members that “even in a branch of government, members of the Legislature do not select the chairs of the House and Senate Committees.

This is the responsibility of the House and Senate leadership.” The House Judiciary Committee, which, compared with other legislative committees, has more lawyer members, voted the bill down 8-1.

Balance of power

Perhaps the most controversial of the bill’s effects on Arizona’s Judiciary is HCR 2031, introduced by Russell K. Pearce (R), District 18. The Resolution would amend Article VI, Section 1 of the Arizona Constitution to provide: “The Court shall not establish rules of law on a retroactive basis, including rules of law that would apply to conduct that occurred in a claim arising out of that conduct.”

Judge Patricia K. Norris of the Arizona Court of Appeals, who appeared in opposition to the bill, pointed out that if the Resolution passed and the Constitution was amended, it would result in the total abandonment of the principle of judicial precedent and would require that every case be decided as if it were the first one of its kind. Despite its seemingly bizarre impact on judicial review, HCR 2031 passed the Judiciary Committee by a 5-4 vote.

Other bills working their way through the House are HCR 2026 which removes the Supreme Court’s authority over justices of the peace and instead places this authority in the hands of the County Board of Supervisors thru a presiding justice of the peace appointed by the Board in each county. HB 2257, which raises the exclusive jurisdictional limits of justice courts to $15,000 from its present limit of $5,000, and HB 2403, which provides that counties with an increase of 30,000 or more in population are not required to automatically create a new Superior Court division, as present law dictates, but may do so if that county’s board of supervisors and the governor approve it. This bill also passed the House Judiciary Committee by a 5-4 vote.

In perhaps the only proposed legislation that judges might be expected to agree with in the legislative hopper, House Bill 2500 would allow judges and other county officials to request that their personal information i.e., addresses, telephone numbers, names of family members, etc., not be made public through the records of the county assessors and treasurers. This bill, sponsored by 27 House members, passed the committee by an 8-1 vote and is expected to become law despite opposition from the state’s county assessors and treasurers who claim it would be too burdensome and expensive for their offices.

HCR 2014, would permit the Legislature to amend or repeal rules of evidence and rules of procedure created by the Arizona Supreme Court. Another bill, HB 2405, would place the Adult and Juvenile Probation Departments under the control of the County Board of Supervisors.

Judicial concern

Chief Justice Jones and Vice Chief Justice Ruth McGregor, appearing on KAET Channel 8’s public affairs program Horizon, hosted by Michael Grant, discussed the flurry of legislative bills and their impact on the judiciary. Jones, in commenting on the current climate at the Legislature as compared with past years, was obliged to concede that “this is by far the roughest.” McGregor saw a common theme in the legislative bills under consideration “to take authority or power from the judicial branch and place it in the legislative branch.” Both Jones and McGregor viewed the attempt to take away the Supreme Court’s rule making authority as a grave threat to the independence of the judiciary. Chief Justice Jones pointed out that “[w]e have rule making authority that provides a level playing field for all parties that come before our courts. . . . If you place it in the hands of the legislative branch, do you think you can change the law in 24 hours? We do not think that is has changed dramatically or appreciatively.

Vice Chief Justice McGregor: I think there is a big difference between interpreting the law, and expanding the law has always been a blared area. I am not sure that this debate is very different from the way it was 50 years ago. Some people seem a little louder in making the argument but I think this has always been an area of tension.

On acting in an activist way:

Chief Justice Jones: There seems to be a view on the part of some that our courts are somehow reaching out and grabbing at issues to decide. What that notion forgets is that no case comes to any courts in this state or anywhere else in this country unless somebody brings it—and we never know what the issue is going to be before it gets here. We do not conceive of government policy that has to be made and then go find a case to decide. The cases come and it places us under the standard constitutional duty to decide those cases—we have to decide them, we have no choice. The notion that we are out looking for issues is basically a false notion.

On court funding:

Vice Chief Justice McGregor: I think that we need to be really careful about overlooking the importance of properly funding the courts. When funding is cut to a certain level and we can no longer keep the courts open and allow the speedy resolution of civil disputes, and can no longer compete the speedy resolution of criminal cases, then we have come to a very serious problem...appropriate funding really does lie at the heart of the court.
Patrick T. Stanley has joined Bonnett, Fairbourn, Friedman & Balint, P.C. Stanley (J.D., 2002, UA) practices in the firm’s insurance defense area.

Kelly Wilkins MacHenry has joined Snell & Wilmer L.L.P. MacHenry (J.D., 1991, Boston College) practices product liability litigation, focusing on personal injury defense, premises liability, insurance defense, general commercial litigation and alternative dispute resolution. Prior to joining the firm, she managed national litigation for General Electric Company.

Gregory D. Honig and Duncan J. Stoutner have joined Norling Kolstad Sif- fermann & Davis, P.L.C. as associates. Honig (J.D., 1997, Gonzaga University) has spent the last seven years in commercial practice at Ferman & Davis, P.L.C. as associates. Honig in Phoenix for the past three years.

Stasy Click has joined the law firm of Burch & Cracchiolo, PA. Click (J.D., UA) will practice in the firm’s litigation area, primarily focusing on defense of personal injury litigation. Prior to working at the firm, Click served as a prosecutor in Pima and Maricopa counties, as the founder and Director of the Victims’ Legal Assistance Project at the Arizona State University College of Law, and in private practice.

Jeffrey Simmons and Robert Shuler have joined Ryley Carlock & Applewhite as shareholders. Simmons (J.D., 1986, UA) practices in the area of transportation, commercial litigation and employment law and has over 18 years of experience as a litigation attorney. Shuler (J.D., 1975, UA) has provided government relations and legislative lobbying representation for clients for 30 years.

Ryley Carlock and Applewhite also selected new members to its executive committee: Michael Moberly, Sheryl Sweeney, and James Brophy. Moberly (J.D., 1983, University of Iowa) represents management in civil rights and employment-related litigation. Sweeney (J.D., 1984, University of Kansas) practices water, environmental and electric utility law, as well as in the area of special taxing districts. Brophy (J.D., ASU, 1974) practices extensively in securities, business transactions and employee benefits law. All have been attorneys with the firm since graduating from law school.

Shahpar Shahpar, an attorney at Snell & Wilmer, values what Maricopa County’s legal community has to offer. As a native of the Phoenix area, she was exposed to the local legal community while studying law at Arizona State University.

That insight, along with family and friends living in the area, made practicing in the Phoenix area as a litigator an easy decision. That insight, along with family and friends living in the area, made practicing in Phoenix area as a litigator an easy decision.

Gregory D. Honig

Real life experience

Shahpar studied electrical engineering and worked full-time at Motorola before starting law school, and continued there part-time while in school.

She gained “hands-on experience working with intellectual property attorneys, scientists, and engineers on a daily basis.” Discovered career goals with this exposure, she felt a spark for law.

Her work as an electrical engineer makes the area of law she is practicing in a perfect fit. “It allows me to experience both my interest in science and engineering as well as law. It is really the best of both worlds.”

Growing business

Phoenix is a great place to be for an intellectual property lawyer.

According to Shahpar, the intellectual property field here is growing. “We've always had Motorola, Honeywell and Intel, but now there are other companies moving to the area. The biotechnology market is also expanding. In addition, with joint programs between Arizona State University and Mayo Clinic, I believe the intellectual property market will really flourish here in the next decade.”

The biggest challenge for the local intellectual property field is “Getting intellectual property attorneys with science backgrounds to stop and notice that there are some great opportunities here in Phoenix. Phoenix isn't the traditional Silicon Valley, New York, Los Angeles or Chicago that normally motivates IP attorneys to relocate, but it is a great place to work with a growing intellectual property market.”

Sizable opportunities

Working at a large law firm, the attorney appreciates the resources and diversity of work a firm of its size has to offer. “The resources are outstanding. I have accessibility to vast legal knowledge whenever I need it. I can just ask a colleague from that practice area.” She credits working at a full service law firm with being able to help clients more thoroughly and efficiently.

And she also points out the great networking opportunities, both through her law firm and as a member of the Maricopa County Bar Association. “These tools have been invaluable in growing my client base and finding new clients.”

Power of networking

Belonging to MCBA helps Shahpar with something not taught in law school—client development. “They teach you how to research and analyze legal issues, but they don't teach you how to find and retain clients and build business relationships. This is something that you need to learn on your own once you start practicing.” MCBA allows her the opportunity to network in the legal community.

Shahpar values client development so much she founded her own local networking group which hosts monthly networking happy hours for professionals. “By doing this, I was able to reach out to an incredible number of businesses and professionals that I would not have had exposure to otherwise. Recognizing that everyone has to find his or her own way to develop clients, Shahpar has found an approach that works for her.

Winning the legal race

This successful attorney also has a passion for running, which is something she cannot do without. She compares her past time, for which she trains year-round, to her legal career.

“I feel that running is an extension of my legal profession. The discipline and hard work in training for races are similar to those qualities needed to be a successful attorney. I have to be disciplined, driven and have a competitive nature for both running and practicing law.”

Without a doubt, Shahpar knows what it takes to win the race.
MCBA Seminar Focuses on Recognizing Class Action Litigation

On Friday, March 25, the Maricopa County Bar Association will present a CLE seminar on class action litigation. For attorneys interested in helping individual and business clients when they have been victims of a class action claim, this practical CLE is not to be missed.

The Maricopa Lawyer sat down with the seminar’s presenter, Daniel Karon, to talk about its importance for any type of attorney. Karon is managing partner at the national class action law firm Weinstein Kirchenoff Scarlett Karon & Goldman, Ltd. in Cleveland, Ohio, where he practices commercial class action litigation. He teaches extensively on class action trial matters and has published several articles on the topic.

ML: What is the general overview of the CLE seminar?

DK: This fun and informative CLE will teach any lawyer how to recognize when a class action claim might exist and, if so, how to maximize the opportunity. We will discuss Federal and Arizona Rule 23 and then apply it to consumer fraud cases to see why some class actions work and others don’t. We’ll then discuss how to recognize price fixing cases, which are cases all lawyers can participate in if they know what signs to look for and how to counsel clients to help. We’ll also discuss securities fraud cases, which are so rampant these days, and how to protect your clients from being victimized. Finally, we’ll discuss how class actions are settled and attorneys are paid.

ML: What are the most important things attorneys need to know about class action litigation?

DK: Class actions are neither easy to recognize nor easy to resolve. This CLE will help lawyers to do both. We will discuss the mistakes and oversight non-class action attorneys make when considering (or ignoring) potential class action claims, which should permit them to maximize their opportunities to bring and succeed in these cases.

ML: How can an attorney know when they are dealing with a class action claim? Is it always obvious?

DK: Class actions aren’t always obvious, sometimes their importance is overlooked and will know how to develop them into meaningful cases, thus growing their business.

ML: What are the politics involved with class action litigation? Do they change frequently?

DK: Federal and State Rule 23 affect class action cases. Federal Rule 23 recently underwent some changes, but none that really affect how to recognize and develop class action opportunities. Moreover, the Senate is currently debating class action “reform,” and we can discuss how this likely federal legislation will impact state court class actions.

ML: What are some of the politics involved with class action litigation?

DK: Class action politics can be difficult, especially when dealing with competing class actions involving the same subject matter in various states. This CLE will discuss ways to navigate these politics and how to maximize your opportunities once you’ve recognized and filed a class action.

ML: Other relevant information attorneys should know about class action claims?

DK: Far too often, lawyers either don’t recognize a viable class action claim, which is a way to help people victimized in sometimes small ways by large companies, or they believe a class action claim may exist, but they don’t know how to proceed with it. This CLE will make lawyers comfortable with both concepts and, as a result, will allow lawyers to grow their business.

ML: What areas of law do you see the most class action litigation in? Any reasons why?

DK: Class actions, especially these days, are everywhere, whether recognized or overlooked, especially concerning consumer scams, securities and commodities fraud violations, or—in a business setting—price fixing and market allocation schemes.

ML: What will attorneys gain from attending this seminar?

DK: Attorneys attending this seminar will leave with the knowledge to recognize class action claims that they likely previously overlooked and will know how to develop them into meaningful cases, thus growing their business.

ML: What rules affect class action litigation? Do they change frequently?

DK: The CLE will impact state court class actions. Federal Rule 23 recently underwent some changes, but none that really affect how to recognize and develop class action opportunities. Moreover, the Senate is currently debating class action “reform,” and we can discuss how this likely federal legislation will impact state court class actions.

ML: What is the general overview of the CLE seminar?

DK: This fun and informative CLE will teach any lawyer how to recognize when a class action claim might exist and, if so, how to maximize the opportunity. We will discuss Federal and Arizona Rule 23 and then apply it to consumer fraud cases to see why some class actions work and others don’t. We’ll then discuss how to recognize price fixing cases, which are cases all lawyers can participate in if they know what signs to look for and how to counsel clients to help. We’ll also discuss securities fraud cases, which are so rampant these days, and how to protect your clients from being victimized. Finally, we’ll discuss how class actions are settled and attorneys are paid.

ML: What are the most important things attorneys need to know about class action litigation?

DK: Class actions are neither easy to recognize nor easy to resolve. This CLE will help lawyers to do both. We will discuss the mistakes and oversight non-class action attorneys make when considering (or ignoring) potential class action claims, which should permit them to maximize their opportunities to bring and succeed in these cases.

ML: How can an attorney know when they are dealing with a class action claim? Is it always obvious?

DK: Class actions aren’t always obvious, sometimes their importance is overlooked and will know how to develop them into meaningful cases, thus growing their business.

ML: What are the politics involved with class action litigation? Do they change frequently?

DK: Federal and State Rule 23 affect class action cases. Federal Rule 23 recently underwent some changes, but none that really affect how to recognize and develop class action opportunities. Moreover, the Senate is currently debating class action “reform,” and we can discuss how this likely federal legislation will impact state court class actions.

ML: What are some of the politics involved with class action litigation?

DK: Class action politics can be difficult, especially when dealing with competing class actions involving the same subject matter in various states. This CLE will discuss ways to navigate these politics and how to maximize your opportunities once you’ve recognized and filed a class action.

ML: Other relevant information attorneys should know about class action claims?

DK: Far too often, lawyers either don’t recognize a viable class action claim, which is a way to help people victimized in sometimes small ways by large companies, or they believe a class action claim may exist, but they don’t know how to proceed with it. This CLE will make lawyers comfortable with both concepts and, as a result, will allow lawyers to grow their business.

ML: What areas of law do you see the most class action litigation in? Any reasons why?

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Brown Bag Lunch to Focus on Balancing Career and Family

On March 18, the Maricopa County Bar Association’s Task Force on the Recruitment and Retention of Women and Minority Lawyers will host its third brown bag lunch. This ongoing series of lunchtime discussions provides an environment for informal conversations on issues uniquely affecting women and minority attorneys in Maricopa County.

This month’s brown bag lunch will feature Lisa Melton, managing attorney at Community Legal Services’ eastside office, who will lead a discussion on “Balancing Your Career and Family: How to integrate your work life with your home life so that you can have the life you want.”

Melton will speak about the challenges faced by lawyers when trying to combine work and family, including balancing the desire to parent children and succeed professionally; the pros and cons of full, part-time and flextime work; child care options; time management; and creating a working parent-friendly office environment.

The brown bag lunch will take place from noon until 1 p.m. on Friday, March 18, 2005, at the MCBA offices. There is no cost to attend. Please bring your food, drink and any questions you would like to have answered about balancing your work life and your home life.

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Civil rights lawyer convicted of aiding terrorists

A federal jury in Manhattan found outspoke civil rights lawyer Lynne F. Stewart guilty of five counts of providing material aid to terrorists and disobeying federal rules that prohibited her client, Sheikh Omar Abdel Rahman, from speaking to anyone but his wife and lawyer. Stewart, well-known for her willingness to represent unpopular clients, faces up to 30 years in prison. Judge John G. Koellri set Stewart's sentencing for July 15.

As former U.S. Attorney General John Ashcroft’s successor, Alberto Gonzales, praised the verdict for “sending a message to those who support the use of digital signatures that it’s dangerous to do so.”

In addition to serving up to 30 years in prison, Stewart’s felony conviction means that she is immediately disbarred.

Spousal rape bill amended after introduction at Senate Judiciary Committee meeting

A bill designed to repeal this state’s spousal rape law and consolidate spousal rape with standard rape, was heard and amended by the Senate Judiciary Committee on January 31, 2005. Should Senate Bill 1040 survive as amended by the Senate Judiciary Committee, rape of a spouse and non-spousal rape will continue to be distinct offenses; however, both offenses will beheld two felonies.

Currently, sexual assault of a spouse is a class six felony, but for first offenses, a judge has discretion to enter a judgment that the severity of the penalty for spousal rape is equivalent to that imposed for loitering. Meanwhile, standard sexual assault is a class 2 felony punishable by up to 10 years in prison. Prosecutors and victim advocates find the sentencing disparity both abominable and unconstitutional.

In Coconino County, prosecutors have brought the higher-penalty standard rape charge against a 45-year old man alleged to have sexually assaulted his spouse. The Coconino County Attorney’s Office’s Chief Deputy David Rozema says “[t]he current statutes are extremely unfair and unconstitutional, and they need to be changed.”

The standard sexual assault charge filed by the Coconino County Attorney’s Office is sure to raise the issue of whether the state’s spousal rape law violates the Constitution’s equal protection guarantees.

Keli Luther of the Crime Victims Legal Assistance Project is currently representing a rape victim challenging Arizona’s law in a case before the Arizona Court of Appeals, and says that Arizona’s law “treats victims differently solely because of their marital status.”

Still, legislators like Rep. Eddie Farnsworth have voiced the opinion that spousal relationships place the allegation of rape into a “much gray area.” “How do you really prove that somebody was raped when they are engaging in an activity that they’ve been engaging in for 20 years?”

Only six states including Arizona have separate spousal rape and sexual assault statutes.
Arizona Supreme Court Issues Orders Concerning Proposed Rule Changes

By Joan Dalton

On January 20, 2005, the Arizona Supreme Court issued orders in response to Supreme Court Rule 28 Petitions to adopt, amend, or repeal rules of procedure for Arizona’s courts. The following petitions were circulated for comment.

Arizona Rules of the Supreme Court

R-03-0012: Petition to Amend Rule 123 Relating to Public Access to Judicial Records of the State of Arizona. This petition proposes amendments concerning how and when the court collects, stores, and provides public access to electronic court documents containing sensitive information on court litigants. Comments are due April 4, 2005.

R-04-0026: Petition to Amend Rules 33, 39 and 40 Relating to Admission to the Bar. This petition seeks to amend Supreme Court Rules so that lawyers needing bar admission on motion may more easily practice for legal services organizations and indigent litigants. Comments are due April 4, 2005.

R-04-0027: Petition to Amend Rule 31 Relating to the Regulation of the Practice of Law. The proposed amendment to this Supreme Court rule is intended to clarify that attorneys who have been suspended, disbarred, or placed on disability status and ordered not to practice may not circumvent the order through the exceptions to Rule 31. Comments are due April 4, 2005.

R-04-0030: Sua Sponte Petition to Amend Rule 42, ER 1.8(g) Relating to Conflict of Interest: Current Clients; Specific Rules. The proposed amendment is intended to clarify that language in the rule signifying “consent, in a writing signed by the client” does not apply to suits against multiple government officials, and is only applicable in situations where there is a potential for a conflict of interest between jointly represented clients on the issue of settlement. Comments are due April 4, 2005.

R-04-0031: Petition for New Section XIII & New Rules 125-128 Relating to Probate Rules of Practice. These proposed new rules are intended to advance the strategic goals of the Supreme Court in providing oversight of fiduciaries by holding them accountable in the performance of their duties. Comments are due April 4, 2005.

R-04-0032: Petition to Amend Rules 33-38, 64 & 65 Relating to Admission to the Bar and Reinstatement. This petition to amend Supreme Court rules concerning admission and reinstatement to practice law in Arizona makes numerous clarifying, technical, procedural and substantive changes to existing rules and adds new rules. Comments are due April 4, 2005.

Rules of Criminal Procedure

R-03-0023: Amended Sua Sponte Petition to Amend Rule 6.7 Relating to Compensatio of Appointed Counsel. The proposed amendment would set forth procedures for compensating appointed counsel by local court rule. Comments are due April 4, 2005.

R-03-0027: Third Amended Petition to Amend Rules 4.2, 14.1, and 14.3 Relating to Misdemeanors: Appointment of Counsel. The proposed rule change is designed to enhance the effectiveness of arraignments and inform defendants of their right to counsel at events after the initial appearance. Comments are due April 4, 2005.

R-03-0028: Third Amended Petition to Amend Rules 3.1, 3.2, 3.4, and 26.12 Relating to Warrants and Summonses. The proposed amendment includes a procedure to issue warrants without a failure to appear complaint, makes a distinction between “initial arrest warrants” and “post-disposition warrants,” proposes that initial appearances be required within thirty days of the filing of the complaint, and authorizes a summons to be served by mail. Comments are due April 4, 2005.

R-03-0029: Revised Form 19 Relating to Guilty/No Contest Plea Proceedings is adopted on an emergency basis, effective immediately with a comment period to follow. The Supreme Court ordered that existing Form 19 be abrogated, and a Revised Form 19 adopted with a comment period. Comments are due March 1, 2005.

R-04-0033: Petition to Amend Rule 27 Relating to Probation and Probation Revocation. The proposed rule changes are designed to establish and clarify administrative and procedural requirements for Intercountry Transfers of Probation. Comments are due April 4, 2005.

ABA Model Court Rule On Insurance Disclosure

R-04-0025: Petition to Adopt ABA Model Court Rule on Insurance Disclosure. The proposed model rule would require lawyers to disclose on their annual registration statements whether they maintain professional liability insurance. Comments are due April 4, 2005.

Rules of Procedure for Commissions on Appellate and Trial Court Appointments

R-05-0002: Petition to Amend Rule 7 Relating to Application for Judicial Office. Clarifies that the six-month period for maintaining judicial applications begins at the deadline stated on the front page of the application; clarifies what will be returned to the applicant upon request during the six-month period that the Commission retains the information; and stipulates what information is available to the public and what is confidential. Comments are due March 1, 2005.

The full text of the proposed rule changes may be obtained by accessing the Arizona Supreme Court’s Website at: http://www.supreme.state.az.us/rules/Recent_rules.htm.

Deadline Announced for Pro Tem Applications

The deadline for submitting applications are approaching for new and current Pro Tem Judges for Trial Courts of Maricopa County, which includes Superior Court and the Justice Courts.

Applications to become a Judge Pro Tem are due Monday, August 8. The required forms are available on the Internet at www.supercourt.maricopa.gov. Go to the index on the home page and scroll to Judges Pro Tempore, to find application forms and additional information.

All current, existing Pro Tem Judges also are asked to submit a renewal application for 2006 by the same deadline date as new applicants. Attorneys on the active Pro Tem list will receive letters with application forms to facilitate reapplication for the upcoming year.

Additional questions about requirements and appointment process can be answered by Pro Tem Coordinator, Kathryn Wallace, 602.506.6826.

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Couthouse Dedication

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decision upholding an Idaho statute regulating the sale of oleo margarine in a manner that favored butter. The judge would continue his career on the federal bench until his death in 1943.

Celebrating light

During the intense two-week court session in Phoenix, Neterer quite likely amused himself by attending the October 21 dedication of Maricopa County’s new courthouse (still in use today on the southwest corner of Washington and First Avenue). The “impressive ceremonies” that marked the opening of the new $1.5 million combined city-county administration building were a part of the international celebration of the 50th anniversary of Thomas Edison’s invention of the incandescent lamp. In honor of the electric light golden jubilee, the courthouse dedication was held at 8 p.m., under the illumination of “the almost sunlight brilliance of a great battery of floodlights.”

Boy Scouts blocked traffic on Washington Street, between Central and Third Avenue, to accommodate the crowd of almost 7,000 gathered for the celebration. Starting at 7 p.m., that evening, the surging crowd was allowed to tour the new courthouse. The visitors were greeted by city and county officials, department heads and their staffs. Every room in the new building was lighted with Edison’s incandescent bulbs and each courtroom and office was filled with flowers.

In spite of the welcoming décor of the rest of the courthouse, the most popular tour stops were the sheriff’s office and the jail on the sixth and seventh floors. The sheriff’s office exhibited eight types of stills captured during recent raids, including a large German still smuggled from Mexico. Along with the distillery equipment, the exhibit included confiscated cases of beer and kegs of wine and whiskey. Warning signs were eventually posted on the beer cases after a little rough handling of the warm brew by the curious and possibly thirsty public resulted in explosive consequences.

Full house

The jail that night contained the largest number of prisoners ever held in a Maricopa County jail up to that time—223 inmates, including 23 women. Fascinated visitors stood in long lines as the new elevator operated non-stop to carry them to the packed sixth and seventh floor cell blocks.

Unfortunately for M. R. Chumbley, the county jailer, the evening’s dedication of the new building and the celebration of electric lighting had an unexpected impact on him. Reportedly, Chumbley’s charges “piqued because of the visitors disturbing their games and other evening amusements,” began pounding on the steal door and walls of Tank No. 5 on the sixth floor. Chumbley attempted to quiet the prisoners, and the large electric light under which he was standing, loosened by the prisoners’ pounding, fell directly on his head. Fortunately, Chumbley was not seriously injured, but he was given emergency treatment in the jail and continued his work.

Broadcasting live

The organized events for the evening began with “one of the greatest radio hookups ever arranged in the history of the world,” beginning at 5:30 p.m., and during which NBC’s Red and Blue Networks broadcast, and local radio stations KFAD and KOY relayed and amplified the live program featuring statements from international leaders and celebrities praising Edison and the far-ranging impact of his invention. KFAD would a month later be acquired by the Arizona Republican newspaper and change its call letters to KREP (for Republican). After only a few weeks of embarrassing public mispronunciation, the call letters were quickly changed to KTAR (for the Arizona Republican).

Following the building tours and radio broadcast, the attendees enjoyed a concert by the Arizona National Guard Band and speeches by at least eleven dignitaries, including Governor John Phillips, the mayors of Phoenix and several nearby communities and the chairman of the Maricopa County Board of Supervisors. Finally, the crowd was treated to a huge street dance on Second Avenue, between Washington and Jefferson, with Clinton Julian’s Orchestra playing until midnight.

No disturbances

The pleasant evening was disrupted briefly when noted Phoenix attorney, Earl F. Drake, was attempting to introduce the speakers. Prisoners being held on the sixth and seventh floor of the new courthouse interrupted the ceremony and began a long-standing tradition by flinging less than dignified catcalls and boos toward the assembled crowd. Sheriff Charles Wright left the speaker’s platform that had been erected in front of the new building, ascended in the building’s new elevator and quickly quelled the disturbance.

An inside view

In his short visit to Phoenix that fall of 1929, Neterer had a chance to observe and celebrate the Maricopa County legal community—a community that was rooted in a dusty, informal agricultural center founded contemporaneously with Edison’s celebrated invention; a community that matured in the roaring 1920s era of stock and land speculation and prohibition; a community that would persevere optimistically through the looming depression, and a community that would prosper from the seeds of modern buildings and busy airports planted that fall.