MCBA Gains New Leadership

By J.W. Brown
Maricopa Lawyer

Colin F. Campbell, the immediate past presiding judge of Superior Court, is retiring from the bench after 18 years of service, and is the first of what may be a lengthy parade of judges retiring in 2007.

Campbell is not abandoning his legal career. He will return to private practice after relinquishing his judicial robes at the close of business on Friday, January 19. He also will continue to serve as an adjunct faculty member at the new Phoenix School of Law.

“I still have six children in grammar school, high school and college, so I will be working for some time to come,” said Campbell, who has four sons and three daughters.

He spent all but two of his non-judicial career years with Osborn Maledon, first as an associate and then as a partner, where he has been invited back after a 17-year intermission. He took a short two-year break from private practice between 1971 and 1973 and worked as an assistant federal public defender.

During his tenure, Campbell sat on several highly publicized cases including, among others, the sentencing of Danny Boudreau (of Partridge family fame) for assault, the sentencing of a defendant who defiled a hamburger sold from a fast food restaurant to a police officer, the transfer hearing of two juveniles charged with vandalizing a Jewish synagogue, the electrical deregulation cases and the Lewis Prison grand jury case.

Although Campbell served on every assignment in Superior Court—criminal, civil, juvenile and family—it is the five years he served as presiding judge, from 2000 to 2005, that he and others think had the most significant impact.

“Judge Campbell is a judicial leader in words and in deeds and has made a great impact on the administration of justice,” said Court Administrator Marcus Reinkensmeyer.

“He is a stalwart proponent of providing fair and equal justice and paved the way for increased programs, services, products and facilities while the presiding judge.”

A summary of his accomplishments during his years as presiding judge fill a multi-page document. Among his accomplishments are:

• Saving over $3 million in operational expenses by reorganizing and re-engineering the court’s business processes.

• Initiating programs focused on early felony case processing—so defendants could be seen by commissioners within days of arrest rather than weeks. This allows quicker and less expensive resolution of cases. Programs he created include: Regional Court Centers for direct felony filing and case processing and Consolidated DUI Court to process only aggravated DUI cases.

• Creating numerous specialty courts including the Probation Revocation Center, Mental Health Court, Criminal Family Violence Court and Family Drug Court, which focus on specialized needs of the community.

• Expanding judges on family court to make it the second largest department in the county, second only to the criminal department.

• Reorganizing the information technology services by consolidating separate, redundant systems, moving off an expensive and outdated mainframe and creating a web-based case management system. A much more efficient system now exists, with improvements continuing.

• Upgrading existing courtrooms and equipping newly constructed courtrooms with audio and video technology for more effective trials and better courtroom experience for lawyers, litigants, juries and court staff.

• Creating a court master space plan resulting in the building of the northwest and northeast regional facilities and the start of planning for a new criminal court tower downtown, a west side regional facility and an expanded southeast facility.

• Consolidating justice courts into new modern facilities and, where possible, co-location with Superior Court facilities.

Not everything Campbell implemented was welcomed by attorneys. When he ordered the suspension of security by-pass cards for attorneys, it riled many lawyers, who didn’t mince words in sharing their opinion on his plan. He calmly listened, despite the outcry.

Barbara Rodriguez Mundell, current presiding judge, commented in a tribute to Campbell shortly after her term began: “He maneuvers through the most daunting of situations with eloquence and style.”

And after 17 years on the bench, he clearly appreciates the ability of a judge to make a decision—and stick to it.
A Presidential Farwell

Amy S. Davis
Paralegal Div. President

This month marks the end of my term as president of the MCBA Paralegal Division. It has been my distinct privilege and pleasure to have served in this capacity, but I can honestly say the same for 2001 when I began serving as a volunteer. This past year, I was surrounded by so many quality people who shared the same energy, enthusiasm, and dedication to the profession and to this organization to make it more successful. As the four very exemplary paralegals that have served as president before me can attest, our success in this capacity is the result of the collective efforts of our board of directors and others who serve as volunteers. I sincerely thank you all for your support, encouragement, and friendship—particularly those of you who have been active on the board and on the various committees. I extend a special thanks to Sybil Taylor Aych, RP for always being there for me and providing the historical reference concerning the division when needed. Special thanks to the law firm of Snell & Wilmer for the generous support they provided and a final thanks to all the vendors who supported the division this year to help make it so successful.

The incoming board of directors under the leadership of incoming President Monica Rapps, CP will be comprised of many more talented individuals who will lead the division to some exciting endeavors in fulfillment of our mission. I wish them all the very best and I am confident that they will find the task as enjoyable, interesting and thoroughly rewarding as I did. As I assume the position of immediate past president, I will continue serving the division, our membership, and the community in 2007.

Remember to take some time to read about this year’s accomplishments in the president’s annual report, which will be posted on the members only section of our Web site soon. All of those achievements happened as a result of those who have given generously of their time. I encourage everyone to get involved and stay involved, as there are many more things to do.

Support 2006 Race Judicata

LaShawn D. Jenkins
Race Judicata 2007 Chair
Guest Columnist

The inaugural Race Judicata 5K, held last December, was a huge success. The event drew nearly 300 participants, and more than 15 corporate sponsors donated food, goodie bag items, and/or their services. With your support, YLD expects both the participation and popularity of Race Judicata 5K to grow exponentially.

Awards will be given for the three fastest females and males in each age group (under 19, 20-29, 30-39, 40-49, 50-59, 60-69, 70+), fastest team, and biggest team. In addition, Golden Gavel Certificates will go to those in the legal profession who are fleet of foot: Fastest Judge, Fastest Criminal Practitioner, Fastest Paralegal, Fastest Secretary/Assistant, Fastest Civil Practitioner (Partner), Fastest Civil Practitioner (Associate), and Fastest Law Student or Law Professor. Margie Gwen, the undisputed 2005 Race Judicata champion in the 70+ female category, has issued a challenge to all comers.

Any takers? A registration form can be found on page 16 so gather your family and friends and come out to support YLD!
MCBA ANNOUNCEMENTS

Defending Our Honor: An Attorney in Iraq

P
racticing law in Iraq is a far cry from practicing in Phoenix. Just ask Richard Erickson, who as a Marine reservist, was recently sent to Iraq. Currently serving as staff judge advocate of the Task Force Military Police in the First Marine Expeditionary Force, Erickson is also a Geneva Conventions analyst and officer in charge of evaluating detainee operations in Anbar Province.

How does a lawyer at Snell & Wilmer L.L.P. who specializes in commercial litigation and construction law end up in Iraq?

Military ties

Perhaps it is in Erickson’s blood to be in the military; his direct ancestors fought in the American Revolution, the War of 1812, the Civil War and World War II. Erickson joined the Marine Corps officer program in 1991, after receiving a bachelor of science degree from the University of Arizona. He spent four years of active duty in the infantry and was a veteran of Operations Continue Hope and Quick Draw in Mogadishu, Somalia.

Erickson received a law degree from the University of the Pacific and launched his legal career as an honors clerk for the governor of California. He was also a criminal clerk to the United States attorney in Sacramento during the Unabomber trial before entering private practice in 1998.

In 2002, he was licensed by the judge advocate general and became the deputy staff judge advocate at North American Aerospace Defense Command/United States Northern Command, specializing in domestic opera-

See Member Profile page 10

MCBA Young Lawyers Division Race Judicata 2006

The MCBA Young Lawyers Division will hold its second annual Race Judicata on Sunday, December 3 at Kiwanis Park in Tempe. The race benefits the Young Lawyers Division’s community service projects. See page two for more details and page 16 for a registration form.

MCBA Young Lawyers Division Barristers Ball 2007

Get your table now for the MCBA Young Lawyers Division’s annual Barristers Ball: Saturday, March 3, 2007 at the Ritz Carlton. The ball will benefit Youth Evaluation and Treatment Centers. See page 12 for a registration form.

MCBA Family Law Section Judicial Reception

MCBA Family Law Section members, don’t miss the annual MCBA Family Law Judicial Reception from 5:30 until 7:30 p.m. on Wednesday, December 6 at the University Club. RSVP to Michelle Perkins at mperkins@owensperkins.com by Monday, December 4.

Renew Your MCBA Membership Today

2007 is almost here. Renew your membership and let the MCBA work for you. Take advantage of sections and divisions to further your career. Use the MCBA Lawyer Referral Service to build your clientele. Continue staying informed and up-to-date with the members-only Maricopa Lawyer.
Judging the Judges: Performance Measures Coming to Tradition-Bound World of State Courts

By Zach Patton
Special to Maricopa Lawyer

Last summer, a litigator at a Maricopa County courthouse in Surprise had a complaint. She had driven around for hours before finding the court. “The directions on MapQuest are wrong,” she told court staff. It wasn’t just an idle gripe: the woman was responding to a survey being conducted by the court.

On the same questionnaire, she answered several other queries, such as whether she had been treated respectfully and whether, upon leaving the courthouse, she was clear about what to do next with her case. As it turns out, she was right about MapQuest. County employees contacted the online map company, and 48 hours later the directions had been corrected.

The survey was part of a broad new effort by the county to gauge how well its court system is working. It’s not an entirely novel concept for Maricopa County, which has historically emphasized good court management.

But the county is embracing a set of new performance measures that many believe could transform the way courts across the country are run. The issues involved range from things as mundane as driving directions to sweeping concepts of justice and fairness. This is taking place at an important moment in judicial administration.

Courts around the country are starting to realize the benefits of performance measurement. They’re learning to set formal standards for good court performance. And they’re beginning to collect and analyze data in an effort to achieve them. Putting judges under a measurement system is not easy—courts historically haven’t focused on performance standards—but jurisdictions are deciding that the investment is worthwhile for the accountability it provides.

20-Year project

The pace of change is picking up in part because the National Center for State Courts has released a performance measurement system expressly aimed at revolutionizing the way courts manage themselves. CourTools, unveiled last year, is a set of 10 core measures that give court managers a framework for assessing and improving performance. Unlike reviews that focus on the performance of a specific judge, CourTools is intended to evaluate the court process, from a litigant’s ability to find the courthouse to a convicted felon’s opinion of how he was treated at sentencing.

One measurement, labeled “access to fairness,” gauges a court’s accessibility and its treatment of those who use it. Managers pick out a “typical” day and survey everyone who happens to be doing business with the court. Another measure looks at the percentage of court records that can be retrieved within established time standards, and how complete and accurate the files are.

Then there are yardsticks to gauge the speed and efficiency with which a court handles its caseload. One of them measures the number of incoming versus outgoing cases; others catalog how many cases are completed within a certain period of time, and how long they stay on the court docket. There are separate measures for trial date certainty, collection of monetary penalties, court employee satisfaction and cost per case.

The CourTools project is actually the result of nearly two decades of work. In 1987, the NCSC launched a Trial Court Performance Standards Project, a collaborative effort of trial judges, court managers and scholars.

Gradual progress

The effort is gaining momentum. Three county courts in Arizona are using the system, and the state is considering adoption of some of the timeliness measures. North Carolina has implemented several of the measures as well. Two county courts in California have instituted a pilot program that California is hoping to increase statewide. A handful of other courts across the country—Seattle municipal court, the District of Columbia, two counties in Texas, one in Ohio, a district in Illinois—are working to put CourTools in place.

Florida, New Jersey and New York—are considering it. Last year, the Conference of Chief Justices and the Conference of State Court Administrators endorsed CourTools, urging state courts to adopt the system.

But Maricopa County has gone furthest. Court managers there actually began working with the NCSC a year before CourTools was released. The county put together multi-agency workgroups, ranging in size from eight people to two dozen, for each of the 10 measures. The workgroups met regularly over several months to study the measures and figure out how to capture the right data.

“We’ve been really aggressive about this,” says Marcus Reinkensmeyer, the county court administrator, because it’s got such great potential.” The workgroups, he says, helped bring every court employee on board. “I don’t think we could have just thrust this on the staff. You’ve got to make it collaboration from the very early stages.”

Part of the challenge is that, while the NCSC has strived to create simple, understandable measures, gathering the right data is still difficult.

“You have to ask yourself if your architecture is flexible enough to accurately measure things like timeliness,” says Richard Schaufler, NCSC’s research director. “The measures are simple but getting quality data is a lot of work. The data is the most mundane, but it’s also the most challenging.”

Maricopa County is still rolling out its CourTools measures, and it’s too soon to gauge their effectiveness. The most useful data, of course, will be those dealing with the longer-term trends in performance: Is the court system improving or declining? That will come later. But useful information is already emerging from the “snapshot” data collected over the past year.

For instance, Reinkensmeyer says he was “shocked” at the number of respondents who said they were satisfied by the court. Roughly half the people walking out of a courtroom have lost their case, but over 80 percent of the respondents in Maricopa County said they were pleased with their court experience.

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Business and Commercial Litigation In Federal Courts

By Peter Baird
Special to Maricopa Lawyer

Book Review

In August, I received a call from Robert Haig, a distinguished New York City trial lawyer, who asked if I would review, “in no more than 500 words,” a treatise entitled “Business and Commercial Litigation in Federal Courts” (Second Edition) published by the ABA Section of Litigation. The treatise sounded interesting and, with only one book to read and only 500 words to write, the task sounded easy and so I said “yes.”

Two weeks later, I opened a heavy, 11” x 18” cardboard box and discovered that the treatise was not one book but nine (plus a CD-Rom) and that these volumes collectively contained over 9,000 pages. And I was supposed to read all this and write a review “in no more than 500 words?”

Skimming the pages while hating myself for having said “yes,” I saw that the print, headings, and style were the same as “Corpus Juris Secundum” and also that Thomson West published both the treatise and CJS. Given those similarities, I thought perhaps I could get off easy, review the treatise in a few paragraphs and brush it off as a warmed-over CJS. However, when I started studying the table of contents and reading the text, I realized that this was not a CJS at all, but rather a vast, down-to-earth encyclopedia that every business litigator should own.

Unlike CJS which is written in “West-speak” generalities by anonymous academics, the treatise is written in lively particulars by 199 specifically identified, profoundly experienced and remarkably distinguished authors. Nineteen of them are current or former federal judges. One is a former United States Attorney General. Another is a former United States Secretary of State. Moreover, as their biographies attest, all of the authors are proven experts with hands-on experience and the text reflects it.

What is so helpful about this treatise is that the applicable rules, statutes and cases are not presented as free-standing abstractions but are integrated into common real life situations—from investigation to case evaluation, arbitration to provisional remedies, electronic information to substitution, motions to sanctions, ADR to bankruptcy, magistrates to special masters and litigation technology to expedited appeals. Throughout, there are sections called “Practice Aids” with checklists, research references and forms that are actually useful.

The last three volumes focus on 34 different categories of cases that monthly get filed in federal court, like copyright, directors and officers, banking, patents, RICO, employment, environmental and e-commerce just to name a few. This is pure gold and this is where the experts draw on their own experiences and spoon-feed the rest of us about subjects in their own fields as vital as “pre-litigation issues,” “litigation concerns and strategies for plaintiffs,” “litigation concerns and strategies for defendants.”

Great stuff.

The $960 price is well worth it. The treatise is not too pricey for any serious business litigator to own, and it certainly is too important to ignore.

Peter Baird is a partner at Lewis and Roca LLP, where he handles commercial and professional liability cases.

The “Business and Commercial Litigation in Federal Courts” includes contributing writers from Arizona: John J. Bouma, Particia Lee Refo and Todd Felts, all of Snell & Wilmer L.L.P.
Everything You Need to Know About 1-1-07

Clerk’s Corner

The Clerk’s Office has increased its outreach to the legal community throughout 2006. One of the office’s major initiatives has been referred to as “1-1-07,” signifying the date clerk’s operations in Maricopa County will see significant changes in several areas. The following questions and answers should help clarify those changes. More information is available on the clerk’s Web site: www.clerkofcourt.maricopa.gov or by calling the Clerk’s Office at (602) 506-3360. These changes are specific to Maricopa County Superior Court only.

Q Are all paper files going away on 1-1-07?
A No. Beginning in 2007, the Clerk’s Office will stop pulling hard copy files for internal court users or the public for adult case types initiated after Jan. 1, 2002. These cases have been scanned and imaged and are available for viewing electronically. All requests for 2002 and more recent adult public case files will be directed to the electronic court record (ECR). Public access terminals are available at all clerk’s locations for the public; internal court users will view the images from their computer. Sealed documents in all case types and all case years will continue being filed and maintained in paper.

Q What does the phrase, “adult case type” mean?
A Adult case types are all matters not filed in a juvenile court. For example, criminal, civil, probate, mental health, family, and tax are all adult case types. Juvenile issues (delinquencies, adoptions, dependencies, etc.) have complex confidentiality requirements, among other aspects, that require bringing juvenile cases into e-filing after all adult case types are implemented.

Q Who are “internal court users” and who are “the public”?
A Individuals who work directly with the clerk or a county department and may have access to one or more internal shared computer systems are examples of internal court users. These are clerk’s employees, judges, commissioners, judicial assistants, court administration, county or state attorneys, and others. The public generally includes private attorneys, media, businesses, citizens, process servers, and others who likely work with the clerk at file counters, by mail, or over the telephone.

Q Will 1/1/07 apply to juvenile matters?
A No. Juvenile filings and hard copy files will still be maintained.

Q Will 1/1/07 apply to the Water Case?
A No. Paper filings and the hard copy file will still be maintained.

Q How will arbitrators access the court file after 1/1/07?
A Arbitrators will continue receiving paper until alternative means to the court record are explored.

Q How will we pull sealed files and document?
A Access to sealed files and documents will not change after 1/1/07. These will continue to be maintained in the Clerk’s Discovery & Confidential Department and will be pulled manually.

Q How do the Lower Court Appeals processes change after 1/1/07?
A Three-part answer:
1. Lower Court Appeals: Access will only be available via the ECR in Superior Court. Original paper documents received from a lower court will be remanded to the court of original jurisdiction.
2. Special Action: Access will be available via the ECR.
3. Administrative Review: Access will be available via the ECR. The original paper Administrative Record will be returned to the administrative agency.

Q How will a case that is appealed to the Court of Appeals be processed?
A A paper record will continue being provided until alternative means to manage the court record are explored.

Q How will Post Conviction Relief (PCR’s) be processed after 1/1/07?
A There will be no change from the current process.

Q How will the record be transferred in a change of venue after 1/1/07?
A There will be no change from the current process. A paper record will continue to be provided until alternative means to manage the court record are explored.

Q How are documents from another county or another court handled with respect to the ECR?
A Two-part answer:
1. Matters from another county heard in Maricopa County: There will be no change from the current process. After the hearing and trial, the original off-line minute entry, as well as the original pleadings and documents will be returned to the Clerk’s Office of the other county. This is the current practice.
2. Document filed by mistake from another jurisdiction: The document will be identified during the audit process and sent to the correct court.

Q Will 1/1/07 affect search warrants?
A Open cases will only be available on the ECR. Closed cases will remain confidential and the current process will not change.

Q Will 1/1/07 affect death penalty cases?
A The Clerk’s Office will no longer maintain a paper file. Access will only be via the ECR.

Q Will 1/1/07 affect search warrants?
A No. Unsealed search warrants will still be available via the ECR.

Q Will 1/1/07 affect mental health cases?
A The Clerk’s Office will no longer maintain a paper file. Access will only be via the ECR. Only those internal users authorized to see Mental Health documents will see the document on the ECR. The public will continue requiring authority from the court before being allowed access to Mental Health documents.

Q Will exhibits utilized in court and/or offered in evidence be subject to 1/1/07?
A There will be no change to court exhibits related to 1/1/07. The current process remains in place.

Q Will sentencing minute entries (with an original thumbprint) be subject to 1/1/07?
A Sentencing minute entries will be scanned and available only via the ECR. The paper original will continue to be maintained.

Q Does 1/1/07 apply to depositions and transcripts?
A No. Depositions and Transcripts will continue to be maintained in paper format.

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absolutely privileged. The Ledvina's appealed, but Division Two affirmed.

Judge Philip G. Espinosa likened the case to other situations in which the courts applied absolute immunity from defamation claims for filing charges and requested conduct; complaints to the State Bar of Arizona and to the Arizona Board of Legal Document Preparers. “We... see no reason why a person who reports a crime to police should be afforded any less protection than a person reporting ethical misconduct by an attorney or a licensed document preparer,” Espinosa wrote.

Absolute protection

Espinosa acknowledged that there is some tension on the subject: while most states grant an absolute privilege in this situation—a minority holds that qualified immunity suffices. He sided with the majority. “We agree that requiring alleged crime victims to rely on the defense of qualified immunity in defamation actions would have dire consequences, including potentially permitting criminal defendants to harass and intimidate victims and witnesses who would testify in court.” He explained that “[t]he mere possibility of retaliatory defamation claims would... tend to discourage free and unfettered reporting to law enforcement authorities to assist the detection and prosecution of criminal activity.”

Espinosa noted that Cerasani was “the alleged victim and main witness in the criminal case,” and that the Ledvina's sued him while the criminal proceedings were still pending. This called into play the Arizona Victim’s Bill of Rights, under which, Espinosa wrote, “the people of Arizona emphatically intended that crime victims ‘be free from intimidation, harassment, or abuse throughout the criminal justice process.’”

“The collateral litigation of defamation claims arising from crime victims’ reports to police,” Espinosa concluded, “would contravene those provisions and thereby vitiate Arizona’s stated public policy.” Explaining his decision to opt for the absolute privilege, he quoted the New Hampshire Supreme Court: “The law does not, and should not, allow recovery in tort by all persons accused of civil liability for abuse of process and malicious prosecution. Joining him were Judges Peter J. Eckerstrom and J. William Brammer, Jr.

Intact interrogation

Judge Patricia Orozco held that there was no Fifth Amendment violation because of the nature of the detective’s question. She acknowledged that the question constituted a custodial interrogation, to which Miranda rights normatively apply: “The officer should have known his question as to whether [d]efendant had swallowed crack cocaine was reasonably likely to elicit an incriminating response, and it therefore constituted interrogation.”

But the officer did not violate the Fifth Amendment because he “was responding to what he reasonably perceived as a potentially life-threatening medical emergency involving [d]efendant while [d]efendant was in his custody... notwithstanding [his] failure to obtain a waiver of Miranda rights beforehand.”

An exception to Miranda applies to situations in which a single person’s safety is at risk, because “[w]hile life hangs in the balance, there is no room to require admonitions concerning the right to counsel and to remain silent,” Orozco wrote, quoting the California Court of Appeal. She noted that this so-called “private-safety exception” or “rescue doctrine” has been applied even when it is the suspect himself who needs its protection.

Rescue exception

To properly apply the rescue doctrine, Orozco noted, three things must be shown. First, the questioning must be necessary because of an urgent need. Second, somebody’s life must be in danger. Finally, the officer’s primary purpose for asking the question must be to rescue the person in danger.

All three requirements were present, Orozco held. Londo’s symptoms proved the urgency and the detective knew from past experience that crack cocaine can endanger one’s life if swallowed. That his primary motive was Londo’s welfare was demonstrated by the fact that he called paramedics and then got Londo emergency treatment.

“[W]e hold that the officer acted with an objectively reasonable concern of immediate danger associated with a potential drug overdose based on the [d]efendant’s physical condition while in custody,” Orozco concluded. Joining her were Judges Sheldon H. Weisberg and Philip Hall.

Secret agent man, secret agent man, They've given you a number and taken away your name.

If you don't know, that's the chorus to the Johnny Rivers hit song, “Secret Agent Man.” It came to mind while reading State v. McIntosh, No. 1 CA-CR 05-0733 (Ariz. App. Nov. 9, 2006), where Division One upheld Durrant Latroy McIntosh’s conviction for weapons misconduct even though the jury foreman had not signed his name but his number to the verdict.

McIntosh was stopped for a traffic violation. When it turned out that his driver’s license had been suspended and he had no identification, he was arrested. The officer searched the car and found a gun, which McIntosh was not allowed to possess, being a convicted felon whose civil rights had not been restored. The state prosecuted him for misconduct involving weapons, and the case went to trial.

The judge instructed the jury that the “verdict form will be signed by the presiding juror. It has to be unanimous, so all of you have to agree, and the presiding juror will affix the presiding juror’s number on the signature line indicating that it’s been deliberated and reached and signed, by using the number.”

Take a number

After deliberating, the jury returned a “guilty” verdict, which the clerk read in open court. The jurors stated collectively that their verdict was “guilty,” and neither the state nor the defense asked for individual polling. But the jury foreman had not signed his name to the verdict. Instead, he had only written “#7,” his juror identification number.

McIntosh argued that the verdict was invalid because Criminal Rule 23.1(a) requires “the verdict of the jury [to] be in writing, signed by the foreman, and returned to the judge in open court.” Merely writing the juror’s number did not constitute a signature, McIntosh argued.

Judge Ann A. Scott Timmer disagreed. Writing for the court, she adopted a broad definition of “to sign,” which she took from Black’s Law Dictionary: “To identify (a record) by means of a signature, mark, or other symbol with the intent to authenticate it as an act or agreement of the person identifying it.” Timmer agreed that people “conventionally sign... a document by writing a name,” but held that this wasn’t absolutely necessary. “[T]he plain meaning of the word ‘sign’ does not constrict the manner of signature,” she wrote. “As long as the mark used evidences authentication of the verdict by the jury foreperson, Rule 23.1(a) is satisfied.”

Privacy protection

Timmer noted that the juror had acted consistently with recent changes to the criminal rules. In 2004, the supreme court amended Rule 23.4, providing that when the court polls the jury, it must not address the jurors by their names. The court’s purpose was “to ensure an accurate record of the poll and to accommodate the jurors’ privacy.” Timmer concluded that it was therefore “reasonable to conclude that it further intended to allow a foreperson to sign the verdict in a manner that satisfies the authentication purpose of Rule 23.1(a) yet protects that person’s privacy.”

“[B]y writing his juror number on the signature line for the verdict,” Timmer concluded, “the foreman expressed his intent to validate the verdict, thereby properly signing the verdict pursuant to Rule 23.1(a).” Joining her opinion were Judges Patricia K. Norris and John C. Gemmill.
Paul E. Burns, an attorney at Steptoe & Johnson LLP, was elected to the Board of Directors of the Arizona Technology Council. The Arizona Technology Council is the largest technology association in Arizona, representing the interests of technology companies, their support firms, educational institutions state-wide economic development groups that collectively form Arizona technology community.

Burns (J.D., 1984, Boston College) concentrates his practice in intellectual property and technology-related litigation, transactions and counseling.

Ken Van Winkle, managing partner of Lewis and Roca LLP, has been appointed chairman of Banner Health Foundation’s board of directors, where he will oversee the volunteer leadership of Banner Health’s philanthropic support organization. Banner Health is the largest not-for-profit health care organization in Arizona. Van Winkle will direct a board charged with enlisting commitments from individuals, corporations and the community at large, to support Banner Health’s mission of making a difference in people’s lives through excellent patient care.

Van Winkle (J.D., 1987, University of Cincinnati) is a member of the firm’s real estate transactional group, focusing his practice on real property acquisitions and dispositions, real estate equity and debt financing, and real estate leasing.

Robert A. Royal, a shareholder at Tiffany & Bosco P.A., has joined The Economic Club of Phoenix’s Board of Directors.

In conjunction with Arizona State University’s W.P. Carey School of Business, The Economic Club of Phoenix is designed to enhance discussion of economic and business issues within the academic, business, labor, and public sectors of the greater Phoenix metropolitan area.

Royal (J.D., 1981, Drake University) is a shareholder at Tiffany and Bosco, where his practice deals with disputes involving businesses and business owners, specifically director, officer and manager liability issues.

Cathy L. Reece, an attorney at Fennemore Craig, has been elected vice president of membership of the Turnaround Management Association. She will serve a one-year term.

The Chicago-based Turnaround Management Association is an international professional organization of attorneys, accountants, investors, lenders, venture capitalists, appraisers, liquidators, executive recruiters and consultants dedicated to corporate renewal and turnaround management.

Reece (J.D., 1979, ASU) is the chair of the firm’s bankruptcy and creditors’ rights practice and focuses in the areas of commercial and real estate finance, bankruptcy, creditor’s rights, workouts, and corporate restructurings.

Daniel E. Garrison, an attorney at Gallagher & Kennedy, P.A., has received the “Turnaround of the Year” award from the Arizona Chapter of the Turnaround Management Association for his work with Jake’s Granite Supplies in Phoenix.

Every year, the Turnaround Management Association’s award program recognizes individuals who helped struggling businesses recover from financial crises, employee downsizing and difficult transitions.

Garrison (J.D., 1995, University of Utah) practice deals with businesses undergoing crisis or transition.

Janna B. Day, an attorney at Fennemore Craig, has been elected treasurer and member of the board of directors of the State Capital Global Law Firm Group.

State Capital Global Law Firm Group is an association of independent law firms with member firms located in all 50 U.S. state capitals, and in capital cities, business markets and financial centers around the world. Membership in the group is by invitation only.

Day (J.D., 1995, Brigham Young University) is a director, practicing in the area of government relations.

Ed Hendricks, managing member of Meyer Hendricks, PLLC, has become a Fellow of the American College of Trial Lawyers.

Founded in 1950, the college strives to improve and elevate the standards of trial practice, the administration of justice and the ethics of the trial profession.

Hendricks (J.D., 1969, UA) has been practicing as a civil trial attorney in Arizona for over 37 years, specializing in complex commercial and tort litigation.
## MCBA Calendar

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, 3003 N. Central Ave. Suite 1850, Phoenix 85012, 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, Chase 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.

### DECEMBER 2006

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<th>Date</th>
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<td>4</td>
<td>Editorial Board Meeting (A), 5:15 p.m.</td>
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<td>5</td>
<td>Litigation Section Meeting (A), noon</td>
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<td>6</td>
<td>Family Law Judicial Reception (University Club), 5:30 p.m.</td>
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<td>Construction Law Meeting (A), noon</td>
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<td>LRS Holiday Party, (Lower Level Conference Room), 5:30 p.m.</td>
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<td>11</td>
<td>YLD Meeting (Bryan Cave), noon</td>
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<td>Paralegal Division Board Meeting (A), 5:30 p.m.</td>
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<td>12</td>
<td>Public Lawyers Division Meeting (A), noon</td>
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<tr>
<td>13</td>
<td>MCBA Executive Committee Meeting (A), 7:30 a.m.</td>
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<td>LRS Committee Meeting (A), noon</td>
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<td>Environmental Law Meeting (Sam’s Café at Arizona Center), 5:30 p.m.</td>
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<td>14</td>
<td>PI/Negligence Section Meeting (A), noon</td>
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<td>Maricopa County Bar Foundation Meeting (A), 7:30 a.m.</td>
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<td>VLP (A), noon</td>
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<td>21</td>
<td>MCBA Board Meeting (A), 4:30 p.m.</td>
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<td>22</td>
<td>MCBA Office Closed Half Day</td>
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<td>MCBA Office Closed</td>
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<td>Criminal Law Section Meeting (Old Courthouse), noon</td>
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<tr>
<td>28</td>
<td>Estate Planning Section Meeting (B), 7:30 a.m.</td>
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<tr>
<td>29</td>
<td>MCBA Office Closed Half Day</td>
</tr>
</tbody>
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The Maricopa County Bar Association would like to thank those who made the 2006 Young Lawyers Division Domestic Violence Necessities Drive a success!

This year’s drive provided 180 women and 160 children currently residing in five Valley domestic violence shelters with items to fulfill their basic needs and also help build the confidence and self-esteem needed to begin a life free of abuse.

**Our Many Thanks to:**

- Maricopa County Bar Foundation
- Lewis and Roca LLP
- Quarles, Brady, Streich & Lang, LLP
- Steptoe & Johnson LLP
- Warner Angle Hallam Jackson & Formanek PLC
- TWO MEN AND A TRUCK
- Bashas’ Supermarkets

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**MCBA**

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The Business of Technology

Using technology makes good business sense. When I started my legal career as a solo practitioner in December 2002, I envisioned using technology as a business tool to better serve my clients and to increase profits. I had discovered in previous businesses the power of the digital world and knew my firm would be stronger and more competitive by harnessing that power.

I had used various legal software programs years earlier as a legal assistant. In fact, around 1990, I was in a firm with about 40 attorneys where I was assigned to help implement litigation support software. As I recall, it was dBASE III. Our greatest challenge was convincing the partners to use a computer. Times have changed.

While in law school, I clerked for an attorney who had legal billing software with some limited document and contact management features. Although I saw in observing his practice the business advantages of venturing into the digital world, I also became keenly aware of the challenges of implementing technology. It was not unusual to lose several hours of productivity at a time due to software glitches. I was, however, still convinced that going digital was a necessary business strategy even though I knew it would not be easy.

As the time arrived for me to start my own firm, I was prepared to hang my shingle and turn on my computer. I purchased a software package that integrated billing, accounting, contact management, case management and document management. It was great. I even created my own little Web site. I felt high tech. I then learned some hard technology lessons about growing a law firm. Going digital is definitely a challenge. It is certainly worth it, but it is still a tremendous challenge.

My original software and hardware environment was designed for a small firm. By the time our firm surpassed about 20 attorneys, the strain on both the software and hardware caused the system to slow down with regular crashes. We then decided it was time to upgrade. Now, unless you have experienced a firm going through sweeping changes in technology, it is hard to appreciate the cost, effort and frustration. Nevertheless, when the dust settles it is more than worth it.

I am now getting comfortable with the new software and the many flexible features. As we learn to master the software, our productivity and effectiveness substantially increases. We can better serve our clients. We save time and cut costs. Ultimately the result is less frustration, more profit and happier clients.

Implementing new technology is a tough decision. Challenging? Yes. Worth it? Definitely.

The Case for the Serial Comma

Of all the punctuation marks, the comma tends to be the most confusing because not every writer agrees on its proper use. Indeed, while some comma usage rules are mandatory, other comma usage rules are discretionary or vary depending on the type of writing in which they are used. The serial comma is a perfect example of this confusing usage.

Generally, the serial comma is the final comma before the conjunction “and” or “or” in a series of words. Most formal writing requires the serial comma, while informal writing, such as newspaper writing, does not require the serial comma. Even more confusing is the fact that some writers use the serial comma in some instances while omitting it in other instances (such as in a common phrase like “red, white and blue”). This varying usage can lead to ambiguity.

Consider the following classic example:

The money should be given in equal parts to Smith, Jones, Taylor and Wright.

Without the serial comma, this sentence is ambiguous. The money should be given in equal parts to Smith, Jones, Taylor, and Wright.

The money should be given in equal parts to Smith, one for Jones, and one for Taylor and Wright to share.

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Member Profile  
continued from page 3

tional law. Erickson graduated with honors from Marine Corps Command and Staff College in 2005 and became a deputy staff judge advocate in the 3rd Marine Aircraft Wing until 2006, mostly prosecuting courts martial.

Erickson accepted his recent deployment with honor and a little uncertainty: “I was encouraged to know that my expertise in military operational law was needed in Iraq, but I was very apprehensive about leaving my family and practice.”

Life lessons

Reading Carl Sandburg’s biography on Abraham Lincoln drew Erickson to law. To this day, he is still passionate about law’s dynamic role in our democratic society.

Erickson turns to General George Patton in defining success: “the secret is how we handle failure and defeat.” He feels his military training in taking decisive action and dealing with contingencies is his biggest career strength.

His biggest challenge has been finding a niche and specialization that best fit his personality, background and desire to continue giving about fifty drill days a year to the Marine Corps Reserve.

And personally, his greatest challenge has been enduring the hardships of Marine Corps infantry officer training and ultimately leading young men in combat.

Worldly knowledge

Iraq has changed his mindset about practicing law in Arizona, as one would expect. “My exposure to civil law and criminal justice in this ancient part of the world has helped me to appreciate the fundamental freedoms our American legal system so supremely protects.”

In Erickson’s legal career thus far, the best lesson he has learned is not to take the adversarial nature of litigation personally. And what does he still have to figure out? “What a judge or jury is going to do with the facts.”

Time marches on

Many parents should be able to relate to Erickson’s use of his spare time, which is much a rarity these days. “The hobbies and interests of my two children have become my own.”

Ten years ago, Erickson did not think he would be where he is now, though he had certainly hoped to be. “I am at a firm where I love to come to work every day and where I look forward to returning after my tour in Iraq.”

And in another ten years, he sees himself continuing to grow as an attorney, guiding his children to college and retiring from the Marine Corps Reserve after about 25 years of active and reserve service.

Service that is much appreciated and respected. Erickson does our local community very proud.

New Lead  
continued from page 1

education programs for schoolchildren and dealt with information and issues related to the jury system and jury service.

Kimbrough has been active in the American Bar Association throughout his career, beginning with its Young Lawyers Division. Currently, he is chair of the Standing Committee on Meetings and Travel. He has also served as a member of the ABA Board of Governors and has been a member of its House of Delegates off and on since 1984. He is also a former officer of the ABA Section of Litigation and chaired a number of ABA standing and special committees, including the Standing Committee on Lawyer Referral and Information Service.

LITIGATION ATTORNEYS

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Bradley P. Hartman has been named chairman of Stinson Morrison Hecker LLP's business department.

Hartman (J.D., 1995, George Washington University) focuses on intellectual property law, business transactions and commercial litigation.

Suzette M. Long, Janey Henze, Anda L. Lincoln, Rhett B. Larson and André E. Carmen have joined Gallagher & Kennedy, P.A. as associates.

Long (J.D., 1999, ASU) has rejoined the firm’s environmental and natural resources practice.

Henze (J.D., 2003, UA) focuses on criminal defense.

Lincoln (J.D., 2004, Lewis & Clark University) joins the firm’s general business practice.

Larson (J.D., 2005, University of Chicago) practices environmental and natural resources law.

Carmen (J.D., 2001, ASU) practices taxation law in the firm’s Prescott office with an emphasis on employee benefits, executive compensation, and federal tax planning and controversies.

Angela Y. Peacock and Clarence Calvin III have joined Fromm Smith & Gadow, PC, as associates.

Peacock (J.D., 2002, Creighton University) focuses her practice on family law.

Calvin (J.D., 2000, ASU) focuses his practice on family law.

Seven associates have joined Quarles & Brady Streich Lang LLP: Nima Aghili, Katea M. Frey, Catherine M. Guastello, Ryan Patterson, Michelle A. Schultz, Ryan M. Schultz, and Jaclyn L. Sepic.

Aghili (J.D., 2006, University of Texas at Austin) joins the firm’s labor and employment group.

Frey (J.D., 2006, Georgetown University) joins the firm’s real estate practice.

Guastello (J.D., 2006, ASU) joins the firm’s bankruptcy and creditors’ rights practice.

Patterson (J.D., 2006, UA) joins the firm’s commercial litigation practice.

Michelle Schultz (2006, University of Cincinnati) joins the firm’s corporate practice.

Ryan Schultz (2006, University of Cincinnati) joins the firm’s business department.

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Patterson (J.D., 2006, UA) joins the firm’s commercial litigation practice.

Michelle Schultz (2006, University of Cincinnati) joins the firm’s corporate practice.

Ryan Schultz (2006, University of Cincinnati) joins the firm’s business department.

Rebecca A. Albrecht has joined Bowman and Brooke LLP as a partner.

Albrecht (J.D., 1975, ASU), a former Superior Court judge for Maricopa County, will continue to grow her mediation and arbitration practice.

Carrie A. Kercsmar has joined the Kercsmar Law Firm.

Kercsmar (J.D., 2000, California Western School of Law) practices commercial litigation, construction defect and employment law.

James W. Fritz has joined Dodge Anderson Mabelson Steiner Jones and Horowitz, Ltd.

Fritz (J.D., 1979, Gonzaga University) will concentrate his practice in the areas of general civil litigation, alternative dispute resolution, juvenile matters and special advocacy.

Jessica A. Benford, Karlene E. Fischer, Andy M. Kvesic, Kristy L. Peters, and Alan A. Waugh have joined Ryley Carlock & Applewhite as associates.

Benford (J.D., 2006, University of Chicago) practices law in the corporate group.

Fischer (J.D., 2006, University of Maryland) practices law in the environmental and natural resources group.

Kvesic (J.D., 2006, University of San Diego) practices law in the litigation group and also does work in the business and white collar crimes group.

Peters (J.D., 2006, University of Minnesota) practices law in the labor and employment group.

Waugh (J.D., 1998, St. John’s University) practices law in the environmental and natural resources and litigation groups.

Lawrence G. Scarborough has been named managing partner of Bryan Cave LLP’s Phoenix office.

Scarborough (J.D., 1981, New York University) will continue to represent and counsel Fortune 500 clients, including leading companies in the technology, manufacturing and finance sectors in class action, antitrust and intellectual property litigation.

Jennifer L. Underwood has joined Fennemore Craig as an associate.

Underwood (J.D., 2005, ASU) joins the firm’s real estate practice group.

Patricia Magrath has joined Zwilliinger & Georges as of counsel. Three new associates also have joined the firm: Sara Wallace, Jesse Anderson and Holly Dormeyer.

Magrath (J.D., 1983, ASU) joins the real estate and business law practice.

Wallace (J.D., 2004, UA) and Anderson (J.D., 2004, Boston University) join the firm’s commercial and real estate litigation practice.

Dormeyer (J.D., 2002, Union University) joins the firm’s real estate and business law practice.

Tabitha A. Jecmen has joined Tiffany & Bosco, P.A.

Jecmen (J.D., 2005, The John Marshall Law School) joins the firm’s litigation department.

David Stevens has joined the Judicial Branch of Maricopa County in Arizona as its chief technology officer.

Stevens served six years as John Barrett’s chief deputy administrator, managing the consolidation of case management systems by leading the development of the Judicial Branch’s Integrated Court Information System.

Looking for more exposure for your business? Have space to lease or need to fill a position at your firm? To place a display or classified ad, call the MCBA 602-257-4200.
The Young Lawyers Division invites you to attend
2007 Barristers Ball – Saturday, March 3, 2007

The Ritz-Carlton Phoenix
2401 East Camelback Road • Phoenix, Arizona
6:00 p.m. Cocktails and Silent Auction
7:30 p.m. Dinner and Live Auction
Semi-Formal Attire

Benefiting: Youth Evaluation and Treatment Centers
Youth Evaluation and Treatment Centers has been providing social and mental health services in Maricopa County for over thirty years and is dedicated to guiding at-risk youth and families through a broad range of services. The organization intends to use the Silent Auction proceeds to expand its programs, including sponsorship of family centered activities, assistance for after school programs and summer youth camps, and emergency assistance for families.

Please visit The Luther Law Firm’s website www.TheLutherLawFirm.com for more information.
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POSITIONS

AV RATED FIRM SEeks LITIGATION ASSOCIATE with excellent academic and professional credentials with a minimum of 2-3 years construction or commercial litigation experience. Segregate resume and letter of interest, in confidence, to Dyer & Butler, LLP, Attn: Everett S. Butler, 2800 North Central Ave., Suite 100, Phoenix, Arizona 85004.

FRIENDLY MESA FIRM SEeks DR SECRETARY for immediate start. Not entry level position—but must have Family Law experience & top communication skills. Benefits and salary DOE. Must be MS Word proficient. Email to rhartsell@weinsoflaw.com or fax to Roger Harttell @ 480-907-1636. No calls please.

PLAINTIFF’S PERSONAL INJURY ATTORNEY needed to handle active caseload. 2-3 years + experience. Candidate must be able to work independently and be highly motivated. Spanish speaker a plus, competitive salary & benefits. Fax confidential resume to 602-288-1651.

THE LAPAZ COUNTY PUBLIC DEFENDER’s office is seeking an experienced criminal law attorney. Salary is $69,000.00 and up, depend- ing on qualifications. The Public Defender’s office is located in Parker, Arizona, which is a community located on the Colorado River. We are 35 pleasant driving miles from Lake Havasu City, Arizona and approximately three hours drive from Phoenix. Applicants may contact this office at the address or fax below: Ella G. Johnson, LaPaz County Public Defender, 1400 Kola Avenue, Parker, AZ 85344. 928-669-9828. Fax: 928-669-2015.

REAL ESTATE ASSOCIATE-PHOENIX. Lewis and Roca’s Phoenix office is seeking a highly motivated real estate associate with approxi- mately three years’ experience in the transac- tional commercial real estate area, preferably including experience in purchase and sale transactions, land development, real estate fi- nancing, associated real estate due diligence, and commercial leasing. The qualified candi- date will join a friendly, team-oriented envi- ronment and will immediately participate in a broad range of sophisticated real estate trans- actions. If interested, please reply in confi- dence to: Mary W. Kiley, Lewis and Roca LLP, recruit@lrflaw.com or fax materials to (602) 734-3930. Lewis and Roca is an Equal Op- portunity Employer. We do not discriminate on the basis of race, sex, sexual orientation, religion, national origin, color, age, disability or veteran status.

LAW OFFICE MANAGER. Ten-employee firm seeking confident, experienced, or- ganized, and motivated legal secretary to manage office operations, employees, and billing. Excellent benefits and salary for the right candidate. Fax: 602-953-1631, E-mail: Don@Loesbrown.com.

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BISHOP LAW OFFICE. AV rated family law firm seeks partner and associate attorneys. At least 3 yrs exp. And excellent writing skills req’d. Fax resume to: (602) 749-8502 or e-mail to bill@bishoplawoffice.com.

LITIGATION ATTORNEY. Mann, Berens & Wisner, LLP, an AV-rated, small/mid-size firm, seeks to hire an attorney with 2+ years com- mercial litigation experience, preferably con- structed and bankruptcy exp. Excellent aca- demic and professional credentials required. Forward resume and writing sample to: Hir- ing Partner Richard S Wisner, 2929 N Central Ave, Ste 1600 Phoenix, AZ 85012-2760, fax (602) 258-6212 or email tzamora@mbwlaw.com.

POLI & BALL, PLC IS LOOKING FOR A LAWYER with at least 3 years experience in the area of commercial litigation. Highly sophisticated practice with informal, small- firm environment. Direct client contact. Must have strong communication and writing skills and be licensed to practice in Arizona. Com- pensation commensurate with credentials and experience with attractive bonus system. Send resumes in confidence to: Administrator, Poli & Ball, PLC, 2999 N. 44th Street, Suite 500, Phoenix, AZ 85018, fax: 602-840-4411, or e- mail: steckerl@poliball.com.

SENIOR ATTORNEY Mann, Berens & Wisner, LLP, an AV-rated, small/mid-sized firm, seeks to expand its practice areas with lateral hires. Will pay top dollar for attorneys with portable books of business whose practices are compatible with the firm. If interested, contact Jay Mann at 602-258-6200 or email jmann@mbwlaw.com. All inquiries will be kept confidential.

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AV-RATED SCOTTSDALE FIRM seeks a civil litigation associate licensed to practice in Ariz- ona with 1-3 years experience. Please send resume, writing sample, and a list of reference- es via e-mail to Firm@BerkMoskowitz.com.

BISHOP LAW OFFICE. AV rated family law firm seeks partner and associate attorneys. At least 3 yrs exp. And excellent writing skills req’d. Fax resume to: (602) 749-8502 or e-mail to bill@bishoplawoffice.com.

LITIGATION ATTORNEY. Mann, Berens & Wisner, LLP, an AV-rated, small/mid-size firm, seeks to hire an attorney with 2+ years com- mercial litigation experience, preferably con- structed and bankruptcy exp. Excellent aca- demic and professional credentials required. Forward resume and writing sample to: Hir- ing Partner Richard S Wisner, 2929 N Central Ave, Ste 1600 Phoenix, AZ 85012-2760, fax (602) 258-6212 or email tzamora@mbwlaw.com.

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Report reveals public’s judicial perception

At a conference held at the George-town University Law Center in September, the Annenberg Public Policy Center of the University of Pennsylvania released findings of two surveys conducted in 2005 and 2006 on the topic of the judiciary. Responses to the surveys indicate the following:

- Only one-third of Americans can name all three branches of government; one-third cannot name any.
- 23 percent of Americans believe that a 5-4 decision by the Supreme Court is referred to Congress for resolution; 16 percent think closely divided decisions are sent back to lower courts.
- 47 percent of survey participants either do not know whether written reasons for Supreme Court judicial decisions are issued by Supreme Court justices (29 percent) or believe that Supreme Court justices do not issue written reasons for their decisions (18 percent).
- The Supreme Court is the most trusted branch of government (64 percent); trust increases with a survey respondent’s education and decreases with their age.
- Nearly half of Americans surveyed (47 percent) think it essential or very important to impeach or remove a judge if the judge makes an unpopular ruling.
- 75 percent of survey respondents say a judge’s ruling is influenced by his or her personal political views to a great or moderate extent.
- 62 percent say that courts favor the wealthy or those with political influence; an equal number believe that courts in their state are legislating from the bench.
- A majority of Americans surveyed (75 percent) believe that a judge’s desire to be promoted affects his or her impartiality.
- 65 percent of the public think it’s better to have a judge’s run for election rather than being nominated by governors and independent committees.
- 70 percent of the public think that judges are influenced by the act of raising money for their election.

Educational program disclosure policy released

The federal Judicial Conference recently released its new disclosure policy concerning federal judges’ attendance at privately funded educational programs. The disclosure policy takes effect on January 1, 2007, and requires educational organizations that issue invitations to federal judges to attend educational programs as a panelist, speaker, or attendee, with an offer to pay for or reimburse that judge in excess of $305, to disclose its financial and programmatic information on the federal judiciary’s Web site, www.uscourts.gov.

Although, generally speaking, nongovernmental organizations are subject to the policy, the Judicial Conference excluded: state and local bar associations; national, state, and local subject-matter bar associations; judicial associations; the National Judicial College; and the Judicial Division of the American Bar Association.

Educational program providers subject to the policy must disclose:
- The name of the program’s sponsors;
- The name or title of the program;
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Arizona’s Economic Loss Rule: Is It a Defense to Fraud?

By Richard G. Himelrick
Special to Maricopa Lawyer

The economic loss rule is a judicially created defense. When it applies, the defense prevents a plaintiff with contract remedies from recovering financial losses under a tort theory unless the plaintiff also suffered personal injury or property damage. Any recovery of economic losses must be based on contract law. The idea is that between contracting parties, the contract’s provisions, not tort law, should control.

The rule is most often applied in negligence and product liability cases. In Arizona, it has not been addressed in an appellate decision outside those areas. But in other jurisdictions and in the Arizona courts, the rule is a fashionable defense to fraud, fiduciary-breach, and even statutory claims. Its application to these claims has had mixed results. But in most jurisdictions the courts have created exceptions to the rule.

Recent decisions by the California and Florida Supreme Courts are part of a backlash at the rule’s expansion. Robinson Helicopter Co. v. Dana Corp., 102 P.3d 268 (Cal. 2004); Indem. Ins. Co. of N. Am. v. Am. Aviation, Inc., 891 So. 2d 532 (Fla. 2004). Both decisions questioned the rule’s growth and placed limits on it as a defense. The Florida decision questioned the rule’s expansion. The Florida Supreme Courts are part of a backlash against the economic loss rule in a fraud case. But several federal decisions have applied Arizona’s rule to bar negligent misrepresentation claims. E.g., Wojtaszek v. Reata, 394 F. Supp. 2d 1149, 1171-72 (D. Ariz. 2005). None of these decisions attempted to reconcile the conflict between a defense that bars recovery for economic losses and a branch of tort law that remedies the same losses. A uniform judicial response does not exist, although most courts permit some type of recovery for economic losses caused by intentional or negligent misrepresentation.

Decision yet to come

Arizona’s state courts have not analyzed the economic loss rule in a fraud case. But the Arizona Supreme Court has applied Arizona’s rule to bar negligent misrepresentation claims. 1171-72 (D. Ariz. 2005). None of these decisions attempted to reconcile the conflict between a defense that precludes economic damages and torts intended to permit recovery of the same damages. A definitive decision by an Arizona appellate court has yet to be issued.

But if recent trends are any indication, it is likely a fraud exception of some sort will be recognized. The argument for a fraudulent-inducement exception is especially compelling. The weight of authority, though, is in line with the California Supreme Court’s sentiment in holding that “a contract is not a license allowing one party to cheat or defraud the other.” Robinson Helicopter Co., Inc., 102 P.3d at 361.

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